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Canadian Indian treaty notes

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Treaties 8 & 11

The Treaties with the Indian people of Canada are not like international treaties. Indian treaties have some of the characteristics of collective agreements and also policy statements, and they are open to different interpretations.

There have been fifteen of these treaties between Indian people and the Crown in right of Canada since 1850. There are many earlier agreements of different forms which can be classed as treaties. The whole area is ill-defined.

|| The early French discovery of North America meant conquest as far as Indian land title was concerned. Similarly, when Britain occupied a land or territory as the result of discovery, exploration, conquest or international treaty, supreme title to all lands within that country was lodged in the British Crown. However, as a matter of justice and as a military necessity, it became British policy not to occupy land until native rights in it had been removed.

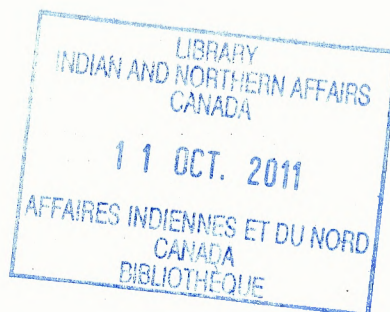
I know you are especially interested in Treaties 8 and 11 and I will talk about them later, but first I think you should know how they fitted in with the development of Canada as a nation. As you know, Canada was created in 1867 at the Confederation of the four Provinces of Ontario, Quebec, Nova Scotia and New Brunswick. Then in 1868 Canada purchased Rupert's Land and the North-Western Territory from the Hudson Bay Company. Now, when these territories were admitted into the Union in 1870, there was a very important provision regarding the Indian people:

"Article 14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian government in communication with the Imperial government; and the company shall be relieved of all responsibility in respect of them . . ."

Therefore, Article 14 set the stage for the negotiation of the numbered Treaties as settlement moved westward and new provinces entered Confederation:

Treaty #1 - covered nearly all of the new province of Manitoba
Treaty #2 - took in a likely area of expansion
Treaty #3 - opened up the Dawson Route to emigrants

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- Treaty #4 - Fertile Belt opened up
- Treaty #5 - paved the way for steam navigation
- Treaty #6 - opened up Saskatchewan District for telegraph and proposed railway
- Treaty #7 - covered remaining portion of the Fertile Belt
- Treaty #8 - cleared route from Edmonton to Pelly River in the Yukon
- Treaty #9 - to forward construction of railways and highways
- Treaty #10 - covered remaining unsurrendered portion of Saskatchewan
- Treaty #11 - prompted by discovery of oil at Fort Norman in 1920

The Commissioners saw the Treaties in one way and the Indians in quite another. The Indians sought to be protected from land settlers grabbing the land and from the evils they could foresee. They sought land which they could call their own and upon which they could live much as they had lived in the past. The Commissioners saw the land they were setting aside as being a place where Indians could learn to be settlers and farmers. Some Indian spokesmen appeared to accept the idea of farming, but it is unlikely they understood what was involved.

In back of all this treaty activity, the Canadian Parliament passed a series of legislation known as the Indian Act which was initially designed to protect the Indian from unscrupulous traders, from land speculators and from the perils of the frontier society while he became adapted to the new way of life.

The Commissioners for Treaties 8 and 11 realized that the Indians of the North acted as individuals rather than as a nation, that tribal organization was very slight, and that they lived by hunting. They were also aware that the country would never be settled extensively for agricultural purposes and that the reserve idea was inconsistent with the life of a hunter. They knew that there might be mineral development and some settlement as a result, but they didn't foresee that this would bring any sudden or great changes likely to interfere with the Indian way of life. Therefore, the Commissioners included in Treaty 8 an option for the Indians of taking lands in severalty, that is, individually, instead of reserves. To date only the Hay River Band has elected to take a reserve in the Northwest Territories portion of Treaty 8. No reserves have been assigned in the Treaty 11 area.

In view of the plans for the development of the Mackenzie Valley Pipeline, the Indian Brotherhood of the Northwest Territories has claimed that aboriginal interest to the 400,000 square miles has never been extinguished. The Brotherhood

CANADIAN INDIAN RIGHTS AND TREATIES

In any discussion about native rights, one should understand the extent to which early British aboriginal policies have affected the attitudes of Canadian governments in its dealings with the Indian people.

When people study the evolutionary growth of Canadian Indian treaty activity, the general consensus seems to be that the solutions to the various major claims, controversies and contentions that attend the study will have to be political rather than judicial. One element of this consensus is to the effect that British "Treaty" policy gave official recognition to the subject of "Indian Rights".

All the European powers who colonized the Americas shared one basic assumption: the aboriginal inhabitants of the land were subjects of the heads of the colonizing states. I should emphasize that the British Sovereign could, if he wished, create and confer certain prerogatives as a matter of grace and favour. For example, it was within the Royal prerogative to create the concept of an "Indian Title", to recognize such a title and to extinguish this title as he saw fit.

As a colonial power, when British occupied a land or territory as the result of discovery, exploration, conquest or international treaty, paramount title to all lands within that country was lodged in the British Crown. However, both as a matter of justice and as a military necessity, it became British policy not to occupy land until native rights in it (and hence the possibility of armed native resistance) had been removed.

The definitive date regarding Canadian Indian treaty matters is 7 October 1763 and the occasion, promulgation of the Royal Proclamation. This instrument

sought to assure the Indian people that settlement of lands reserved to them as their "hunting grounds" to the west of the Appalachians would be inhibited and under control of the British Sovereign.

The Proclamation did not recognize or confer a clear ownership title, and the lands reserved as Indian hunting grounds were expressly cited as "parts of Our Dominions and Territories" in the Royal sense. Neither the land nor the peoples west of Lake Winnipeg were known in 1763. (John Rocque's map of 1760).

The treaty system in Canada evolved gradually in sophistication:

- 1) in the 17th and 18th centuries the Maritime treaties were largely of the "Peace and Friendship" variety, designed to maintain the neutrality of Indian groups in colonial wars;
- 2) between 1781 and 1850 - to accommodate their Iroquois allied and the United Empire Loyalists whom had fought on the British side during the American Revolution - purchase and cession activities as required in the Royal Proclamation were entered into by the Crown;
- 3) the discovery of minerals on the shores of Lakes Huron and Superior led to the signing of the Robinson Treaties of 1850 in the new Province of Canada;
- 4) In June 1870 the Order-in-Council admitting Rupert's Land and the North-Western Territory (Yukon and NWT) into Confederation provided in Article 14:
"Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian government in communication with the Imperial government; and the company shall be relieved of all responsibility in respect of them"
- 5) Treaty #1 - covered nearly all of the new province of Manitoba
Treaty #2 - took in a likely area of expansion
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- Treaty #4 - Fertile Belt opened up
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- 1923 - Chippewa and Mississauga Agreements which dealt with all other Indians having any interest in the area ostensibly covered by the Robinson-Huron Treaty of 1850.

