

**Reference to the establishment of Indian reserves in
British Columbia, 1849-1911**

Dorothy I. D. Kennedy

Ottawa : Indian and Northern Affairs, 1994. 132 p.

Claims and Historical Research Centre: K.105

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**A REFERENCE GUIDE
TO THE ESTABLISHMENT
OF INDIAN RESERVES IN BRITISH COLUMBIA
1849-1911**

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Claims and Historical Research Centre

Claims Research and Assessment Directorate

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Ottawa

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March 31st, 1994

Revised for Publication, October 1995

FUNDING FOR THIS PROJECT HAS BEEN PROVIDED BY
THE FOLLOWING BRANCHES OF
INDIAN AND NORTHERN AFFAIRS CANADA:

CLAIMS RESEARCH AND ASSESSMENT DIRECTORATE, OTTAWA

SPECIFIC CLAIMS WEST, VANCOUVER

FEDERAL TREATY NEGOTIATION OFFICE, VANCOUVER
(FORMERLY, COMPREHENSIVE CLAIMS BRANCH, B.C.)

LITIGATION SUPPORT DIRECTORATE, OTTAWA

LANDS AND TRUSTS SERVICES, OTTAWA

PUBLICATION OF THIS REPORT
BY THE CLAIMS AND HISTORICAL RESEARCH CENTRE. OTTAWA
HAS BEEN MADE POSSIBLE WITH FUNDS PROVIDED BY
SPECIFIC CLAIMS WEST, VANCOUVER AND
THE LITIGATION SUPPORT DIRECTORATE. VANCOUVER

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1.0 INTRODUCTION

1.1 Overview of B.C. Indian Reserve Establishment

The development of Indian reserve land policy in British Columbia, which evolved in the colonial period, differed significantly from that of Canada. The colonial office in London took no active position regarding the affairs of Indians on Vancouver Island and mainland British Columbia and encouraged the idea that the character of Indian Affairs must develop on-the-spot in the Colony. Since the imperial authorities knew little about the Native people of this area, Indian policy was largely dictated by local officials.

The earliest Indian administration in British Columbia was undertaken by Hudson's Bay Company officers including James Douglas, who as Chief Factor at Fort Victoria from 1849 to 1858 (and as Governor of Vancouver Island from 1851 to 1864), gained a reputation for efficient and impartial dealings with Indians and non-Indians. Between 1850 and 1854, Douglas negotiated fourteen "treaties" with various Vancouver Island tribes in which they surrendered their land in return for a few blankets and certain reserve lands.

Douglas' policy was to provide sufficient reserves so as to sustain the traditional way of life of the Indians and allow adjustment to changing conditions. Hampered by a lack of funds, he petitioned the imperial government in 1861 for financial assistance to facilitate the provision of reserves and the extinguishment of Native land title. The British Colonial Office's refusal to provide funds coincided with the termination of the

monies supplied to maintain the Indian department in the Province of Canada.

After Douglas's retirement in 1864, his successors, especially Joseph Trutch, were less lenient in establishing new reserves and in several cases reduced some of the original allotments. Trutch's views on Indian land policy differed from Douglas', but they were in tune with those of the settlers and local authorities who ignored or dismissed Indian land claims.

The Indian people hoped for improvements in Native policy when British Columbia (the mainland and Vancouver Island were united as one colony in 1866) entered Confederation in 1871. Yet there was little discussion of Indian affairs in the negotiations leading to Confederation. A motion for the protection of the indigenous peoples was defeated 20-1 in the B.C. legislature; another advocating the extension of federal Indian policy to B.C. was withdrawn.

Under the *Terms of Union*, the federal government assumed responsibility for Indian affairs. The attitudes of Trutch continued to prevail in B.C., reflecting the demands of the provincial government and the settlers generally. As the first lieutenant governor of British Columbia, Trutch defended his Indian land policies against those of the federal government. The province was determined to perpetuate its own Indian policy. Unlike Manitoba, and later Alberta and Saskatchewan, B.C. entered Confederation in control of its public lands, and with its Indian land policy already formulated. The Dominion's desire to establish large reserves, as on the Prairies, resulted in a series of conflicts.

Under mounting pressure, Ottawa and Victoria came to an agreement in 1876. A Joint Indian Reserve Commission would be set up to allot reserves as local circumstances dictated. The three-man commission commenced its work in 1876, but was hindered from the outset by the uncooperative attitude of the provincial government. Pressure from Victoria resulted in its dissolution after two years and one of its members, Gilbert M. Sproat, continued the commission's work until 1880. After Sproat resigned, Peter O'Reilly served until his retirement in 1898.

By 1897, most of the reserves in the British Columbia had been allotted; a total of 718,568 acres had been "fixed" by survey as reserves by commissioners acting under the terms of the agreement of 1876. With an Indian population of 23,620, the acreage per capita amounted to 30.42. But not all of this land was suitable for agriculture or grazing, and its distribution among the Native peoples was extremely uneven. The lands were not, however, set apart by Order-in-Council, nor conveyed by grant to the federal government. Title remained in the Crown in right of the province.

After O'Reilly's retirement, the task of continuing with reserve allocation fell to Commissioner A.W. Vowell, who assumed this role as well as that of the Superintendent of Indian Affairs for British Columbia. Until 1908, Vowell's activities were confined to re-defining present reserves and allotting small areas such as fishing stations, hay meadows, and gardens. Neither the province nor the dominion, however, was satisfied with the progress made. In 1909, the province stated that it would make n

no further reserve allocations, although it would be prepared to consider purchase or exchange. The following year, the office of reserve commissioner was abolished.

As previously noted, most of the lands reserved for Indians in British Columbia were set apart by executive action following agreement between the province and the federal government. The only treaties concluded with the Indians regarding the surrender of aboriginal title and the establishment of reserves were located on Vancouver Island in the vicinity of Victoria, Fort Rupert, and Nanaimo (approximately 358 square miles) and a small portion in northeastern British Columbia (about 104,000 square miles) which was included in Treaty 8 (1899).

Of the 836,226 acres allotted for the establishment of Indian reserves in British Columbia, 6,711 were held by bands that signed agreements in the 1850s, 759,392 were set apart by executive act, and 71,123 were allocated under the provisions of Treaty 8.

1.2 Report Preparation

In May 1992, the Department of Indian and Northern Affairs contracted with the B.C. Indian Language Project to research and analyze more fully the history of the establishment of Indian reserves in the Province of British Columbia. The research for this project, undertaken jointly by Dorothy Kennedy and Randy Bouchard, has resulted in Kennedy's preparation of this report covering the period from 1849-1911.

Chapter two of this report deals extensively with the pre-confederation era (1849-1871), particularly the reserve policy pursued by James Douglas, who established both treaty and non-treaty reserves. The government policy guiding the creation of reserves after Douglas' retirement in 1864 is also explored. Post-Douglas reserve policy is illustrated by a case study which examines briefly the reduction of reserves established by surveyor William Cox in the Okanagan Valley and along the South Thompson River.

Chapter three focuses on the post-confederation period from 1871 to 1910. The disagreements between the federal government and the Province of British Columbia concerning reserve allocation and the formation of Indian reserve allotment commissions that were responsible for the assignment and readjustment of reserves are the main issues discussed in this chapter.

Several of the issues reviewed by Dorothy Kennedy in this reference guide have remained unresolved for decades. Additionally, the numerous citations to reference materials held by archival institutions throughout Canada provide an invaluable guide to the pre-1911 reserve allotment process.

It is anticipated that a subsequent report will focus upon Indian Reserve allotment policy after this period, and will add to the chapters presented herein. However, due to the enthusiastic response that the present two chapters have received,

the Claims Research and Assessment Directorate has decided to make them generally available.

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March 1994

2.0 THE PRE-CONFEDERATION ERA

The pre-confederation era (1849-1871) can be divided into two main periods. Between 1849 and 1864 were "the Douglas Years," during which time the policy pursued with respect to aboriginal land matters was interpreted, created and implemented by James Douglas, who established both treaty and non-treaty reserves. After Douglas' retirement in 1864, lands continued to be reserved for Indian use, although government policy guiding the establishment of these reserves was considerably changed. This second period, lasting until 1871 when British Columbia joined Confederation, was also marked by reductions to previously-allotted reserves.

The following section outlines the major events of this pre-confederation period as they pertain to the establishment of Indian Reserves, and presents sources for further research of the issues raised.

2.1 The Douglas Years

2.1.1 The Vancouver Island Treaties

James Douglas' pragmatic view of colonial survival influenced both his liberal approach to settlement and his recognition of the need to treat with the Indians.¹ Life

¹ Early discussions of Indian land policy during the Douglas years can be found in George E. Shankel, "The Development of Indian Policy in British Columbia," PhD dissertation, University of Washington, 1945, and Robert E. Cail, *Land, Man and the Law: The Disposal of Crown Land in British Columbia, 1871-1913*, Vancouver: University of British Columbia Press, 1974. Both of these historical works continue to provide a basis for discussion. Historian Robin Fisher's *Contact and Conflict: Indian-European Relations in British Columbia 1774-1890*. Vancouver: University of

(continued...)

south of the border had instilled within him a keen appreciation of the dangers inherent in unresolved racial conflicts. Reporting back to Hudson's Bay Company Headquarters in September 1849 from Fort Victoria, Douglas stated that the Natives were both "kind and friendly" and readily bartering with the Fort, but that it had been "a work of time and labour to bring the Indians to that state of friendly intercourse . . ." Douglas added that he had tried to impress on the first colonists, who arrived in August 1849, the importance of good relations with the local Indian people, whom he described as "children of the Forest."²

Also in September 1849, Douglas advised the Hudson's Bay Company of the necessity of purchasing the Indian people's interest in their lands. The Company's response was provided in Archibald Barclay's memorandum dated December 17th, 1849:

With respect to the rights of the natives, you will have to confer with the Chiefs of the tribes on that subject; and in your negotiations with them you are to consider the natives as the rightful possessors of such lands only as they occupied by cultivation, or had houses built on, at the time when the island came under the undivided sovereignty of Great Britain in 1846. All other land is to be regarded as waste, and applicable to the purposes of colonization. Where any annual tribute has been paid by the

(...continued)

British Columbia Press, 1977, has made a significant contribution to discussions of Native history. A view opposing Fisher on central issues has been prepared by political scientist Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989*, Vancouver: University of British Columbia Press, 1990.