The centralization of authority through the Royal Proclamation to deal with native people and their property rights was continued in the constitutional frame-work at Confederation in 1867. S. 91(24) of the B.N.A. Act gave the Federal Parliament exclusive jurisdiction over "Indians, and Lands reserved for the Indians. By this authority Parliament has passed legislation known as the Indian Act which was originally designed to protect and assimilate the native people into the dominant society. However, in recent years some provisions of the Indian Act have been tested in the courts as being discriminatory and in conflict with the Canadian Bill of Rights (1960):

- R. v. Drybones (1970) S.C.R. 282, 9 D.L.R. (3d) 473;
- A.G. (Can.) v. Lavell (1974), 38 D.L.R. (ed) 481.

This special legislation affects the lives of approximately 270,000 status or registered Indians. Of these about 125,000 are descendants of those Indian people who entered into land cession treaties, which cover about one-third of Canada.

Apart from special provisions in the Indian Act, Indians are subject to federal, provincial and municipal laws, and in the same manner as other Canadian citizens, Indians may sue and be sued and may enter freely into contractual obligations in ordinary business transactions. Their property on a reserve is exempt from

taxation, and such property, except on a suit by another Indian, is also exempt from seizure.

Indians may vote at Federal elections on the same basis as other citizens. With regard to provincial elections, the Indians are governed by the electoral laws of the various provinces.

Total prohibition of the use of any kind of intoxicant by Indians except for medicinal purposes began in the Indian Act of 1876 and continued with minor changes until 1951 when legislation was broadened to allow the Indian people to decide their own course of action on this matter on a provincial and individual reserve basis.

The Indians now elect band councils consisting of a chief and councillors who correspond to the local elective officers in rural municipalities. However, Indian bands who wish to adhere to their tribal system of choosing chiefs and councillors may continue to do so and those chosen exercise the same powers as an elected council. The councils are concerned with local conditions affecting members of the band and work closely with the Indian Affairs representatives. They may make by-laws with regard to local matters and also have responsibilities concerning the management of band funds, the surrender or lease of reserve lands, land allotment and band membership.

Under the Indian Act, an Indian band may be permitted by Order in Council to control, manage and expend in whole or in part its revenue moneys. To date over 60% of the Indian Bands in Canada have been granted this authority.

The provision of education services to Indians is the responsibility of the

Federal Government. Today an Indian may receive a free education including university levels. In many cases federal schools are operated on the reserves; in others, agreements have been reached with provincial schools, in which cases the tuition costs are paid by the Federal Government.

In May 1969 the federal Government announced a new Indian policy, one of the proposals having been to abolish the Indian Act altogether. This policy was almost totally rejected by the Indian people and the Government subsequently shelved it.

Finally, as many Indian people continued to have grievances concerning the Treaties, land transactions, and the Government's administration of certain of the Indians' affairs, Dr. Lloyd Barber was appointed a Commissioner in December 1969 to inquire into, study and report on how these grievances, in the form of claims, can best be adjudicated.

In addition funds have been provided by the Government to Indian and Inuit Associations to carry out research into such claims. However, the Minister of Indian Affairs has stated recently that the Government will not renegotiate the treaties but will honor its obligations under them.

This year, in anticipation of an increasing flow of claims, the Department has set up an Office of Claims Negotiation to deal more effectively with them. The role of this Office is to represent the Federal Government in negotiating the settlement of claims between the native people and the Government. Negotiation permits settlements of claims involving forms of compensation and concessions that might not be available under an adjudicatory approach.

CANADIAN INDIAN TREATY NOTES

*Minor Revision
Run "Notes" of
Jan to C. Fairclough*

In the consideration of Canadian Indian Treaty matters there is an understandable tendency to look at these purely from the standpoint of to-day's values almost as one would look at current sociological concepts or the type of legislation which arises from these concepts. There is also a tendency not to separate the constitutional, moral and ethical principles involved - in consequence there is a resultant confusion as to what actually transpired in treaty activity with what people think should have taken place or as to how what actually transpired should be interpreted to-day.

What we think of as Indian treaty activity in Canada has its roots in the relatively loose pre-revolutionary colonial policy of British North America, growing in an evolutionary and organic manner to the definite statement enunciated in the Royal Proclamation of 1763 (after the conquest of New France) to the comprehensive Robinson Huron and Superior treaties in Upper Canada of 1850, and culminating in the quite sophisticated Western exercises which took place after Confederation. These successive activities, it should be always borne in mind, were engaged in on both sides by peoples of those specific times to deal with particular situations occurring during those times. Being human activities, they are fraught with all the ills, fears and faults that human flesh and mind are heir to. Being essentially matters of exigency, the evolutionary aspects of the successive exercises are generally seen to be spasmodic and are very often imprecise or inexact to our critical and enlightened view.

However imperfect these treaty exercises were, from the constitutional and legal point of view they accomplished what they were designed to accomplish. As a colonial power, when Britain occupied a land or territory as the result of discovery, exploration, conquest or international treaty, no British functionary

ever suffered any illusions as to who "owned" that country - it belonged to the Sovereign, the manifestation of the British Crown. Paramount title to all lands within that country was lodged in the British Crown - it became a dominion of the Sovereign in right of the Crown, subject to British law as did all the inhabitants. Internally there was, and could be, no question of shared "sovereignty" - this would deny the exclusive sovereignty of the British monarch and create an "ownership" paradox which British constitutional law would not, and could not, permit (this sovereignty principle was shared by all the "Colonial" powers.)

Concurrent with Britain's rise as a colonial power was the evolution of the British principle that government should at least appear to rule with the consent of the governed - in British North America this could be shown to be so if the subject peoples could be persuaded to engage in internal treaty activities. It should be emphasized that the British Sovereign could, if he wished, create and confer certain prerogatives as a matter of grace and favour. For example, it was within the Royal prerogative of the Sovereign to create the concept of an "Indian" title, to "recognize" such a title and to "extinguish" this title (in any way he saw fit) at his pleasure. An understanding of the unfettered sovereign or supreme authority lodged in the British Crown prerogative concerning both basic land ownership in colonial possessions and the creation, recognition and extinguishment of interests on the part of their indigenous peoples, is essential to any study of the evolutionary growth of Indian treaty activity within what is now Canada.

There were, of course, other exigent matters to consider in the colonization of British North America. In the early days there was the matter of security - these were the times when Indian treaties were entered into to ensure the alliance or neutrality of the various Indian peoples beyond the British forts and palisaded settlements. The British were sure of Sovereign ownership but

they can be pardoned for wondering how far this knowledge extended, and for taking advantage of the facts of contemporary Indian politics. Also, in these times it was the British who doubted the value of Indian treaties and who questioned the good faith of the Indian signatories. For example, the Indian peoples of the Maritimes were loyal allies of the French Sovereign in the main; sovereignty of the British monarch over Nova Scotia had been acknowledged in the Treaty of Utrecht (1713) but Governor Cornwallis in a letter to the Lords of Trade dated 1749 expresses his misgivings as follows "...The St. John's Indians I made peace with ... a warlike people... treaties with Indians are nothing. Nothing but force will prevail." Similar doubts were even expressed by Sir William Johnson, vaunted mentor of the Iroquois peoples, "...They desire to be considered as Allies and Friends, and such we may make them at a reasonable expense and thereby occupy our outposts, and carry on a trade in safety, until in a few years we shall become so formidable throughout the country as to be able to protect ourselves and abate of that charge; but until such measures be adopted, I am well convinced there can be no reliance on a peace with them... as interest is the grand tie which will bind them to us, so their desire of plunder will induce them to commit hostilities whenever we neglect them."