² James Douglas, Fort Victoria, September 3rd, 1849 to Archibald Barclay, Secretary, Hudson's Bay House, London. Enclosed with letter of February 28th, 1851 from J.H. Pelly to Earl Grey. C.O. 305/3, f.362ff.

natives to the chiefs, a fair compensation for such payment is to be allowed.³

Chief Factor Douglas was further instructed to be guided by principles established in New Zealand, where the native residents were granted rights to those lands under cultivation in addition to their right to hunt and fish in the customary manner.⁴

"Measures of liberality and justice," was how Lord Carnarvon later characterized this approach used in compensating the Native people for their lands.⁵

Douglas had recommended in September 1849 that an annual allowance that provided a continual benefit, be given to the Indian people in exchange for their lands. At the same time, Douglas recommended guaranteeing the security of their fisheries, village sites and cultivated fields.⁶

The practical interpretation of Barclay's December 1849 memorandum was left to Douglas. Shortly after receiving this memo, Douglas assembled the chiefs and influential men of the Songhees and negotiated the first of 14 Vancouver Island land

³ Archibald Barclay to James Douglas, December 17th, 1849. Hudson's Bay Company Archives, Provincial Archives of Manitoba, A.5/28, folio 90d-92.

⁴ *Ibid.*

⁵ Herbert Carnarvon to James Douglas, April 11, 1859. Great Britain, Colonial Office. BCARS, C/AB/10.2/1.

⁶ James Douglas to Archibald Barclay, September 3rd, 1849. *Fort Victoria Letters, 1846-1851* (Hudson's Bay Record Society, Vol. XXXII, ed. by H. Bowsfield. Winnipeg: Hudson's Bay Record Society, 1979) p.43.

cession treaties.⁷ Compensation, at the request of the Native people, was a lump sum payment, paid in goods (mostly blankets).

Much attention has been paid to the actual text of the treaty used by Douglas.⁸ Research has revealed that it was supplied by Archibald Barclay from one used previously in New Zealand; Douglas simply copied the text, or faithfully reflected its content, filling in the blanks with the appropriate names, dates and amount of payment.⁹ It has been suggested by Wilson Duff that each individual's name and corresponding "x" appear in the handwriting of Douglas, himself, but in Duff's view it is plausible that Douglas directed each signatory to indicate approval by touching the end of his pen.¹⁰

John McKay, another Company man having extensive experience among the Native people and a facility for their languages, was present during Douglas' meetings

⁷ Fort Victoria Treaties. BCARS Add. Mss. 772, file 1. Text published as "Conveyance of Land to Hudson's Bay Company by Indian Tribes," *Papers Connected with the Indian Land Question, 1850-1875* (Victoria: Government Printer, 1875) p.5. Correspondence from Douglas to Colonial officials can be found in the Fort Victoria Correspondence Outwards, BCARS. In recent years, Canadian courts have upheld the validity of these treaties in *Regina v. White and Bob* (1964), and *Claxton et al. v. Saanichton Marina* (1987), 18 B.C.L.R. (2d) 217 (B.C.S.C.).

⁸ A discussion of the manner in which the treaties were prepared and negotiated has been compiled by anthropologist Wilson Duff, "Fort Victoria Treaties," *B.C. Studies*, 1969, No.3, pp. 3-57, and by historian James Hendrickson, "The Aboriginal Land Policy of Governor James Douglas, 1849-1864." (Paper presented at B.C. Studies Conference, Simon Fraser University, 4-6 November, 1988).

⁹ A copy of the blank form can be found appended to a letter from Archibald Barclay to James Douglas, August 16, 1850. HBCA A.6/28, Folios 158-161d.

¹⁰ Duff, "Fort Victoria Treaties," pp.17-18.

with the aboriginal groups. Recalling the event many years later, McKay stated that Douglas provided him with the document the night before the conference and requested that McKay commit it to memory, thereby preparing himself to confirm the accuracy of the interpreter's translation. He characterized the intent of the treaties as providing "security of cultivated land, village sites, and preservation of sufficient land to cultivate."¹¹

In the spring of 1850, Douglas negotiated nine treaties covering the areas of Victoria, Metchosin, and Sooke; in 1851, he concluded two treaties at Fort Rupert; in 1852, two on the Saanich Peninsula; and in 1854, one at Nanaimo. No text has been found for the Nanaimo treaty, signed December 23rd, 1854, for which only the series of names exists.¹²

Political scientist Paul Tennant¹³ argues that Douglas' recognition of the Indian people as the aboriginal owners of *all* land, including that which Barclay termed "waste," deviated from Barclay's instructions. In Tennant's view, the wording of the treaties and a map appearing in Duff's "Fort Victoria Treaties" advance the notion that Douglas purchased "the whole of their lands," the extent of which met the outward

¹¹ John McKay, Kamloops, B.C., to Dr. Helmcken, December 3rd, 1888. BCARS, Add. Mss. 1917, f.27.

¹² For reference to the Nanaimo treaty see *Regina v. White and Bob*, 50 D.L.R. (2nd) 621.

¹³ Tennant, *Aboriginal People*, p.20.

bounds of land owned by neighbouring groups.¹⁴ Yet as Duff noted, overlapping claims involving shared resource and village sites had no place in Douglas' conception; divisions among groups were made, often reflecting "ethnographic absurdities," and ultimately confirming for the Indians' possession only a portion of the lands upon which they depended.¹⁵ Robin Fisher¹⁶ points out that Douglas found the treaties difficult to negotiate: differing concepts of land tenure resulted in uncertain identification of owners; discussion of Indian rights produced agitation; and, in Fisher's opinion it was unlikely that the Natives were fully aware of the finality of the phrase "entirely and forever."¹⁷

Douglas wrote to Barclay concerning this purchase and said that "it includes all the land," and that he had reserved for the Natives' use "only the village sites and potatoe patches . . ."¹⁸ Little attention was paid to the Indians' own concept of land tenure or land use, beyond recognition of those winter village sites as inhabited *circa*

¹⁴ An 1854 Arrowsmith map of *Districts of Victoria and Esquimalt in Vancouver Island* shows a line demarcating the southern extent of the territory purchased from the "North Saanich" people. A notation on this map states: "The peninsula North of this Line Lately Purchased by Governor Douglas from Indians." Original of map found in HBCA, G.3/96.

¹⁵ Duff, "Fort Victoria Treaties," pp. 51ff.

¹⁶ Fisher, *Contact and Conflict*, pp.67-68.

¹⁷ On April 4th, 1932, the Saanich Indians submitted a petition to Indian Commissioner W.E. Ditchburn stating that they had no knowledge of a treaty. The intent of their agreement with Douglas was to maintain peace while Douglas removed some timbers from their land. They stated that they understood fully the discussions with Douglas as his words were interpreted by McKay, who, they claim, spoke their language fluently. NAC, RG 10, Vol. 11,303, File 974/1-9.

¹⁸ Douglas to Barclay, March 18th, 1852. HBCA A.11/73, folio 398-402.

1846. Reserving these occupied sites was in accord with Douglas' conviction that the "wandering denizen of the forest"¹⁹ would attain law and order, religion and education, and security from the "aggressions of the immigrants"²⁰ once the Native people had been settled in permanent communities.

The Vancouver Island treaties differed from treaties negotiated in other parts of British North America in that the surrenders were made to the proprietary company which owned the island under the grant of 1849, and not to the Crown directly. The Company, apparently, was an instrument of Imperial policy.²¹

Douglas' policy while negotiating the treaties was to lay out reserves in those areas where settlement was anticipated. Thus, the area in the environs of Fort Victoria was of immediate concern due to the agricultural and industrial endeavours. Coal discoveries in the Fort Rupert area provided the impetus for that treaty, although the mines soon failed. Negotiations with the Nanaimo Indians were more complex, especially since the Native people realized that Douglas was trying to terminate their

¹⁹ James Douglas, Victoria, to Right Hon. Sir. E.B. Lytton, March 14th, 1859. *British Columbia Papers*, 16-17.. Similar sentiments are also contained in Douglas' Despatch No. 62, December 30th, 1858. C.O. /1, p.185.

²⁰ *Ibid.*

²¹ K. Lysyk, "Report on the British Columbia Land Question in Relation to Proposed Indian Claims Litigation." Department of Indian Affairs and Northern Development, 1967. G.M. Sproat in 1909 recalled that James Douglas had told him "the Company considered that in 1850, power of making such agreements by the Company must have been inferred from the grant of the land." Sproat to Mohun, June 17, 1909. BCARS, Add. Mss. 257, File 1.

control over the profitable production of coal.²² Douglas was certainly aware that the Natives throughout Vancouver Island clung tenaciously to their property rights and their rights to resources.

Reserved for the Native people's own use, pursuant to the Douglas treaties, were their village sites and cultivated fields, in addition to burial grounds. But apparently no formula was employed in determining the extent of acreage, as had been done in northern Ontario during Canada's treaty negotiations with Native tribes.²³

An examination of the locations of sites reserved by the Vancouver Island treaties indicates that they were locations of cedar plank smokehouses. Sites resorted to during the summer months where less permanent shelters were erected were not considered. Although the treaties provided for the protection of village sites, not all ethnographically-documented sites said to have been occupied *circa* 1850 were eventually confirmed to the Indians.²⁴ Nor were resource camps on Vancouver Island and summer villages on the offshore islands reserved for Native use. One particular Indian Reserve located inside Victoria Harbour within the Hudson's Bay Company lands and including the site of the present-day Parliament Buildings, was offered for sale by the Skosappson Indians to Douglas, himself, although Douglas subsequently

²² Dennis Madill, *British Columbia Indian Treaties in Historical Perspective*. Ottawa: DIAND, 1981, pp. 21-22.

²³ Tennant, *Aboriginal Peoples*, p.20.