The unfortunate fact of the pre and post-Conquest "Peace and Friendship" treaties with the former Indian allies of the French Sovereign in the Maritimes is that they conferred no identifiable continuing material benefits on the Indian people concerned. The Conquest itself discharged any prior claim to title, principally that acquired by French occupation, and confirmed the absolute title of the British Sovereign. This is as practical an example as one could hope to find that a British Sovereign could conceive, acknowledge and extinguish any native title as he or his advisors saw fit - the initiative always rested with the Crown.

In New France absolute title to the lands claimed was considered to be lodged in the French Sovereign and passed, unfettered, to the British Sovereign at the Conquest. The French had concluded numerous treaties with the Indian people - treaties of alliance and support with the Hurons and Algonkians; treaties of neutrality with the Iroquois - but the major benefit conferred was considered to be the protection of the French Sovereign; this, of course, equated with the British "protection" which had been enunciated as early as 1670 by Royal Command. The French had also set aside land for various Indian groups (e.g. the Hurons at Lorette, the Iroquois at Caughnawaga) but the title of these lands was lodged with the clerics into whose charge the various groups were placed. Although the Articles of Capitulation of 1760 stipulated that the former Indian allies of the French Sovereign were not to be penalized or disturbed in possession of their lands, the bounds or limits of these lands were nowhere defined in this document. (It should also be borne in mind that the British Crown prerogative did not admit any form of title or ownership of land to the indigenous peoples of North America other than that of occupancy and use.)

The French had been singularly successful in binding the Indian peoples in New France and Louisiana to them through the partnership of the fur trade. Among the reasons cited as the impetus for the Royal Proclamation of 1763 was the fact of disaffection among the Western peoples (particularly those in the lands dominated by Detroit in what is now northern Michigan) as exemplified by Chief Pontiac. These people feared that settlement, along the lines of that in the Atlantic colonies, would inevitably follow transfer of suzerainty to the British. In order to placate these fears and to inhibit land-grabbing, the Royal Proclamation stipulated that the western lands (exclusive of old Quebec and Rupert's land) would be reserved to the Indians as their hunting grounds. It was further stipulated

that any expansion into these lands was to be cleared by preliminary Crown purchase.

Unfortunately the "Indian hunting grounds" were severely limited by the knowledge of the times, geography and subsequent historical events. Although its western limits were unknown in 1763, Rupert's Land by definition took in all the land drained by waters flowing into Hudson's Bay making the drainage basin of the Red River the effective western boundary of the "hunting grounds". (The southern portion extending to East and West Florida was, of course, lost to the United States as the result of the Revolutionary War.) Neither the land or the peoples west of Lake Winnipeg were known at the time of the Proclamation.

The Proclamation applied to all Indian peoples in the territory concerned then known to be under the sovereignty and protection of the British Crown. It did not serve to inhibit the Royal Prerogative but emphasized that additional Royal protection would be accorded the Indian people during any westward expansion of colonization. It did not recognize or confer an indigenous clear or ownership title, and the lands reserved were expressly cited as "parts of our Dominions and territories" in the Royal sense; the tenure of the Indian peoples continued to be that of occupancy and use and no division or sharing of "sovereignty" was implied or intended.

Despite the appearance of exigency attending the Royal Proclamation, the principles enunciated were not put into practice until after the Revolutionary War (and then precipitately) in order to accommodate the Hudson valley Iroquois who had fought on the British side, and the United Empire Loyalists - the plan for both groups being resettlement in Upper Canada. In conformity with the Royal proclamation the Ojibway, who had filtered into Upper Canada from the north-west and were deemed to be the Indian people in residence, were dealt

with in various treaty exercises and relieved of their occupancy rights by outright purchase agreement payable once-for-all, or annually by goods in kind. Until 1830 the treaty exercises and the outgrowing administration were handled by military personnel. By 1850 the treaty concept and attending humanitarian considerations had evolved to the point where it was considered just to set aside parcels of land reserved for the exclusive use of Indian signatories in order that they would not be overrun by advancing settlement. Even so, the principle that Indian tenure was merely that of occupancy and use was maintained - title to these reserved lands remained vested in the Crown.

With Confederation the rights of sovereignty came to be exercised through the Dominion government. While Rupert's Land had been specifically exempted from the provisions of the Royal Proclamation, and the obligations assumed as a matter of policy concerning Indian tenure there and elsewhere in the mid-western provinces could have been discharged by outright purchase agreement as stipulated in the Royal Proclamation, the Dominion government continued, and expanded on, the treaty methods introduced in 1850 with humanitarian considerations exigent to the conditions of the times being the order of the day.

British Columbia had not shared the history of eastern British North America and had evolved as a separate British colony. Indian tenure had not been interpreted as it had in the territories to which the Royal Proclamation had applied (or in the true North-West) and Indian reserves had been assigned on the basis of fixed occupational sites of long standing. The preponderance of legal opinion is to the effect that an Indian "title" in the eastern sense had never been conceived, recognized or extinguished in British Columbia west of the Great Divide (the legal rationale being that if the Crown signed no treaty or agreement recognizing an Indian title, it did not exist.)

Undoubtedly the Indian component of the Canadian population did not experience the degree of dislocation and hardship suffered by the indigenous peoples of the United States. It may be that the transition from colony to republic played a part in the United States, but it is much more valid to say that the relatively greater pressures engendered by a rapidly growing population and expanding frontiers tended to push the U.S. Indian people out of the way - the United States was simply more attractive in the eyes of incoming settlers and developers.

In Canada these pressures did not exist in any degree to the same extent, and indeed the land was far more attractive to the fur trader and, by natural extension, the administration more hospitable to the Indian collector for a much longer period of time than in the United States. The fur trade can be said to have sustained the Canadian Indian people well into the Twentieth Century until their cause could become a feature of modern sociological concepts.

Treaty and Property Rights
March, 1970.

INDIAN TREATIES - A RATIONALEINTRODUCTION

The premise on which the British occupation of what is now Canada was based is that absolute title to the land was vested in the Crown; this paramount estate becoming a plenum dominium whenever the Indian title was surrendered or otherwise extinguished. The French, on the other hand, did not subscribe to the principle of an Indian or aboriginal title but rather, on acquiring the land, accepted a responsibility for the religious welfare of the indigenous peoples whose social affairs were also attended to by the ecclesiastics into whose charge they were placed.

An aboriginal title can be interpreted not as a clear land title to a fixed occupational site but as the territorial range rights of an identifiable nomadic group over a wide but definable area for food-gathering, hunting, fishing and trapping. The idea that a nomadic existence equates with the principle of an aboriginal title is quite valid where it can be shown that this territorial imperative is maintained by force of arms, agreement or lack of serious competition, and this way of life can quite legitimately be referred to as "ancient" or "traditional".

However, at this point cognizance should be taken of several divergences set in motion by the various occupying European powers fairly late in historical times which completely changed the ancient or traditional ways of most Indians and irrevocably modified those of the remainder. Prior to the various occupations, the traditional Indian ways in what is now Canada ranged from the conspicuous consumption of the Pacific coastal peoples, through the marginal subsistence levels of those in the north-central region to the ample subsistence provided the inhabitants of the eastern woodlands by the chase and the produce of their village plots.

Arising from Article 14, the post-Confederation numbered treaty activity in the west commenced with Treaties 1 and 2 (1871) and by 1877, with Treaty 7, all the lands within the Fertile Belt had been dealt with. Twenty-two years later Treaty 8 was negotiated to facilitate the passage of miners to the Pelly River mines in the Yukon and Treaties 10 and 11 followed in 1906 and 1921 respectively.

The most dramatic change was, of course, the conversion of the Plains Indians to the horse culture. At least equal in impact was the emphasis placed by the early French and British entrepreneurs on the fur-trade which, to provide the profits expected, wholly depended on a re-direction of Indian pursuits to the primary production (on a massive scale) of hides and furs for the world market. At this stage, at least for the French and the English, the wide-ranging nomadic Indian was a necessity.

However, in other quarters the fur-trade was not the be-all and end-all of the new land's potential. The dilemmas which are manifest to this day were early evidenced and the Indian people, already subject to dislocations and relocations beyond thier control, were inevitably caught up in the resultant conflicts - to nurture the fur-trade; to open the country to settlement and development; to support and protect the Indian people; to maintain effective trading facilities and, above all, to uphold law, peace and good order.

These problems were resolved for the French Sovereign by the conquest of 1759. For the British, the existing dilemmas were not only becoming more apparent but paradoxes were gestating which would make the half-century between 1763 and 1814 most portentuous for the future of the Indian people who found themselves under the suzerainty of the British Sovereign.

HISTORICAL BACKGROUND

In 1713, by the Treaty of Utrecht, France ceded Acadia (excepting Cape Breton Island) to Great Britain; recognized the British Sovereign's suzerainty over the Iroquois people; relinquished all claims to Newfoundland and recognized British rights to Rupert's Land. When the Charter for exploitation of Rupert's Land was granted to the Hudson's Bay Co. in 1670 and the land so named was claimed as British, it is doubtful that even the claimants were aware

of the vast territory involved - all the land draining into Hudson's Bay from Baffin Island on the north-east to the headwaters of the Saskatchewan in the south-west. For the next century and a quarter the western boundaries of Rupert's Land were to remain the firmest delineation of British America's western extent.

By the Peace of Paris, 1763, France ceded all her North American possessions to Great Britain, with the exception of St. Pierre and Miquelon Islands (which she retained) and Louisiana (which she ceded to Spain). In the Spring of this year the crystallization of Indian misgivings gained expression through the activities of Chief Pontiac, although particular provisions in the Royal Proclamation concerning the protection of Indian occupied lands were designed to allay such fears. The Royal Proclamation of 1763 did indeed define lands which were to remain, at the Sovereign's pleasure, with the Indians as their hunting grounds, but Rupert's Land and the old colony of Quebec were specifically exempted. In what was to become Canada, the hunting grounds in the east comprised a relatively narrow strip between the northern bounds of Quebec and Rupert's Land along with all of what was to become Upper Canada - in the north-west, an amorphous area bounded by Rupert's Land, the Beaufort Sea, and the Russian and Spanish claims to the west and south.

In 1769 St. John Island (P.E.I.) became a separate government.

By the Quebec Act, 1774, in what has been described as a statutory repudiation of Royal Proclamation policy, Quebec's boundaries were extended to encompass all the land described in the preceding paragraph as the eastern Indian hunting grounds.

With the Revolutionary War of 1775 to 1781 the emphasis in the colonies of Nova Scotia and Quebec changed irrevocably to settlement, development, lumbering,

fishing and trade - dissolution of the two hundred year old partnership between Indian and fur-trader was well on the way. The most immediate effect was a 50% increase in population in the two colonies occasioned by the influx of United Empire Loyalists who were primarily interested in farming, home-steading and business. These were followed, particularly to Upper Canada, by a steady stream of settlers with like interests from the south. They brought with them the desire for peace, law, good order and the other concomitants of settled living.

The Treaty of Paris, 1783, established the boundary from the Atlantic to Lake of the Woods. At one stroke Canada lost the entire south-western half of the vast inland domain she had discovered, explored and exploited with the help of the Indian people. Along with it went that portion of the Indian hunting grounds, established in 1763, bounded by the Great Lakes and the Ohio and Mississippi Rivers. A natural point of departure for the future boundary at the 49th parallel of latitude was also ensured. However, the inevitable dissension with the Indian people which followed was reaped by the United States rather than Great Britain.

In 1784, as a result of the large scale influx of United Empire Loyalists into the St. John River area the year before, New Brunswick was created and separated from Nova Scotia. Cape Breton Island also became a separate entity.

By the Constitutional (or Canada) Act of 1791 the Imperial Parliament divided Quebec into the provinces of Upper Canada and Lower Canada, abolished the conciliar form of government which had existed in Quebec for two centuries and established representative government in both provinces. Land was to be granted in freehold tenure in Upper Canada and could so be granted in Lower Canada, if desired.

In 1796, by the Jay Treaty, the fur-trading posts of Niagara, Detroit, Michilimackinac and Grand Portage - which were still in British hands, along with the region south of the lakes which they controlled - were handed over to the United States in accordance with the boundary provisions agreed to in 1783. In order to facilitate what remained of the fur-trade, an article in the Jay Treaty provided for free passage back-and-forth across the boundary of Indian trappers with their ordinary goods and peltries; it is on this provision that the present Iroquois claim to duty-free passage across the international boundary is based.

In 1803 by the Louisiana Purchase the United States acquired that vast, vaguely defined territory west of the Mississippi which had been ceded back to France by Spain in 1800. This march westward and the consequent rivalries would once again raise the question of the boundary between British America and the United States.

On the West Coast, the leading protagonists changed over the course of time from Russia, Britain and Spain to Russia, Britain and the United States; but it was not from the sea that this contest was to be settled. Indeed, Captain Cook had made his landfall at Nootka Sound in 1778 but the traders who followed him were relieved of their vessels and furs by the Spanish in a last endeavour to enforce their claims to the north-west coast. In 1791 Captain George Vancouver arrived to officially acknowledge restoration of British rights, after the Nootka Convention while concurrently the Russians were pushing down from the north, following the seal and sea otter.