²⁴ This point was made by Jeannie Kanakos in *Negotiations to Relocate the Songhees Indians, 1843-1911*. (M.A. thesis, Department of History, Simon Fraser University, Burnaby, 1982).

forbade other settlers to purchase reserved lands.²⁵

The December, 1854 Nanaimo treaty provided for the surrender of approximately 200 square miles, while reserving for the aboriginal people their villages sites and enclosed fields, and their customary hunting and fishing practices. The surrendered area was comprised of all the lands (and offshore islands) along the coast in a 20-mile by 10-mile strip stretching between Dodd Narrows in the south and the Lantzville area in the north.²⁶ Several months later, the land between Departure Bay and the Nanaimo River, encompassing 6,193 acres, was purchased by the Hudson's Bay Company.²⁷ Within this area, pursuant to the treaty, three reserves totalling 250 acres were allotted. The locations and acreage of these reserves were noted on a plan of the area submitted to James Douglas by surveyor J.D. Pemberton in March 1860.²⁸ Only two of the three indicated Indian Reserves marked on the plan were later

²⁵ The nature of the disposition of this land is vague. Douglas informed Barclay, August 26th, 1854, that he would "have no objection to purchase it in part, if the Company will take the remainder of the lot...". It is not clear whether the purchase proceeded or not, but as discussed by Fisher, *Contact and Conflict*, p. 68, by the end of the decade the land had been re-allotted as the site of the legislative buildings. The use of this land for erecting government offices was discussed by the Assembly on March 25th, 1859 (*Journals of the Colonial Legislatures of the Colonies of Vancouver Island and British Columbia, 1851-1871*, edited by James Hendrickson, Victoria: Provincial Archives of B.C., 1980, p.25). The land in question—a 10.6 acre Indian Reserve including the site of today's Parliament Buildings—is indicated on a Hudson's Bay Company sketch map entitled: "Large scale tracing showing changes in Government Reserve and Governor Douglas' property between 1855 and 1862." HBCA, A.11/80 Fo.169a.

²⁶ Douglas to Barclay, December 25th-26th, 1854. HBCA, A.11/75, folio 450.

²⁷ Map accompanying "Minutes of a Committee of the Hudson's Bay Company . . . Seventh day of May in the Year One Thousand Eight Hundred and fifty five." BCARS, Map CM/A452.

²⁸ Pemberton to Douglas, March 28th, 1860. BCARS, C/AA/30.7J/1.

confirmed to the Nanaimo tribe by the Indian Reserve Commission. The third area marked in 1860 as an Indian Reserve, a 79-acre parcel of land, was never set aside as an Indian Reserve.

The signing of the 14 Douglas (Vancouver Island) treaties provided sufficient land for the immediate demands of a slowly developing colony. Offers to sell came in from the Cowichan tribe, but Douglas refused the purchase, explaining to Barclay that the Company could not take up possession immediately, and fearing that the arrangement might be forgotten by the Native people if this was not done.²⁹

Surveys were not undertaken until the late 1850s, although they had been promised in the preamble to each of the 14 Douglas treaties. It is not known how Douglas arrived at the size of the individual reserves resulting from the 14 treaties, or if their original lines were marked in any way at the time the treaties were signed.

On the Saanich Peninsula, surveys of country land were undertaken by John Trutch in 1858. A new survey system using "sections" and "ranges" was initiated that year. Each section of 20 chains latitude by 50 chains in departure defined 100-acre rectangles of land running as nearly as possible to the cardinal points of the compass.³⁰ Thus, in Saanich, beginning in 1858, natural boundaries were not acceptable boundaries either for reserves or for pre-emptions. The following year, the land-status

²⁹ Douglas to Barclay, May 16th, 1850. HBCA, A.11/72, folios 246-7. Copy in, *Fort Victoria Letters*, pp. 94-96.

³⁰ A description of survey systems can be found in W.A. Taylor, B.C.L.S., *Crown Lands: a History of Survey Systems*. Surveyor General Branch, Ministry of Environment, Lands and Parks.

map of this area indicated the locations of "government reserves," that were subsequently termed "Indian Reserves" in the 1862 correspondence of surveyor J.D. Pemberton.³¹ Boundaries of Indian lands were either not *all* defined, were ill-defined, or were encroached upon by settlers, for in November 1859, Indian people from the village at Union Bay [Patricia Bay] on the Saanich Peninsula told George Heaton, the Sheriff of Vancouver Island, that they intended "to come to Victoria for the purpose of ascertaining the limits of their own 'Reservation'"³²

Two early purchases of Indian lands were recorded among tribes on the west coast of Vancouver Island. By one of these agreements, Government Agent W.E. Banfield on July 6th, 1859 procured an island called "Osmetticey" from its owners, the first and second chiefs of the Ohiaht tribe. The price paid was "two Blankets and two Shirts."³³ It has not been possible to determine where in Barkley Sound this island is located.

By the terms of an agreement dated February 4th, 1860, Banfield paid to the Opetchesaht Indians a "small patch . . . of ground" on the east side of Somass River.

³¹ Letter from J.D. Pemberton to the Colonial Secretary, January 10th, 1862. BCARS, GR 1372, F.905/5. The location of the Tsartlip reserve is shown on an 1862 survey sketch by F.W. Green found attached to a letter of October 24th, 1865, from Henry Fry to the Colonial Secretary. BCARS, GR 1372, F.613/2. A notation by B.W. Pearse on this letter states that the Indian Reserve in question was situated as "R.11.w.7.8.9.s," the co-ordinates of the Tsartlip Indian Reserve subsequently confirmed by the Indian Reserve Commissioner in 1877.

³² Letter from George Heaton, Sheriff of Vancouver Island, to Governor James Douglas, November 28th, 1859. BCARS, GR 1372, File 748/18.

³³ "Title deed" between William Banfield and Cleeshin and Howeeseni, July 6th, 1859. BCARS, Add. Mss. 772, Folder 4, Microfilm A-1285.

The cost was "five blankets and other small articles." The owners of this land were identified as the "joint Chiefs" of the Opetchesaht tribe, "Kal-lou-ish" and "Quile-chee-namt." The land in question was identified as "No-peh-tse-kopis."³⁴

2.1.2 Non-treaty Reserves Established by James Douglas

The mainland Colony of British Columbia was established by law on August 2nd, 1858. James Douglas assumed Governorship of both colonies and his position with the Hudson's Bay Company ended. On November 19th, 1858, the colony was proclaimed and the law of England was introduced to the mainland of British Columbia. As historian Barry Gough explained, the Colony Office had been forced to create a new colony to check the threat of an "American invasion"--as they viewed the thousands of foreigners flooding north--and had no alternative but to rely on Douglas to maintain law and order.³⁵

Since 1858, the settlement of British Columbia had begun in earnest; gold miners flocked to the interior, trespassed on Indian villages and competed for the same resources. The European population increased dramatically, while the Native

³⁴ Agreement between William Banfield and Kal-lou-ish and Quile-chee-namt, February 4th, 1860. BCARS, Add. Mss. 772, Folder 4, Microfilm A-1285. The Native name for this place has been transcribed as "no:pts'ikapis" in a recent place names study by E.Y. Arima and Denis St. Claire, *Between Ports Alberni and Renfrew. Canadian Ethnology Service, Mercury Series Paper No. 112* (Ottawa: Canadian Museum of Civilization, 1991) page 193.

³⁵ Barry Gough, "'Turbulent' Frontiers and British Expansion: Governor James Douglas, The Royal Navy and the British Columbia Gold Rushes," *Pacific Historical Review*, Vol.41, No.1, February 1972, 15-32.

population declined, leaving the Native people in a position of submission. The picture presented by Fisher was one of chaos in the new colony.³⁶ A situation had developed that was antithetical to Douglas' goal of harmonious race relations in an environment where the aboriginal people would "be placed under proper moral and religious training, and left, under the protection of the laws, to provide for their own maintenance and support."³⁷

Prior to the founding of the new colony, compensation to the aboriginal groups for their land pursuant to the Douglas treaties had come from the Hudson's Bay Company. But in 1859, with the termination of the Company's Charter, new sources of revenue had to be found if additional treaties were to be negotiated. This was the topic of an exchange between the Right Honourable E.B. Lytton and Douglas in July 1858 at which time it was submitted that Imperial policy required "that it should be an invariable condition in all bargains or treaties with the Natives for the cession of Lands possessed by them, that subsistence should be supplied to them in some other shape . . .".³⁸ In response to Lytton's instructions, Douglas advised that he would "treat the Indians with humane consideration" while protecting their "civil and agrarian rights."³⁹ Douglas favoured assimilation; his policy was to treat Native people as British subjects

³⁶ Fisher, *Contact and Conflict*, pp.95-118.

³⁷ Douglas to Lytton, March 14th, 1859, *B. C. Papers*, pp.16-17.

³⁸ Rt. Hon. E.B. Lytton, July 31st, 1858. C.O. 410/1, pp. 147-159.

³⁹ Douglas to Lytton, October 11th, 1858. C.O. 60/1, pp.181-189.

possessing equal rights with all other subjects.

In a letter of December 30th, 1858, Lytton informed Douglas of a plan undertaken successfully in South Africa where the Kaffirs were settled in villages, and suggested that the same might be implemented in British Columbia.⁴⁰ The Aboriginal Protection Society also petitioned Britain to protect Native rights in the developing colony, though they spoke of protection through the negotiation of treaties.⁴¹

On March 14, 1859, Douglas forwarded to Lytton a despatch which sets forth his views on the establishment of Indian Reserves and responds to the despatch containing the letter of the Aborigines Protection Society. At point 8 of this despatch, Douglas states that anticipatory Indian Reserves will be made for Natives and will include:

their cultivated fields and village sites, for which from habit and association they invariably conceive a strong attachment, and prize more, for that reason, than for the extent or value of the land.

At point 9 of this same despatch, Douglas states:

In forming settlements of natives, I should propose, both from a principle of justice to the state and out of regard to the well-being of the Indians themselves, to make such settlements entirely self-supporting, trusting for the means of doing so, to the voluntary contributions in labour or money of the natives themselves; and secondly, to the proceeds

⁴⁰ E.B. Lytton to James Douglas, 30 December 1858. C.O. 398/1, pp.185-187. Copy in, *Papers Relating to the Indian Land Question*, p.15.

⁴¹ F.W. Chesson, Secretary, Aborigines Protection Society, to E.B. Lytton. Forwarded to James Douglas from Lytton, 2 September 1858. C.O. 398/1, p.65. Copy in, *Papers Relating to the Indian Land Question*, pp.12-14.

of the sale or lease of a part of the land reserved, which might be so disposed of, and applied towards the liquidation of the preliminary expenses of the settlement.⁴²

In reply, Lytton cautioned Douglas against giving so much land to the Indians that it would retard the progress of settlement.⁴³ Yet on October 1st, 1859, Douglas forwarded copies of a *Circular* to the colony's Gold Commissioners and Magistrates, instructing them to "cause to be reserved the sites of all Indian Villages, and the land they have been accustomed to cultivate, to the extent of several hundred acres around each village for their especial use and benefit."⁴⁴

At first glance, the House of Assembly for the Colony of Vancouver Island in 1860 supported without hesitation the necessity of extinguishing, by purchase, the Native title to land, providing the costs were to be sustained by Britain.⁴⁵ But this was not to be the case;⁴⁶ Douglas was informed that funds would have to be raised locally.⁴⁷

⁴² Copy of Despatch (No. 114) from Governor Douglas to the Right Honourable Sir E.B. Lytton, Bart, March 14th, 1859. C.O. 60/4, pp.212ff. NAC, RG 10, Vol. 11,028, File SSR-1. Copy in, *Papers Relating to the Indian Land Question*, pages 16-17.