However, the only firm and lasting links with the Pacific Coast would have to be by land and these were provided: Alexander Mackenzie, 1793, by way of the Peace River canyon to Dean Channel; Simon Fraser, 1808, by the tumultuous river which bears his name; David Thompson, 1811, down the Columbia

to its mouth. These Canadian Scots were all members of the North West Company and rivals not only of the Spanish, Russians and Americans but of the Hudson's Bay Company. The chain of discovery and exploration whose initial links were forged in the fur-trade of the Atlantic coast over two centuries earlier was complete from ocean to ocean - all in the name of the fur-trade. In each instance, the ubiquitous Scot was accompanied, guided and sustained by Indian companions.

For the United States Lewis and Clarke had, of course, paced the Canadians, reaching the Columbia in 1805 and John Jacob Astor had established the western headquarters of his fur company at the mouth of the Columbia in 1810.

Meanwhile, on the Atlantic coast St. John's Island was re-named Prince Edward Island in 1793.

In 1809, by the Labrador Act, Anticosti Island and the coast of Labrador from the St. Jean River to Hudson Strait were transferred from Lower Canada to Newfoundland. However, not even the eastern provinces were to be allowed to engage in such peaceful organizational exercises much longer. The improvement in relations which the Jay Treaty appeared to herald has not resolved the border ambiguities at the centre of the continent and the animosities of the Revolutionary War were by no means exhausted.

The outbreak of war in 1812 saw half a million British Americans (of whom less than five thousand were regular troops) confronted by a population of eight million in the United States. Great Britain was not only at war with the United States but had her strength committed to the struggle with Napoleon. Through a combination of dogged determination on the part of the British Americans in throwing back invasion forces and ineffective planning on the part of the enemy, Canada managed to hold out until the defeat of Napoleon in 1814 allowed

the British to bring all their forces to bear in America. Having thus gained the initiative in no uncertain manner, it is hard to understand why the British did not seek more equitable boundary terms by the Treaty of Ghent in 1814 but both parties appeared content to settle the controversy through a mutual return of conquered territories.

The United States considered the Jay Treaty of 1796 to be abrogated by the War of 1812-14, but the Convention of 1818 settled the outstanding boundary matters by confirming the border to the Lake of the Woods and extending it along the 49th parallel to the Rocky Mountains. The Treaty of Ghent reinstated the provisions affecting the Indian people written into the Jay Treaty but as the conditions of the former were not considered to be self-executing, it became the individual responsibility of each of the governments concerned to give effect to the relevant provisions by appropriate legislation.

In terminating the international boundary at the Rocky Mountains the Convention of 1818 left one major area subject to contention with the growing neighbour to the south - the so-called Oregon Territory, roughly half in and half out, jointly occupied by Britain and the United States. The first large scale movement of American settlers into Oregon in 1842 naturally created a clamour for annexation to the United States. Fortunately, the contention was resolved in the Treaty of Washington in 1846 by which the boundary was continued to the sea along the 49th parallel and Vancouver Island confirmed as a British possession. With the agreement of 1825 between Britain and Russia on a description of the Alaska boundary, to all intents and purposes Canada's external boundaries were not fixed and her attention could be concentrated on consolidation.

D R A F T

ANNEX

HISTORICAL BACKGROUND - CANADIAN INDIAN TREATIES

The Indian treaty system in Canada gradually evolved in sophistication from its inception during British colonial times. In the Seventeenth and Eighteenth centuries, "Peace and Friendship" treaties were signed by representatives of the Crown with relatively small groups of Indians inhabiting the present-day provinces of Nova Scotia and New Brunswick. These exercises did not involve the surrender of land and provided no continuing benefits to the Indian signatories.

The next stage of development can be found in the Pre-Confederation Upper Canada treaties, 1764 to 1850. These land cession treaties were negotiated to purchase from the Indians lands defined as their "Hunting Grounds" by the Royal Proclamation of 1763. Much of this activity took place after the end of the American Revolutionary War (1783) in order to facilitate the settlement of United Empire Loyalists along the St. Lawrence River and lower Great Lakes region. For the most part these transactions were uncoordinated and imprecise, with the Indians receiving small once-for-all payments either in money or goods; in some instances annuities; and in a few cases, reserved lands.

The Robinson-Huron and Superior Treaties of 1850 were signed in order to open the country around Lakes Huron and Superior to mining (minerals had recently been discovered along the shores of these two lakes) and settlement. These treaties were more sophisticated and reflected the evolving humanitarian considerations of government. In return for ceding specified tracts of land to the Crown, reserve lands were set aside for the exclusive use of the Indians, so that they would not be molested nor overrun by white settlement. Title to these reserves remained vested in the Crown with Indian tenure being one of occupancy and use.

In 1870 the acquisition of Rupert's Land and the North-western Territory by the new Dominion of Canada afforded the first opportunity for the Canadian government to continue and expand upon the British treaty making policy. Article 14 of the Imperial Order-in-Council admitting Rupert's Land and the North-western Territory into Confederation provided that: "Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government...". This was the constitutional instrument behind Post-Confederation Treaties 1-11.

Canada's immediate concern in negotiating Treaties 1-7 (1871-1877) was to open the Fertile Belt of western Canada to settlement and pave the way for construction of the Canadian Pacific Railway. Treaties 8 (1899) to 11 (1921) opened the northern parts of Ontario, Saskatchewan, Alberta, north-eastern British Columbia, and the western portion of the NWT to settlement and mineral exploration.

The terms of Treaties 1-11 reflected a comprehensive and sophisticated attempt by government to protect the Indian people and provide them with a new way of life as agriculturalists. In return for surrendering all "rights, titles, and privileges" to the land, reserves were set aside for their exclusive use. Additional benefits such as once-for-all cash payments; annuities; farm stock and equipment; educational facilities; and other considerations were provided.

Today about half the Indian population of Canada is under land cession treaty, covering the provinces of Ontario, Manitoba, Saskatchewan, Alberta, and the western half of the NWT. Most of British Columbia has not been dealt with - except for the north-east corner (Treaty 8), and small areas on Vancouver Island surrendered to the HBCo. between 1850 and 1854. The Indians of the Maritimes and Quebec did not sign land cession treaties.

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The definitive date regarding Canadian Indian Treaty matters is 7 October 1763 and the occasion, promulgation of the Royal Proclamation.

By the Peace of Paris in February 1763 Great Britain had nullified France's influence in North America and was in effective control of the continent everywhere east of the Mississippi River and eastward of a line drawn roughly north from the headwaters of the Mississippi to the Arctic Ocean. Accompanying the fact of British sovereignty was Indian unrest throughout the area.

The primary reason for unrest was a basic, immediately apparent, difference in approach to development on the continent vis-a-vis the French and the British. At the time, the French population in North America was less than 100,000, a sizeable element being devoted to the fur trade - an activity which demanded Indian participation. On the other hand the British population was approximately one and a half million being constantly augmented and devouring arable land at an ever increasing pace. (Admittedly Rupert's Land, under British Dominion, was devoted to the fur trade but the proportion of British people so occupied was miniscule.)

Indian unrest culminated in Pontiac's uprising (May 1763) and a hurried promulgation of the Royal Proclamation sought to assure the Indian people that settlement of lands reserved to them as their "Hunting Grounds" to the west of the Appalachians would be inhibited and under control of the British Sovereign. The Governors of the thirteen British colonies could not, or would not, prevent the settlers' march westward over the Appalachian Highlands and the Hunting Grounds' provisions were breached from the "thirteen colonies" on a number of occasions between 1763 and the outbreak of the Revolutionary War in 1775.

However, on the cessation of the War British America retracted to Canada where, primarily because of the climate, settlement was necessarily at a slower pace than in the newly formed United States. Prior to the War there had been little reason to apply the Hunting Grounds' provisions in what was to become Upper and Lower Canada, but on the cessation of hostilities the British were obliged to accommodate their Iroquois allies and the United Empire Loyalists - thus purchase and cession activities as defined in the Proclamation were quickly entered into in the Upper province.

By the 1840's it was felt that settlement in Upper Canada had reached such a stage that the "Hunting Grounds" remnant on the shores of Lakes Huron and Superior should be opened to colonists. Instead of obtaining cession on numerous small parcels by outright "purchase agreement" as had been the case heretofore in Upper Canada, all the land remaining to the heights bounding Rupert's Land were obtained in two comprehensive exercises - the Robinson Huron and Robinson Superior Treaties of 1850.

Some historians claim that Canada was driven to nationhood partly by the military might of the northern States as shown in the Civil War of 1861-65 - in any event Nova Scotia, New Brunswick, and the Province of Canada (immediately divided into Ontario and Quebec) confederated in 1867 to form the Dominion of Canada.

As early as 1857 the British Parliament had considered the feasibility of turning Rupert's Land over to the Province of Canada and had stated that an east-west railway was desirable. Both considerations had their effect on western treaty activity.

In 1870 Rupert's Land was sold to the new Dominion of Canada and became the North-West Territories. A very attenuated "Manitoba" was concurrently created therein. A condition of sale was that the Federal Government, rather than the

Hudson Bay Company, would assume responsibility for Indian claims for compensation arising from the opening of Rupert's Land to settlement and development. In 1871 the first post-Confederation treaty activity in the west covered nearly all of the new province of Manitoba. Treaty No. 2 in the same year took in what could be considered a likely area of expansion.

At first view one could wonder why the "North-West Angle" Treaty No. 3 area was dealt with in 1873 under the Lieutenant-Governor of Manitoba and the North-West Territories. The answer here of course is that Manitoba hoped to expand in that direction; the resulting controversy was settled in Ontario's favour in 1889 and most of the Treaty No. 3 area lies within that province. As stated by Alexander Morris, successful cession of the Treaty 3 area was vital to the construction of the Pacific railway and western settlement.

Government's aspiration regarding the western treaties is plainly set out in the preamble of each treaty: to open the lands dealt with for development, settlement and to ensure peace, law and good order.

The progress of Treaty No. 9 in northern Ontario paralleled the successive extensions of the Province's northern boundary to Hudson and James Bays.

In Quebec the "Hunting Grounds" corridor (between the eastern boundary of the Coast of Labrador, the northern boundary of "Old Quebec" as defined in the Royal Proclamation, and the southern limits of Rupert's Land) was not dealt with under the Proclamation's provisions probably because little interest was shown in settling the area until quite recently; the same might be said on possible Indian claims concerning the province's absorption of the Hudson Bay Company's lands within her purview and the consequent extension of the provincial boundary to Hudson Bay, Ungava Bay and Hudson Strait.

TREATY NOTES

Among the people who study "Treaties" as these instruments affect the Indian people of Canada, a consensus of opinion appears to be forming that the solution to the various major claims, controversies and contentions that attend the study will have to be "political" (i.e., effected by appropriate legislation) rather than "judicial" (i.e., resolved through legal action in courts of law).

An element of this consensus is to the effect that British "Treaty" policy as it evolved in North America gave official recognition to the subject of "Indian Rights" through specific exercises of the Royal Prerogative in particular actions such as the Royal Proclamation of 1763 and the Imperial Order-in-Council, dated 23 June 1870, admitting Rupert's Land and the North-West Territories into Confederation.

The Royal Proclamation 1763

The Royal Proclamation of 1763 designated lands bounded by administrations of the time as "Indian Hunting Grounds" - these fixed administrations were Rupert's Land to the north; the Coast of Labrador and Old Quebec in the north-east; the original Thirteen Colonies on the east; East and West Florida to the south, and Louisiana along the far bank of the Mississippi to the west. The Proclamation stipulated that lands wanted for settlement within the Indian Hunting Grounds would first have to be cleared through cession exercises from Indian people concerned to the Sovereign - this was to ensure that the Indian people would not lose the Hunting Grounds through sharp practice. After the Revolutionary War and prior to Confederation the Indian Hunting Grounds comprising Upper Canada were opened to settlement beginning with relatively simple land cession or surrender activities in the 1780's and finishing with the comprehensive Robinson-Huron and Robinson-Superior Treaties of 1850. The loose ends were deemed to be taken up by the Chippewa and Mississauga Agreements of 1923.

Rupert's Land and the NWT

In 1670 King Charles the Second granted Rupert's Land to the Governor and Company of Adventurers of England trading into Hudson's Bay, latterly known as the Hudson Bay Company; the Company, with its headquarters in England, was granted not only the right to harvest the resources of its land holdings but was charged with governing the area and its inhabitants; eventually the Company came to control all the lands in the North-West that were not within the bounds of some other Colonial administration (or within what came to be known as Alaska and the other United States).

In order to enter Confederation the Hudson Bay Company's holdings had first to be surrendered to the Queen by the Company (November 1869). However, before the Surrender Canada had agreed to compensate the Company with the sum of £ 300,000 and 1/20 of all the land set out for settlement in the Fertile Belt, a huge tract of land bounded by the Rocky Mountains on the west, the North Saskatchewan River to the north, the Lake Winnipeg and Lake of the Woods systems on the east and the United States border to the south. (While Canada was interested in acquiring all of the Company's holdings, the new Dominion particularly wanted the Fertile Belt not only as the area most likely for immediate settlement but to secure the most practical right-of-way for the proposed Pacific Railway.) Canada had also agreed with the Company that the Dominion would settle the claims of Indian people affected in the transfer and this provision was written in as Article 14 of the Imperial Order-in-Council dated 23 June 1870 admitting Rupert's Land and the NWT into the Dominion of Canada.

Arising from Article 14, the post-Confederation numbered treaty activity in the west commenced with Treaties 1 and 2 (1871) and by 1877, with Treaty 7, all the lands within the Fertile Belt had been dealt with. Twenty-two years later Treaty 8 was negotiated to facilitate the passage of miners to the Pelly River mines in the Yukon and Treaties 10 and 11 followed in 1906 and 1921 respectively.