⁴³ [E.B. Lytton]. Signed by Carnarvon, Parliamentary Under-Secretary, Colonial Office, to James Douglas, May 20th, 1859. C.O. 398/1, pp. 289-290.

⁴⁴ James Douglas to Chief Commissioner of Lands and Works, 7 October 1859. Encloses copy of 1 October 1859 Circular from James Douglas, Governor, to Gold Commissioners and Magistrates. BCARS, GR 1372, F. 485/8f: Microfilm B-1325.

⁴⁵ In March of 1861, Douglas forwarded to the Duke of Newcastle a petition from the Vancouver Island House of Assembly referring to the extinction of Indian title. C.O. 305/17, folio 132.

⁴⁶ An estimate of £2,000 to purchase Indian title in the Chemainus District was dropped from
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A policy of treaty making could not continue, however, without the Colonial Office providing Douglas with the necessary funds. As Paul Tennant has explained, the Assembly itself could not raise the funds, as it had no authority over the monies derived from land sales, this being under the control of the Colonial Office in London.⁴⁸ A few weeks after becoming Governor of British Columbia, Douglas issued a *Proclamation* providing that colonial land grants could be issued by him alone.⁴⁹ Attempts by settlers to purchase Indian reserves were thwarted when Douglas placed a notice in the *Victoria Gazette* advising that all land was the property of the Crown and that the Natives could not convey title to it to anyone except the Crown.⁵⁰

Tennant,⁵¹ in opposition to Shankel, Cail, Duff and Fisher, suggests that this edict demonstrates a profound change in Douglas' Indian policy: while negotiating the

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the budget at a July 3rd, 1860 meeting of the Vancouver Island House of Assembly as the majority of members considered that responsibility for this matter remained with the Imperial government. See Fisher, *Contact and Conflict*, 152. On October 4th, 1861, Douglas was informed that the Lords Commissioner of the Treasury, to whom the matter had been submitted were "not prepared to purchase up the Native title at the expense of this country." C.O. 307/17, folio 132.

⁴⁷ See letter of F.W. Murdock to F. Rogers, dated June 12th, 1861. C.O. 305/18, folio 169-172. In a letter of October 19th, 1861, Douglas was informed by the Duke of Newcastle that extinguishing Indian title on Vancouver Island was a colonial interest that should not be a burden of the British taxpayer. C.O. 305/18, folios 213-214.

⁴⁸ Tennant, *Aboriginal Peoples*, pp.22-23.

⁴⁹ Proclamation No.11 Enabling the Governor to Convey Crown Lands, December 2nd, 1858; and Proclamation No. 13, Capital of British Columbia, February 14th, 1859, *Revised Statutes of British Columbia, 1870*. Appendices.

⁵⁰ Douglas to Lytton, February 9th, 1859. C.O. 305/10.

⁵¹ See Tennant, *Aboriginal Peoples*, pp.30, 245n.

Vancouver Island treaties, Douglas acknowledged Indian ownership of land beyond their village sites that was extinguished by purchase; now, Douglas' policy contained no recognition of aboriginal title. As support for this view, Tennant relies on Douglas' statement to the Assembly in March 1862 that allocation of reserves would satisfy Indian "claims on the land."⁵² Fisher, on the other hand, takes the view that it was the chronic shortage of funds that prevented Douglas from continuing his earlier policy, and that despite his financial limitations, he advocated protection of aboriginal rights.⁵³

In an effort to safeguard the Indians' interest, while avoiding racial conflict, Douglas did two things: he instructed his surveyors to lay out Indian Reserves; and, he permitted Native people to pre-empt land. In both of these endeavours he was assisted frequently by missionaries, with whom he shared a vision of orderly, self-sustaining Native hamlets fashioned on an European model.

Louis D'Herbomez was one of the Oblate priests concerned about the loss of lands by the numerous Natives people living in the New Westminster area in the mid-1800s. An inquiry by D'Herbomez as to whether the *Land Act* applied to Native people brought a reply from Judge Matthew Begbie that "Indians have perfectly the right of pre-emption, like all other British subjects."⁵⁴ The 1861 *Land Ordinance* provided

⁵² *Ibid.*, p.30.

⁵³ Fisher, *Contact and Conflict*, p.153.

⁵⁴ L.J. D'Herbomez to Leon Fouquet, June 24th, 1861. Archives Deschatelets, Ottawa. HPK/5282/.H53L/28.

detailed regulations for pre-empting land in the colonies.⁵⁵

Douglas' pre-emption policy was well-motivated but short-sighted and short-lived. It brought strong opposition from others in his government. Moreover, pre-emptions required Native people to acquire capital and assume financial liabilities, and this undoubtedly contributed to its failure as an adequate method of reserving lands for Native use. An example of an ill-fated pre-emption was the allotment of a New Westminster parcel to a Squamish Indian man named Snat Srouten. The priest applied for the land on behalf of Snat. Presumably it was granted, for in 1864, the question of Snat's taxes was raised by the New Westminster City Council. The priest's protest to the Council inferred that Snat's land was included within the Oblate religious community.⁵⁶

Pre-emption applications of "an extended-order" were being submitted when in 1862 the Chief Commissioner of Lands and Works, Colonel Richard Moody, wrote to the Colonial Secretary seeking guidance on this issue.⁵⁷ Moody feared that the practice

⁵⁵ B.C. *Revised Statutes*, pp.25-28, 24 Vict. no.4. A summary of these regulations can be found in Cail, *Land, Man and the Law*, p.15.

⁵⁶ The events surrounding the registering and subsequent loss of this pre-emption can be found in: Richard Moody to Colonial Secretary, May 27th, 1862, BCARS, GR 1372, F 931/10; Leon Fouquet to James Douglas, June 23rd, 1862, BCARS, GR 1372, F584/1a; H. Luard to the Colonial Secretary, June 24th, 1862, BCARS GR 1372, F931/42; and, L. Fouquet to L.J. D'Herbomez, September 2nd, 1864, Archives Deschatelets, HPK/5282/.H53Z/213.

⁵⁷ Colonel Richard Moody's appointment as Chief Commissioner of Lands and Works was ordered to be confirmed under the Public Seal of the Colony of British Columbia. See Lytton to Douglas, September 23rd, 1858, Despatch 22. C.O. 398/1, pp.103; Moody's instructions were issued in a letter from E.B. Lytton, October 29th, 1858. BCARS, GR 1372, F.1149a/2.

of pre-emption by Indian people was likely to increase rapidly, for it was not prohibited by the 1860 Land Ordinance.⁵⁸ Douglas advised that anticipated legislation governing Native pre-emptors would require considerable improvements to be undertaken on the pre-empted land, and that "they shall have no power to convey such land without the consent of the Governor first obtained," a dictum that did not apply to non-Indian pre-emptors.⁵⁹ Several years later, more narrowing legislation restricting Native pre-emptions was enacted with the passing of the 1866 *Pre-emption Ordinance*. Those earlier Native pre-emptions that had not already been accumulated by land-speculators were now considered invalid.⁶⁰

⁵⁸ On January 20th, 1860, Douglas issued a proclamation providing for the sale of town and suburban lots and surveyed agricultural lands. The *Pre-emption Amendment Act*, dated January 19th, 1861, amended the January 1860 proclamation. On January 19th, 1861, the so-called *Country Land Purchase Act* reduced the price of country land on pre-emption. The *Pre-emption Purchase Act* of May 28th, 1861, was intended to limit speculation in pre-empted land by reducing the amount of land a settler could hold to 160 acres. The August 27th, 1861, *Pre-emption Consolidation Act, 1861*, brought into one general *Act* all of the several proclamations regulating the pre-emption of land, and to simplify the process of land acquisition. On May 27th, 1863, the *Mining District Act, 1863*, was passed. After Frederick Seymour became Governor of British Columbia, the House passed *An Ordinance for Regulating the Acquisition of Land in British Columbia*, dated April 11th, 1865.

⁵⁹ A minute by James Douglas on a letter from Colonel Richard Moody to Colonial Secretary, June 11th, 1862, states: "It is intended to legislate on the subject hereafter permitting Indians to hold land under pre-emption on the following conditions: that they build thereon a fence of square logs with shingle roof not less than 30 x 20 feet and 10 foot walls . . . clear, enclose and cultivate . . . 1st year 2 acres of wood land, 5 acres of prairie land, 2nd year 3 acres of wood land and 6 acres of prairie land, and at the same rate per annum afterwards till the end of the fifth year." BCARS, GR 1372, F931/27.

⁶⁰ H.M. Ball to the C.C.L.&W., November 19, 1869 notes that this change in policy occurred in 1866. BCARS GR 1372, F101a/16e. Attorney General H.P.P. Crease on March 8th, 1866, opined that the proposed new legislation clarified the situation of Native people being permitted to pre-empt land. It was his view that the Native people were already in possession of "more land

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A detailed review of the extent, location and disposition of Indian pre-emptions in the Colonial period has yet to be undertaken. A cursory examination of Colonial records indicates that Native pre-emption applicants were especially prevalent in the New Westminster area, although reference is also made to a Native pre-emption at Kamloops, another area subjected to an influx of settlers in the early 1860s.⁶¹

The manner in which Indian Reserves were established during the Douglas years varied considerably.⁶² Some, like the Yale reserve, set aside in 1858, were established by the Governor, himself, during visits to the area in response to disputes involving non-Indians.⁶³ The boundaries of the reserved land were marked on the spot, with Douglas present.