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What we think of as Indian treaty activity in Canada has its roots in the relatively loose pre-revolutionary colonial policy of British North America, growing in an evolutionary and organic manner to the definite statement enunciated in the Royal Proclamation of 1763 (after the conquest of New France) to the comprehensive Robinson Huron and Superior treaties in Upper Canada of 1850, and culminating in the quite sophisticated Western exercises which took place after Confederation. These successive activities, it should be always borne in mind, were engaged in on both sides by peoples of those specific times to deal with particular situations occurring during those times. Being human activities, they are fraught with all the ills, fears and faults that human flesh and mind are heir to. Being essentially matters of exigency, the evolutionary aspects of the successive exercises are generally seen to be spasmodic and are very often imprecise or inexact to our critical and enlightened view.

However imperfect these treaty exercises were, from the constitutional and legal point of view they accomplished what they were designed to accomplish. As a colonial power, when Britain occupied a land or territory as the result of discovery, exploration, conquest or international treaty, no British functionary

ever suffered any illusions as to who "owned" that country - it belonged to the Sovereign, the manifestation of the British Crown. Paramount title to all lands within that country was lodged in the British Crown - it became a dominion of the Sovereign in right of the Crown, subject to British law as did all the inhabitants. Internally there was and, could be, no question of shared "sovereignty" - this would deny the exclusive sovereignty of the British monarch and create an "ownership" paradox which British constitutional law would not, and could not, permit (this sovereignty principle was shared by all the "Colonial" powers.) Concurrent with Britain's rise as a colonial power was the evolution of the British principle that government should at least appear to rule with the consent of the governed - in British North America this could be shown to be so if the subject peoples could be persuaded to engage in internal treaty activities. I should state here that the British Sovereign could, if he wished, create and confer certain prerogatives as a matter of grace and favour. For example, it was within the Royal prerogative of the Sovereign to create the concept of an "Indian" title, to "recognize" such a title and to "extinguish this title" (in any way he saw fit) at his pleasure. An understanding of the unfettered sovereign or supreme authority lodged in the British Crown prerogative concerning both basic land ownership in colonial possessions and the creation, recognition and extinguishment of interests on the part of their indigenous peoples, is essential to any study of the evolutionary growth of Indian treaty activity within what is now Canada.

There were, of course, other exigent matters to consider in the colonization of British North America. In the early days there was the matter of security - these were the times when Indian treaties were entered into to ensure the alliance or neutrality of the various Indian peoples beyond the British forts and palisaded settlements. The British were sure of Sovereign ownership but

they can be pardoned for wondering how far this knowledge extended, and for taking advantage of the facts of contemporary Indian politics. Also, in these times it was the British who doubted the value of Indian treaties and who questioned the good faith of the Indian signatories. For example, the Indian peoples of the Maritimes were loyal allies of the French Sovereign in the main; sovereignty of the British monarch over Nova Scotia had been acknowledged in the Treaty of Utrecht (1713) but Governor Cornwallis in a letter to the Lords of Trade dated 1749 expresses his misgivings as follows "...The St. John's Indians I made peace with... a warlike people... treaties with Indians are nothing. Nothing but force will prevail." Similar doubts were even expressed by Sir William Johnson, vaunted mentor of the Iroquois peoples, "...They desire to be considered as Allies and Friends, and such we may make them at a reasonable expense and thereby occupy our outposts, and carry on a trade in safety, until in a few years we shall become so formidable throughout the country as to be able to protect ourselves and abate of that charge; but until such measures be adopted, I am well convinced there can be no reliance on a peace with them... as interest is the grand tie which will bind them to us, so their desire of plunder will induce them to commit hostilities whenever we neglect them."

The unfortunate fact of the pre and post-Conquest "Peace and Friendship" treaties with the former Indian allies of the French Sovereign in the Maritimes is that they conferred no identifiable continuing material benefits on the Indian people concerned. The Conquest itself discharged any prior claim to title, principally that acquired by French occupation, and confirmed the absolute title of the British Sovereign. This is as practical an example as one could hope to find that a British Sovereign could conceive, acknowledge and extinguish any native title as he or his advisors saw fit - the initiative always rested with the Crown.

In New France absolute title to the lands claimed was considered to be lodged in the French Sovereign and passed, unfettered, to the British Sovereign at the Conquest. The French had concluded numerous treaties with the Indian people -- treaties of alliance and support with the Hurons and Algonkians; treaties of neutrality with the Iroquois -- but the major benefit conferred was considered to be the protection of the French Sovereign; this, of course, equated with the British "protection" which had been enunciated as early as 1670 by Royal Command. The French had also set aside land for various Indian groups (e.g. the Hurons at Lorette, the Iroquois at Caughnawaga) but the title of these lands was lodged with the clerics into whose charge the various groups were placed. Although the Articles of Capitulation of 1760 stipulated that the former Indian allies of the French Sovereign were not to be penalized or disturbed in possession of their lands, the bounds or limits of these lands were nowhere defined. (It should also be borne in mind that the British Crown prerogative did not admit any form of title or ownership of land to the indigenous peoples of North America other than that of occupancy and use.)

The French had been singularly successful in binding the Indian peoples in New France and Louisiana to them through the partnership of the fur trade. Among the reasons cited as the impetus for the Royal Proclamation of 1763 was the fact of disaffection among the Western peoples (particularly those in the lands dominated by Detroit in what is now northern Michigan) as exemplified by Chief Pontiac. These people feared that settlement, along the lines of that in the Atlantic colonies, would inevitably follow transfer of suzerainty to the British. In order to placate these fears and to inhibit land-grabbing, the Royal Proclamation stipulated that the western lands (exclusive of Quebec and Rupert's Land) would be reserved to the Indians as their hunting grounds. It was further stipulated

that any expansion through these lands was to be cleared by preliminary Crown purchase.

Unfortunately the "Indian hunting grounds" were severely limited by the knowledge of the times, geography and subsequent historical events. Although its western limits were unknown in 1763, Rupert's Land by definition took in all the land drained by waters flowing into Hudson's Bay making the drainage basin of the Red River the effective western boundary of the "hunting grounds". (The southern portion of course was lost to the United States as the result of the Revolutionary War.) Neither the land or the peoples west of Lake Winnipeg were known at the time of the Proclamation.

The Proclamation applied to all Indian peoples in the territory concerned then known to be under the sovereignty and protection of the British Crown. It did not serve to inhibit the Royal Prerogative but emphasized that additional Royal protection would be accorded the Indian people during any westward expansion of colonization. It did not recognize or confer an indigenous clear or ownership title, and the lands reserved were expressly cited as "parts of our Dominions and territories" in the Royal sense; the tenure of the Indian peoples continued to be that of occupancy and use and no division or sharing of "sovereignty" was implied or intended.