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than they can possibly use for themselves . . ." and that it would not be politic to "shut out any more land from proper cultivation." Further comments by Crease can be found in a letter to the Officer Administering the Government, April 26th, 1866. BCARS, GR 752. In 1869, Crease prepared a second document entitled "Can Indians Pre-empt Land?" in which he reviewed the history of native pre-emptions. Concerning a specific case involving an 1862 Native pre-emption, it was Crease's opinion that the Crown should refuse to recognize such pre-emptions, as Indian Reserves had been established. BCARS, G-86-101. *An Ordinance Further to Define the Law Regulating the Acquisition of Land in British Columbia*, dated March 31st, 1866, provided that the right to pre-empt land would not extend to "Companies . . . or, without the permission aforesaid, to or on any of the Aborigines of the Colony." Tennant, *Aboriginal Peoples*, p.42, states that the wording of the amendment to the pre-emption Act was ambiguous, but that it was possible that officials interpreted it as retroactively cancelling the Indian pre-emptions.

⁶¹ E.H. Sanders to Acting Colonial Secretary, 26th July 1866. BCARS, GR 1372, F1562.

⁶² Years later, in a letter to the Deputy Superintendent General of Indian Affairs dated 11th August 1880, Indian Reserve Commissioner G.M. Sproat stated that he was unable to find records as to the "why and wherefore" of Colonial reserves. NAC, RG 10, V.3711, f.19,581.

⁶³ Douglas to Lytton, October 12th, 1858. C.O. 60/1, p.213-215,221-222. The "Address of His Excellency the Governor to the inhabitants of Fort Yale, September 12th, 1858, can be found in BCARS, GR 1372, F484a/3.

Although Douglas also visited Fort Hope where he met with the Indians and advised them of his policy of equitable treatment under British law, it is not clear that he set aside any Indian Reserves. Peter O'Reilly, Magistrate at Fort Hope between September 1859 and May 1862, informed the Colonial Secretary that reserves "at either end of town" were "marked off in accordance with His Excellencys [sic] instructions contained in His letter dated 1st Oct'r 1859." O'Reilly had been notified that reserves of several hundred acres were to be laid out around each village.⁶⁴ A recommendation from O'Reilly that the Indians should be removed from the townsite provoked a firm response from Douglas that "the Indians must not be disturbed."⁶⁵ Although the plan of Hope area that was prepared by William McColl of the Royal Engineers in the early 1860s, shows the location of several Indian villages, they were not marked as "Indian Reserves," contrary to O'Reilly's information. The earliest confirmed reserve in the Hope area appears to have been set aside at the mouth of the Coquihalla River on 11th November 1863 by Magistrate E.H. Sanders. An acknowledgement by the Colonial Secretary notes that the reservation of this land was approved by the Governor and that the records had been forwarded to the Commissioner of Lands and Works

⁶⁴ Douglas to Thomas Elwyn, October 1st, 1859. A note at the bottom of this letter states that a similar letter was sent to four other individuals, including Peter O'Reilly. BCARS, C/AB/30.1J, Vol. 2.

⁶⁵ Peter O'Reilly to W.A.G. Young, Acting Colonial Secretary, December 24th, 1859, with a minute by James Douglas. The "enclosed sketch," presumably showing the location of the Indian Reserves, is missing. BCARS, GR 1372, File 1277.

accordingly.⁶⁶ This reserve was listed in the land records of the Yale District as claim "No. 105, Coquahalla Ranch Indian Reserve," containing 55 acres, more or less.⁶⁷ A settler who attempted to pre-empt the land in 1870 was informed that it was unavailable as it was an Indian Reserve.⁶⁸ Apparently, the reserve was finally surveyed in 1870, but was omitted from the 1873 "Return of all Indian Reserves (surveyed) in the Province of British Columbia."⁶⁹ The land was subsequently confirmed as Aywawwis I.R. No. 15 (Union Bar).⁷⁰ It was not until the 1880s that the townsite reserve, the land that was likely allotted initially by O'Reilly in 1859, became an official Indian Reserve.

Advocating the protection of Indian rights in a frontier of miners, land speculators, and settlers was an arduous task for James Douglas, but his correspondence reveals a man intent upon maintaining peace. Wherever competition for

⁶⁶ E.H. Sanders to Colonial Secretary, November 2nd, 1863. BCARS, GR 1372, F.1556.

⁶⁷ B.C. Government Agent, Yale. Land Records, Pre-emption Claims, 1859-66. BCARS, GR 252, Vol. 30.

⁶⁸ Correspondence between M. Michaud and the Chief Commissioner of Lands and Works, February 15th, 21st, 1870. *B.C. Papers*, p.80.

⁶⁹ In a letter from Philip Hankin, Colonial Secretary, to Joseph Trutch, Chief Commissioner of Lands and Works, April 29th, 1870, he advises that "With reference to the subject of the survey of the Indian Reserves on the Fraser" the Governor "approves of the boundaries of all lands which are to be reserved for the use of the Indians, from Harrison River to Yale, and along the Waggon Road from Yale to Cache Creek, being determined by the local Magistrates, and surveyed under instructions from your Department; the Magistrates personally inspecting such survey . . ." *B.C. Papers*, p.81. In June of 1870, B.W. Pearce forwarded to Peter O'Reilly "three tracings of the Indian Reserves at Hope and Yale, and that at the mouth of the Harrison River, beyond which no reserves have been laid out." *Ibid.*, p.83.

⁷⁰ Exhibit A, Reserves Allotted Before Union. Enclosed with McKenna to McBride, July 12th, 1912. BCARS, GR 441, Vol. 149, File 1.

land threatened to displace Native villages, Douglas directed the Magistrates, Gold Commissioners and Lands and Works personnel to reserve those lands "defined as they may be severally pointed out by the Natives themselves."⁷¹ This directive, although forwarded to one of the Gold Commissioners by the Chief Commissioner of Lands and Works, was tempered by Richard Moody's own advice:

be particular in scrutinizing the claims of the Indians, as I have every reason to believe that others (white persons) have, in some instances, influenced the natives in asserting claims which they would not otherwise have made, the object of such persons being prospective personal advantages previously covertly arranged with the Indians. . .⁷²

Douglas occasionally enlisted the aid of missionaries in defining reserves, providing them with stakes to mark reserve boundaries. Apparently this practise was halted temporarily in 1862. At that time, Father Fouquet wrote to Moody agreeing not to provide any more letters recommending that the Indians obtain reserve stakes.⁷³ Yet by 1863, William Duncan, missionary among the Tsimshian people on the isolated north coast, was instructed to place boundary posts to indicate the reserve at Metlakatla and to advise the Indians elsewhere within his sphere of influence to mark off their

⁷¹ Fisher, *Contact and Conflict*, p. 154, is of the opinion that this statement appears so frequently that "there is no room for doubt that this was Douglas's policy." A similar conclusion was reached by Cail, *Land, Man and the Law*, pp. 179-180. More recently, a less generous interpretation has been argued by Tennant, *Aboriginal Peoples*, pp.32-33.

⁷² Moody to Cox, March 6th, 1861. *B.C. Papers*, 21.

⁷³ Leon Fouquet to Colonel Richard Moody, December 27th, 1862. BCARS, GR 1372, F.584/1c.

desired lands.⁷⁴ In 1865, Fouquet wrote again to the government, this time on behalf of the Tsawwassen people at the Fraser River mouth who were eager to have their reserve staked.⁷⁵ Moody and Douglas generally disapproved, however, of enlisting the assistance of Catholic priests beyond furnishing information on Native population and location.⁷⁶

During trips to the interior of the colony, Douglas met with the chiefs and assured them that the magistrates had been directed to "stake out, and reserve for their use and benefit, all their occupied village sites and cultivated fields and as much land in the vicinity of each as they could till, or was required for their support."⁷⁷ In some cases the reserves were surveyed, while others were only "roughly traced out upon the ground by the Gold Commissioners of the day."⁷⁸ The size of the reserves varied considerably. When Moody inquired about the size of reserve allotments, Colonial Secretary W.A.G. Young, responding for Douglas, wrote on January 10th, 1860, that 10 acres was appropriate for Indian villages near town sites and 1000 acres "of country

⁷⁴ Colonel R. C. Moody, R.E., Chief Commissioner of Lands and Works, Victoria, to William Duncan, Metlakatla, July 24, 1863. NAC, MG 29, H15, Duncan Papers, Roll 1; BCARS, GR 2900, V.4 p.32; Microfilm B-11043.

⁷⁵ Fouquet to A.E. Howse, August 15, 1865. BCARS, GR 1372, F584/2c.

⁷⁶ Colonel R. C. Moody, R.E., Chief Commissioner [of Lands and Works] to Governor James Douglas, 28 April 1863. GR 1372, File 935/10; Microfilm B-1339. See reply: 11 May 1863, W. A. G. Young, Colonial Secretary's Office to Chief Commissioner of Lands and Works. BCARS, GR 1372, File 331[4]; Microfilm B-1316; BCARS, C/AB/30.1 J/9:399-400; Microfilm B-4718.

⁷⁷ Douglas to Lord Stanley, June 15th, 1858. C.O. 60/1, pp.54-57.

⁷⁸ Douglas to Lt. Col. I. Powell, October 14th, 1874. NAC, RG 10, V.1285.

land in places where they may make selection."⁷⁹ Despite the recommendation, no formula was adopted.

A few reserve surveys were completed on Vancouver Island in 1858, but once the Royal Engineers arrived in the Colony, they undertook most of this work in areas where Douglas was promoting settlement and pushing through roads.

Locations of Indian Reserves in the Fraser Canyon along the wagon road to be built between Lytton and Boston Bar were indicated on maps prepared by Sapper James Turnbull of the Royal Engineers during his reconnaissance of the area in 1861.⁸⁰

Survey notes compiled by Turnbull of the individual reserves were drafted throughout the summer of 1861.⁸¹ A survey of some Lytton Reserves had been undertaken by the Royal Engineers in 1860, in conjunction with the survey of the town.⁸²

Setting aside Indian Reserves was only one of the duties of the Royal Engineers in the colony, and Douglas soon became frustrated with the slowness and great expense

⁷⁹ W.A.G. Young, Acting Colonial Secretary, to the Chief Commissioner of Lands and Works, January 10th, 1860. Colonial Secretary, Correspondence Outwards. BCARS, C/AB.30.1J/1, p.118. Microfilm B-2651.

⁸⁰ A series of maps surveyed and drawn by J. Turnbull in 1861 (when he was with the Royal Engineers) illustrates the location of Indian Reserves, gardens and burial grounds in the environs of the wagon road. Maps and Plans Vault, Surveyor General Branch, Ministry of Environment, Lands and Parks, Victoria. 11T2, 12T2, 13T2, 14T1 Roads and Trails.

⁸¹ "Indian Reserves: Yale District, 38." Royal Engineers' Surveys, May, June and July 1861. Maps and Plans Vault, Surveyor General Branch, Ministry of Environment, Lands, and Parks, Victoria.

⁸² "Survey of the Town of Lytton & Suburbs," Royal Engineers' Surveys, 1860. Maps and Plans Vault, Surveyor General Branch, Ministry of Environment, Lands and Parks, Victoria.

involved in this task. Moreover, with settlers encroaching upon Indians' lands, the peace of the colony was threatened, causing the Governor great concern that an Indian war could potentially result. Intent that the Royal Engineers proceed more quickly, Douglas issued Moody with instructions to mark out town sites and Indian Reserves throughout the colony. Notice of the location and extent of these reserves was to be published in three places in each district, as well as in the local newspaper, and the Governor was then to be provided with a map of each district exhibiting the alienated lands.⁸³ Despite a reminder sent on August 2nd, 1861, in which the Governor requested the map along with a lists of reserves "and the dates on which such notices were published in each district," it is not clear that Douglas received all the desired information.⁸⁴

Pursuant to these instructions, the surveyors were most active in the Fraser Valley. Their correspondence provides some insight into the manner in which lands were reserved. In the spring of 1861, Captain Robert Parsons of the Royal Engineers received instructions to "mark out successively & as early as possible by Posts and in any other clear and permanent ways, Boundaries of Lands claims by Indians" from the Harrison River to the sea.⁸⁵ Before proceeding, Parsons asked for clarification of a

⁸³ W.G. Young to Colonel Moody, April 5th, 1861. *B.C. Papers*, p.22.

⁸⁴ Charles Good to Colonel Moody, August 2nd, 1861, *B.C. Papers*, p.23.

⁸⁵ Instructions to lay out reserves were given in a memo from Colonel Richard Moody, C.C.L.&W. to Captain Robert Parsons, R.E., 13th April 1861. Parsons' response to Colonel
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number of points that he outlined in a return letter to Moody. Moody's pencilled notation on the original letter indicates his response. When asked how much land was to be allotted per village or per male head of family, Moody replied that the land to be set aside as reserves was:

What the Tyhee [chief] of the village points out--(within reason). If anything extreme is asked for postpone decision until further communication with me.

Recognizing the dispersed nature of burial grounds, Moody instructed that "the immediate precinct" of each burial ground be reserved. Those cultivated areas claimed by the Indians were likewise set aside. Parsons also inquired of Moody:

When the Posts or Marks are inserted in the ground is it to be explained to the occupants of the House or Village that the land so staked out is bona fide allotted to that settlement?

Moody replied, "Yes."⁸⁶

Apprised of these instructions, Captain Parsons notified Corporal Turner to "mark on the ground with strong stakes and blazed trees" villages on the Harrison, Chilliwack, Sumas and Matsqui Rivers. A postscript to the letter states that "Colonel Moody desires that the Indians *shall put down the stakes themselves* and that you look

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Richard Moody, C.C.L.&W., April 15th, 1861, and Parsons and Turner, April 31, 1861, can be found in this same letterbook. Royal Engineers, Correspondence Outward, Letterbook 1859-1863. BCARS, C/AB/30.6J/5.

⁸⁶ *Ibid.*

at them and report to him the position and quantity of land claimed."⁸⁷

The documentary record allocating these reserves is incomplete, but the manner in which the Indian lands were surveyed can be gleaned partly from the surveyors' reports on other Fraser Valley Indian villages visited by the Royal Engineers at this time. On May 13th, 1861, Sergeant W. McColl reported on his survey of the Katzie Reserve. A map accompanying the report illustrates the position of the village, burial ground and potato patches, as well as the location of stakes and blazed trees marking the reserve's boundaries. McColl wrote that the chief accompanied him and "pointed out the boundary of the land claim." A settler had already encroached upon the back of the village, and inasmuch as the settler was absent, Surveyor McColl had to await his return before marking this boundary. Another village belonging to the Katzie and situated across the river was entirely within the claim of a settler. McColl deferred marking this reserve until receiving instructions from Captain Parsons to proceed. The land was eventually reserved for the Katzie.⁸⁸

Public notices of some allotted reserves were signed by the Chief Commissioner of Lands and Works, but it appears that few allotments complied with the official procedure of posting and publishing the allotments. One such notice concerning an

⁸⁷ *Ibid.*

⁸⁸ W. McColl to Captain R.M. Parsons. May 13, 1861. Parsons to Moody (?), May 28, 1861. Royal Engineer's Letterbook. BCARS, C/AB/30.6J/5.

Indian Reserve on the Coquitlam River appears in the Royal Engineers' letterbook.⁸⁹ This notice delineates the extent of the land along with a statement that the plans of the reserve can be seen at the Lands and Works Department office in New Westminster. An additional note states that a copy of the notice is to be deposited in the Indian village. Apparently no notices of Indian Reserves were published in the *Victoria British Colonist* in 1861 or in the *British Columbia Gazette* before 1866.⁹⁰ It is not known how many public notices were printed for colonial reserves.

To assist in his venture to establish law and order throughout the two colonies, and to impose equal British justice for the Indians as well as the white man, Governor Douglas appointed Gold Commissioners who functioned as policemen, magistrates and Indian Agents. After February 1861, Gold Commissioners carried the additional title of "Assistant Commissioner of Lands."⁹¹ Their duties in this latter area were to be defined by the Chief Commissioner of Lands and Works, Colonel Richard Moody. Each was

⁸⁹ Public Notice, New Westminster, June 13th, 1861, issued by R.C. Moody. British Columbia, Royal Engineers Correspondence Outward, Memorandum Book, 17 November 1859 - 20 July 1861. BCARS, C/AB/30.6J.

⁹⁰ A compilation of gazette notices held by the reference library of Specific Claims West, Vancouver, includes a statement that no gazette notices were published in the *British Columbia Gazette* for the period 6th June 1863 to 5th October 1866, but that there is a possibility that notices appeared in other colonial newspapers published in the Colony of British Columbia. This has not been confirmed.

⁹¹ In a letter from the Lands and Work to Colonial Secretary, dated May 19, 1864, the writer asks if the connection between the Land and Works department and the Magistrates, as Assistant Commissioners of Lands and Works, has been discontinued. It appears that Moody, himself, prior to his departure, wrote to the Colonial Secretary stating that "there is no such office as Asst Comm. of L & W". BCARS, C/AB/30.7J/8.

provided with a copy of Douglas' October 1st 1859 *Circular* outlining their duties with respect to establishing Indian Reserves.⁹²

In the interior, Gold Commissioner William G. Cox received the above instructions from Governor Douglas and Chief Commissioner of Lands, Richard Moody, and allocated Indian Reserves of a considerable size in 1861 at Penticton and at Head of the Lake in the Okanagan,⁹³ and at the mouth of the Kootenay River,⁹⁴ and in 1862 at Osoyoos⁹⁵ as well as in various areas of the Shuswap district.⁹⁶

Upon receiving his new commission, Cox wrote to Colonel Moody on February 12th, 1861 requesting information on "laws for controlling Indian Reservations," and recommending that land at the head of Okanagan Lake be reserved for use by the

⁹² Enclosure of October 1st, 1859, in Douglas to the Chief Commissioner of Lands and Works, Richard Moody, October 7th, 1859. BCARS, GR 1372, F485/8f. Microfilm B-1325.

⁹³ Correspondence concerning the establishment of the reserves in the north Okanagan can be found in BCARS, GR 1372, F.375. The map illustrating the lands reserved is contained in the Royal Engineers letterbook and dated July 1861. BCARS, C/AB/30.6J/5. For identification of the Penticton lands see Colonel R. C. Moody, R.E., Chief Commissioner of Lands and Works to Colonial Secretary. BCARS, GR 2900, V.9 pp.92-95: Microfilm B-11044; John C. Haynes, at New Westminster, to Colonial Secretary, April 7th, 1865. BCARS, GR 1372: File 741/13: Microfilm B-1333.

⁹⁴ William Cox to J.J. Young, October 19th, 1861. BCARS, GR 1372, F376/24.

⁹⁵ William Cox to the Chief Commissioner of Lands and Works, August 9th, 1862. BCARS, GR 1372, F.377/13A. B-1320.

⁹⁶ Cox to W.A.G. Young, July 4th, 1861. BCARS, GR 1372, F.376/1. Cox to Colonel R. C. Moody, Royal Engineers, Chief Commissioner of Lands and Works, October 31st, 1862. BCARS, GR 1372, File 377/25b, Microfilm B-1320. Copy in, *Papers Relating to Indian Land Question*, p.26; Cox's Record of Land Claims, Government Reservations, etc., 1861-2. BCARS, GR 857. B-7893.

Native residents. Cox's request was urgent as he sensed the impingement of miners and farmers upon lands used by the local Indians.⁹⁷ Days later, Cox reported to the Colonial Secretary that there was, in his district, growing unrest relating to land. He said that the Okanagan Chief "Zelahetza" [Chilliheetsa] had been to see him, requesting that Cox convey to Governor Douglas his desire for a reserve.⁹⁸ Instructions to mark out the Indian Reserves were then sent from the Colonial Secretary's Acting Private Secretary, Charles Good, on March 5th, 1861 to Colonel Moody, and from Moody to Cox on the following day.⁹⁹ Both men reported that their instructions emanated from the Governor. Both sets of instructions stated clearly that the reserved lands were to be "defined as they may be severally pointed out by the Natives themselves," although Moody cautioned Cox to be wary of White men influencing the Indians' choice of lands.¹⁰⁰

On March 29th, 1861, Cox again wrote to the Colonial Secretary stating that he

⁹⁷ Cox to Moody, February 12th, 1861. BCARS, GR 1372, F375/3a.

⁹⁸ Cox to W.A.G. Young, February 16th, 1861. BCARS, GR 1372, F375/5. The wording of Cox's letter is ambiguous due to the handwriting: "Zelahitza the Okanagan Lake Chief had a lengthy interview with me relative to his reservation [on the?] [illegible] of the newly discovered diggings [alluded?] to & requested of me to convey his wishes to His Excellency, he asks for permission to dispose of the ground His Excellency may feel disposed to Grant him for his people. I have written to the Chief Commissioner of Lands on the subject of Indian Reservations. It will be re[illegible] for me to proceed to that portion of the Country [illegible] these land claims may be satisfactorily [illegible]."