Despite the appearance of exigency attending the Royal Proclamation, the principles enunciated were not put into practice until after the Revolutionary War (and then precipately) in order to accommodate the Hudson valley Iroquois who had fought on the British side, and the United Empire Loyalists - the plan for both groups being resettlement in Upper Canada. In conformity with the Royal Proclamation the Ojibway, who had filtered into Upper Canada from the north-west and were deemed to be the Indian people in residence, were dealt

with in various treaty exercises and relieved of their occupancy rights by outright purchase agreement payable once-for-all, or annually by goods in kind. Until 1830 the treaty exercises and the outgrowing administration were handled by military personnel. By 1850 the treaty concept and attending humanitarian considerations had evolved to the point where it was considered just to set aside parcels of land reserved for the exclusive use of Indian signatories in order that that they would not be overrun by advancing settlement. Even so, the principle that Indian tenure was merely that of occupancy and use was maintained - title to these reserved lands remained vested in the Crown.

With Confederation the rights of sovereignty came to be exercised through the Dominion government. While Rupert's Land had been specifically exempted from the provisions of the Royal Proclamation, and the obligations assumed concerning Indian tenure there and elsewhere in the mid-western provinces could have been discharged by outright purchase agreement as stipulated in the Royal Proclamation, the Dominion government continued, and expanded on, the treaty methods introduced in 1850 with humanitarian considerations exigent to the conditions of the times being the order of the day.

British Columbia had not shared the history of eastern British North America and had evolved as a separate British colony. Indian tenure had not been interpreted as it had in the territories to which the Royal Proclamation had applied and Indian reserves had been assigned on the basis of fixed occupational sites of long standing. The preponderance of legal opinion is to the effect that an Indian "title" in the eastern sense had never been conceived, recognized or extinguished in British Columbia west of the Great Divide (the legal rationale being that if the Crown signed no treaty or agreement recognizing an Indian title, it did not exist.)

Undoubtedly the Indian component of the Canadian population did not experience the degree of dislocation and hardship suffered by the indigenous peoples of the United States. It may be that the transition from colony to republic played a part in the United States, but it is much more valid to say that the relatively greater pressures engendered by a rapidly growing population and expanding frontiers tended to push the U.S. Indian people out of the way - the United States was simply more attractive in the eyes of incoming settlers and developers.

In Canada these pressures did not exist in any degree to the same extent, and indeed the land was far more attractive to the fur trader and, by natural extension, the administration more hospitable to the Indian collector for a much longer period of time than in the United States. The fur trade can be said to have sustained the Canadian Indian people well into the Twentieth Century until their cause could become a feature of modern sociological concepts.

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The French had been singularly successful in binding the Indian peoples in New France and Louisiana to them through the partnership of the fur trade. Among the reasons cited as the impetus for the Royal Proclamation of 1763 was the fact of disaffection among the Western peoples (particularly those in the lands dominated by Detroit in what is now northern Michigan) as exemplified by Chief Pontiac. These people feared that settlement, along the lines of that in the Atlantic colonies, would inevitably follow transfer of suzerainty to the British. In order to placate these fears and to inhibit land-grabbing, the Royal Proclamation stipulated that the western lands (exclusive of ^{ed} Quebec and Rupert's Land) would be reserved to the Indians as their hunting grounds. It was further stipulated

that any expansion through these lands was to be cleared by preliminary Crown purchase.

Unfortunately the "Indian hunting grounds" were severely limited by the knowledge of the times, geography and subsequent historical events. Although its western limits were unknown in 1763, Rupert's Land by definition took in all the land drained by waters flowing into Hudson's Bay making the drainage basin of the Red River the effective western boundary of the "hunting grounds". (The southern portion, ^{extending to East and West Florida was,} of course, ~~was~~ lost to the United States as the result of the Revolutionary War.) Neither the land or the peoples west of Lake Winnipeg were known at the time of the Proclamation.

The Proclamation applied to all Indian peoples in the territory concerned then known to be under the sovereignty and protection of the British Crown. It did not serve to inhibit the Royal Prerogative but emphasized that additional Royal protection would be accorded the Indian people during any westward expansion of colonization. It did not recognize or confer an indigenous clear or ownership title, and the lands reserved were expressly cited as "parts of our Dominions and territories" in the Royal sense; the tenure of the Indian peoples continued to be that of occupancy and use and no division or sharing of "sovereignty" was implied or intended.

Despite the appearance of exigency attending the Royal Proclamation, the principles enunciated were not put into practice until after the Revolutionary War (and then precipitately) in order to accommodate the Hudson valley Iroquois who had fought on the British side, and the United Empire Loyalists - the plan for both groups being resettlement in Upper Canada. In conformity with the Royal Proclamation the Ojibway, who had filtered into Upper Canada from the north-west and were deemed to be the Indian people in residence, were dealt

with in various treaty exercises and relieved of their occupancy rights by outright purchase agreement payable once-for-all, or annually by goods in kind. Until 1830 the treaty exercises and the outgrowing administration were handled by military personnel. By 1850 the treaty concept and attending humanitarian considerations had evolved to the point where it was considered just to set aside parcels of land reserved for the exclusive use of Indian signatories in order that that they would not be overrun by advancing settlement. Even so, the principle that Indian tenure was merely that of occupancy and use was maintained - title to these reserved lands remained vested in the Crown.

With Confederation the rights of sovereignty came to be exercised through the Dominion government. While Rupert's Land had been specifically exempted from the provisions of the Royal Proclamation, and the obligations assumed ^{as a matter of policy} concerning Indian tenure there and elsewhere in the mid-western provinces could have been discharged by outright purchase agreement as stipulated in the Royal Proclamation, the Dominion government continued, and expanded on, the treaty methods introduced in 1850 with humanitarian considerations exigent to the conditions of the times being the order of the day.

British Columbia had not shared the history of eastern British North America and had evolved as a separate British colony. Indian tenure had not been interpreted as it had in the territories to which the Royal Proclamation had applied ^(or in the time North-West) and Indian reserves had been assigned on the basis of fixed occupational sites of long standing. The preponderance of legal opinion is to the effect that an Indian "title" in the eastern sense had never been conceived, recognized or extinguished in British Columbia west of the Great Divide (the legal rationale being that if the Crown signed no treaty or agreement recognizing an Indian title, it did not exist.)

Undoubtedly the Indian component of the Canadian population did not experience the degree of dislocation and hardship suffered by the indigenous peoples of the United States. It may be that the transition from colony to republic played a part in the United States, but it is much more valid to say that the relatively greater pressures engendered by a rapidly growing population and expanding frontiers tended to push the U.S. Indian people out of the way - the United States was simply more attractive in the eyes of incoming settlers and developers.

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In Canada these pressures did not exist in any degree to the same extent, and indeed the land was far more attractive to the fur trader and, by natural extension, the administration more hospitable to the Indian collector for a much longer period of time than in the United States. The fur trade can be said to have sustained the Canadian Indian people well into the Twentieth Century until their cause could become a feature of modern sociological concepts.

Treaty and Property Rights