⁹⁹ Good to Moody, March 5th, 1861. BCARS, GR 1372, F650(1)/4c4; Moody to Cox, March 6th, 1861. BCARS, GR 2900, Vol. 2, pp.144-5.

¹⁰⁰ R.C. Moody, CCLW, to W.G. Cox, Assistant Commissioner of Lands and Works at Rock Creek, March 6th, 1861. BCARS, GR 2900, V.2 p.144-145; Microfilm B-11043. Copy in, *Papers Connected With the Indian Land Question*.

would inform the Okanagan Chief of the "laws and regulations" respecting his reservation. Cox was, however, waiting for receipt of the "proper instructions" from the Chief Commissioner of Lands.¹⁰¹ Possibly Cox anticipated receiving from Moody the so-called "laws for controlling Indian Reserves" that initiated his first letter to the Chief Commissioner of Lands and Works on February 12th, 1861. It is not known if any additional instructions were received from Colonel Moody. A circular sent out by Colonel Moody in 1861 "to the different magistrates in their capacity as Asst Comr of Lands" was likely Douglas' October 1st, 1859, *Circular*, although this remains speculation. A followup letter to the Chief Commissioner of Lands informed him that Cox would soon proceed "to the Great Lake [Okanagan Lake] and there mark out the Indian reservations as you have instructed me."¹⁰²

Cox spent four days at the beginning of June laying out a large Indian Reserve at the head end of Okanagan Lake and recording it in his notebook entitled "Record of Land Claims."¹⁰³ The reserve had been chosen by the Native people themselves, who were, in Cox's words, "well satisfied with the arrangement." Although the original copy of Cox's sketch map has not been found, a second copy dated June 30th, 1861,

¹⁰¹ Cox to Good, March 29, 1861. BCARS, GR 1372, F375/15.

¹⁰² Cox to Moody, April 24, 1861. BCARS, GR 1372, F375/23b.

¹⁰³ "Record of Land Claims, Government Reservations etc. by William George Cox Esq, Magistrate, Rock Creek, B.C." BCARS, GR 857. Several years later, the Indian Reserve was reported to be "ten square miles" in extent. Haynes to Colonial Secretary, April 7, 1865. BCARS, GR 1372, F741/13.

and signed by Cox was appended to his letter to William A. G. Young on July 4th, 1861.¹⁰⁴ The sketch shows the location of Indian camps, gardens, and fisheries. A more final version of this same map, but not showing the location of these features, and excluding the tip of the peninsula west of the mouth of Vernon Creek, was forwarded to New Westminster in July 1861.¹⁰⁵ A discrepancy in the boundary separating the Indian Reserve from the Government Reserve in the vicinity of Vernon Creek was reported in 1864 by a settler who unwittingly settled on the Government Reserve.¹⁰⁶ On July 30th, 1861, Charles Good acknowledged receipt of Cox's letter and map of the reserve at the head of Okanagan Lake and informed him that these "had been perused by His Excellency with peculiar interest and satisfaction."¹⁰⁷

Also during the summer of 1861 Cox established an Indian Reserve at the south end of Okanagan Lake measuring "twenty square miles" in extent.¹⁰⁸

Cox employed another procedure for allotting lands at the mouth of the

¹⁰⁴ Cox to Young, July 4th, 1861. BCARS, GR 1372, F376/1.

¹⁰⁵ Map entitled "Indian Reserve Okanagan Lake... Received New Westminster July 1861," This map was subsequently bound into a Royal Engineers' letterbook. BCARS, C/AB/30.6J/5.

¹⁰⁶ C.F. Houghton to the Colonial Secretary, June 3rd, 1864. February 17th, 1864. BCARS, GR 1372, F799/4,5.

¹⁰⁷ Good to Cox, July 30th, 1861. BCARS, Colonial Secretary. Miscellaneous Letters. C/AB/30.1J/3.

¹⁰⁸ Haynes to the Colonial Secretary, April 7th, 1865. BCARS, GR 1372, F741/13. The "Rough Survey of Reserve at Penticton, Situated at South End of Okanagan Lake" is held by the Maps and Plans Vault, Surveyor General Branch, Ministry of Environment, Lands and Parks, Victoria. Map 26 T1.

Kootenay River on October 9th, 1861, when a delegation of Kutenai Indians requested him to assign for their use a reserve at this site. Cox did so:

by placing notices on it and also along the banks of the Columbia River in the immediate neighbourhood of same, warning all persons not to trespass or encamp thereon it being an Indian Reserve until instructions to the contrary from the Government.¹⁰⁹

The following year Cox laid out Indian Reserves at Kamloops, along the North and South Thompson Rivers, at Adams and Little Shuswap Lakes, at Cherry Creek, and on the Bonaparte River.¹¹⁰

Ground-proofing the land to be set aside was not always part of Cox's procedure. For example, Cox initially allotted the Neskainlith Reserve by providing the chief with a notice advising others against removing timber or interfering with the Indians' enjoyment of certain lands. Boundaries were then staked by the chief

¹⁰⁹ William Cox to J.J. Young, October 19th, 1861. BCARS, GR 1372, F376/24. Within four years of Cox's visit, Edgar Dewdney laid out a town site in this same location and posted notices to this effect. The land was subsequently pre-empted by non-Indians. The events surrounding the establishment and loss of this reserve are described in Bouchard and Kennedy's "Lakes Indian Ethnography and History" (1985, report prepared for the Heritage Conservation Branch, B.C. Ministry of Provincial Secretary and Government Services, Victoria). Although the reserve was set aside in 1861 for Kutenai Indians, the original residents of this area, and the people who subsequently lived at this site, were members of the Lakes (Okanagan-Colville Interior Salish) tribe.

¹¹⁰ Cox to the Chief Commissioner of Lands and Works, October 31st, 1862. *B. C. Papers*, p.26. After a settler had intruded upon cultivated fields belonging to the Indians at the lower end of Kamloops Lake, Cox had been instructed "to mark out the lands claimed by them and to inform the settler that they are reserved for the use of the Indians." J.J. Young to Cox, October 6th, 1862. BCARS, Colonial Secretary. Correspondence Outward. C/AB/30.1J/4, p.316; Cox to J.J. Young, Acting Private Secretary, October 15th, 1862. BCARS, GR 1372, File 377/19: Microfilm B-1320; Cox at Kamloops to Young, Colonial Secretary, October 25th, 1862. BCARS, GR 1372: F 377/22: Microfilm B-1320; Record of Land Claims, Government Reservations, etc. BCARS, GR 857. B-7893.

himself.¹¹¹

In some cases, where Governor Douglas failed to issue precise instructions, expeditionary forces neglected to set aside reserves, as was the case in Bute Inlet and North Bentick Arm, where reconnaissance was undertaken to determine road building feasibility. Colonel Moody, however, advised Douglas that:

Indian Reservations are guarded very fully, I submit, in the Pre-emption Proclamation, though it will be equally necessary to continue our present process whenever practicable, and to stake such out on the ground there or elsewhere.¹¹²

Whether laid out by Magistrates, Gold Commissioners, surveyors, Douglas, or by the Native people themselves, a number of areas *were* set aside as Indian Reserves during Douglas' administration in places where settlement was anticipated. Reference to these reserves can be found throughout the Colonial Correspondence.¹¹³

Few of the Douglas reserves were surveyed. A chronic shortage of funds prevented much of the survey work that had been anticipated; Moody's Royal Engineers were unable to keep up with the demand. As early as January 1859, Moody complained that his detachment was too small in number to "execute the surveys for the

¹¹¹ A series of letters describing the sequence of events establishing and subsequently reducing the Shuswap Reserves can be found in *B. C. Papers*, 29-31. See section 2.3 of this present report for a discussion of the reduction of the Cox reserves.

¹¹² Moody to Colonial Secretary, March 14th, 1862. BCARS, GR 1372, F930/32; Colonel Moody informed Attorney General H.P.P. Crease on June 14th, 1862, that the Bute Inlet survey reserved all lands claimed by Indians. BCARS, GR 1372, F931/33.

¹¹³ This collection of correspondence, identified as GR 1372, is held by the British Columbia Archives and Records Service, Victoria. An index to documents in this series that refer to Indian villages, land use or Indian Reserves appears at the end of this present report.

allotments of lands (except towns). . .".¹¹⁴ Later, in response to Colonel Moody's report to the Colonial Secretary dated June 2nd, 1862, a frustrated Douglas expressed his displeasure with the slowness of the Royal Engineers' survey work:

The marking out of the Indian Reserves was presumed to have taken place long ere this--as instruction to that effect was issued to CCLW. . . At Present I cannot sanction the expenditure of the sum . . . proposed by the CCLW or any expenditure whatever on account of civilian labour.¹¹⁵

Despite the few completed surveys, Douglas left office content that he had secured for the Native people their "village sites, cultivated fields, and favourite places of resort." He informed the Legislative Assembly in March 1864 that he had succeeded in protecting the Indian people against encroachment by settlers, and thereby "for ever removing the fertile cause of agrarian disturbance. . .".¹¹⁶ Douglas further advised his colleagues that reserved lands did not exceed "the proportion of ten acres for each family concerned," although with respect to many unsurveyed reserves, this was simply not the case.¹¹⁷

¹¹⁴ Memo on the Department of Lands and Works, R.C. Moody. January 31, 1859. BCARS, GR 1372, F915.

¹¹⁵ Minute of James Douglas on a letter sent from Colonel Moody to Colonial Secretary June 2nd, 1862. BCARS, GR 1372, F931/21; Cail, *Land, Man and the Law*, p.177, suggested that Douglas had been slow to commit decisions regarding Indian Reserves to paper as he had been advised by Lord Carnarvon to be cautious not to impede future settlement. The above-noted Minute of Douglas, however, indicates that he was displeased at the surveyors' tardiness.

¹¹⁶ Minutes of the meeting of the Legislative Council, January 21st, 1864. British Columbia, *Journals of the Legislative Council of British Columbia*, New Westminster: R. Wolfenden, 1864, p.2.

¹¹⁷ Surveyors' field notebooks (including those kept by the Royal Engineers) of those lands
(continued...)

Upon Douglas' retirement, his successors, Frederick Seymour in British Columbia and Arthur Kennedy on Vancouver Island, initiated Indian policies that differed significantly from those of Douglas. Seymour's and Kennedy's policies were arguably more responsive to the whims of settlers than to the needs of Natives. After 1864, Fisher notes, the Colonial Office in England also ceased to be a moderating influence.¹¹⁸

2.2 Post-Douglas Colonial Reserves

Governor Kennedy's Indian policy for Vancouver Island was outlined in his address to a Native gathering in Victoria on August 22nd, 1864. He assured them that they were secure in the possession of their lands, which could be alienated only by mutual agreement. Promises that he would draft "plain and equitable rules and regulations" enacting Indian-White relations do not appear to have materialized during Kennedy's regime.¹¹⁹ Indeed, his personal apprehension regarding the intemperance occurring on the Songhees Indian Reserve in Victoria Harbour was expressed in his request to the Executive Council contemplating the propriety of removing the Indians

(...continued)

surveyed during the Douglas years are held by the Surveyor General's Branch of the Ministry of Environment, Lands and Parks, Victoria.

¹¹⁸ Fisher, *Contact and Conflict*, 160.

¹¹⁹ See Appendix B of C.O. 305/23, No.60. Governor Kennedy to Edward Cardwell, August 23rd, 1864.

from this reserve.¹²⁰ The Governor was informed that the Natives' occupation of their lands could be disturbed and that title could be extinguished by providing "ample and fair compensation."¹²¹ The amount of consultation with the Indian people that was required pursuant to this action remains unclear.

Arthur Kennedy's tenure as Governor was short-lived. Irreconcilable differences between Kennedy and the Assembly resulted in dissolution of the House in September 1866, and two months later the colony joined with British Columbia. Consequently, Kennedy's Indian policies were never enacted.

On the mainland, prior to the amalgamation of the colonies in November 1866, Governor Seymour struggled to maintain peace among the races with little in the way of policy to guide his actions.¹²² As more and more Indian lands, both reserved and unreserved, became circumscribed by settlers' farms, ranches and townsites, the Native people became more vocal, and petitions and protests became more frequent.¹²³

¹²⁰ See Appendix B, C.O. 305/26, No.6, Kennedy to Executive Council, June 23rd, 1865.

¹²¹ *Ibid.* Reply of the Executive Council to Governor Kennedy.

¹²² In an Address to the Legislative Council in November 1864, Governor Seymour stated: "I . . . have no Bill embodying an Indian Policy to lay before you. The Government has its policy - always, we trust, just and firm, stern or merciful as occasion may require." See C.O. 60/19, No.79.

¹²³ Seymour arranged a gathering of Native people at New Westminster where he listened to their grievances and presented them with gifts. See Clarkson to Seymour, May 16, 1868. BCARS, GR 1372, F297/3.

Skirmishes between Native people and settlers, especially the confrontation between a Bute Inlet road building crew and some Chilcotin Indians, preoccupied Governor Seymour until his death in 1869. During this time, money that had been ear-marked for surveys was now spent averting armed Native insurgency, and few surveys were undertaken that were not completed in association with laying out townsites and roads. Nevertheless, Acting Governor Birch advised the Legislative Assembly on January 8th, 1866, that:

. . . arrangements are in progress which will . . . enable the Chief Commissioner of Lands and Works to undertake this work without further delay. Measures will at the same time be taken to alter the present unsatisfactory system of Indian Reserves.¹²⁴

Moreover, Birch called for relinquishing legislated Indian policy to the discretionary powers of the executive.¹²⁵ In many respects, Indian policy during the Seymour years proceeded without legislative authority.

With the growing numbers of settlers in the colonies, the less than generous attitude of Richard Moody became more prevalent in the non-Indian community. Upon Douglas' retirement, Joseph Trutch, one such settler, was appointed Chief Commissioner of Lands and Works in British Columbia and a more restrictive reserve policy was introduced. The well-known August 28th, 1867 letter of Trutch summarizes his ardent views:

¹²⁴ C.O. 60/24, No.5. Acting Governor Birch to Cardwell, January 24th, 1866. Letter transmits his Address of January 8th, 1866, to the Legislative Assembly.

¹²⁵ *Ibid.*

The Indians have really no right to the lands they claim, nor are they of any actual value or utility to them; and I cannot see why they should either retain these lands to the prejudice of the general interests of the Colony, or be allowed to make a market of them either to Government or to individuals.¹²⁶

When Trutch assumed control of Lands and Works, a position he held until 1871, the future of the colony was believed to be vested in its agricultural potential. Large tracts of property in Indian hands, therefore, were viewed as prejudicial to such development, and Trutch set about to reduce acreage of previously-allotted lands. Tennant concurs with Fisher's argument that it was Trutch's disparaging opinion of aboriginal people that influenced subsequent Indian policy.¹²⁷ It appears, notwithstanding, that pressures from land-hungry settlers bolstered his sentiments into action.

The reduction of previously-allotted Indian Reserves has become recognized as the hallmark of the post-Douglas Indian policy that was implemented by Joseph Trutch during the pre-confederation years. Beginning with the re-allocation of Indian Reserves assigned previously by William Cox in the Okanagan and Shuswap areas, Trutch proceeded systematically and reduced other large reserves now desired by settlers. Cail has summarized Trutch's zealous and successful attempt to reduce the Fraser Valley

¹²⁶ Joseph Trutch, August 28th, 1867, *B.C. Papers*, p. 42.

¹²⁷ Tennant, *Aboriginal People*, 39; Fisher, *Contact and Conflict*, 161-162.

reserves established by McColl.¹²⁸ McColl, in Trutch's view, acted with "indefinite authority" in assigning reserves far exceeding the "ten acre per family" rule.¹²⁹ Thus, new surveys were required, or the lands would have to be purchased back from the Natives, an idea Trutch personally found repugnant. According to Tennant, Trutch was of the view that the Indians did not possess title to the land, and that previous governments had, in fact, distinctly denied the existence of title.¹³⁰ Fisher argues that Trutch intentionally misconstrued the Douglas policy.¹³¹

The Native people expressed dissatisfaction with the loss of their lands. In 1867, seventy Indian chiefs signed a petition of grievances and submitted it to Governor Seymour. These chiefs asked that their "reserves not be interfered with. . .".¹³² Seymour assured them that his "heart was as good to the Indians as to the White man,"¹³³ but at the same time he advised Carnarvon that some of the larger reserves

¹²⁸ Cail, *Land, Man and the Law*, p.180-184.

¹²⁹ Brew to McColl, April 6th, 1864. BCARS, GR 1372, File 1030.

¹³⁰ Tennant, *Aboriginal Peoples*, pp.41-43. Tennant, takes a more kindly view of Trutch's motives than that suggested by Fisher, "Joseph Trutch," p.20. Tennant believes that Trutch was "simply following the well-established practice he inherited . . ." and "was able to be credible in his doctrine of explicitly denying title in part because for more than a decade Douglas had been denying it implicitly." Tennant says that Trutch simply adhered to Douglas' ten-acre rule. This present examination of Douglas' policy, nevertheless, finds that Douglas did not adhere rigidly to a standard rule.

¹³¹ Fisher, "Joseph Trutch and Indian Land Policy," *B.C. Studies*, No.12 (Winter 1971-72).

¹³² Seymour to Carnarvon, February 19, 1867. C.O. 60/27, No. 33.

¹³³ *Ibid.*

may need reduction, which would only be done after his personal inspection.¹³⁴

Indian grievances increased along with settlement. On March 15th, 1869, "An Ordinance respecting Indian Reserves" was given assent by Governor Seymour, providing the Stipendiary Magistrate of each district with powers to judge and resolve land disputes between Indians and settlers.¹³⁵ The rationale behind the legislation was to provide a quick and inexpensive manner of reconciling controversial issues. The potential abuse of the Ordinance was recognized by the Earl of Granville who cautioned that "it was to be carefully watched as large powers were given by it."¹³⁶

2.3 Case Study: The Reduction of the Cox Reserves

Implementation of the Trutch policy can be illustrated by examining his reduction of reserves established previously by William Cox in the Okanagan Valley in 1861, and along the South Thompson River in 1862.¹³⁷

Following Cox's assignment to the Cariboo, John Carmichael Haynes was commissioned in June 1864 as Justice of the Peace for the Okanagan District. Soon

¹³⁴ *Ibid.*

¹³⁵ "An Ordinance respecting Indian Reserves," No.24, *Revised Statutes of British Columbia* (1871).

¹³⁶ Seymour to the Earl of Granville, April 20, 1869, with comments by H.P.P. Crease concerning Indian Reserve ordinance and response of Granville. C.O. 60/35, folio 571ff.

¹³⁷ The reduction of the Okanagan Reserves has been described by Duane Thomson, "Opportunity Lost: A History of Okanagan Indian Reserves in the Colonial Period," *Forty-second Annual Report of the Okanagan Historical Society*, (1978) pp.43-51.

after, Haynes became a Member of the Legislative Council. Having been a pre-emptor in the Okanagan for the previous three years, Haynes was familiar with the developing area and new settlers' complaints that the best lands belonged to the Indians. On April 7th, 1865 Haynes wrote to Colonial Secretary A.N. Birch transmitting his views on the "excessive" land in the hands of the Indians and recommending compensating them for its reduction.¹³⁸ A minute written on the original of Haynes' letter after being received by the Colonial Secretary indicated that the Governor was in favour of reducing the reserves, but not in paying compensation. Birch relayed the Colonial Secretary's reply and expressed his view that Cox had acted solely on verbal instructions--a supposition that the documentary record shows to be incorrect--and had laid out reserves of an unreasonable amount. Haynes' letter was given to the new Governor, Frederick Seymour, for comment, and soon Haynes was asked for a report.¹³⁹

In May of 1865, Haynes travelled to the head of Okanagan Lake, inspected the Cox reserve, and produced a rough sketch confirming the boundaries as laid out in 1861.¹⁴⁰ Haynes' letter dated May 27th, 1865, to the Colonial Secretary, reiterates his position that the Indian Reserves were much too large, especially considering that the Natives occupied land in several other places and remained on the north Okanagan

¹³⁸ Haynes to Colonial Secretary, April 7th, 1865. BCARS, GR 1372, F741/13.

¹³⁹ Birch to Haynes, April 10th, 1865. BCARS, Colonial Secretary, Correspondence Outward. C/AB/30.1J/7.

¹⁴⁰ Haynes to the Colonial Secretary, May 27th, 1865. BCARS, GR 504, F.1.

reserve for a short time in each year.¹⁴¹ In response, Haynes received Governor Seymour's guarded authorization to diminish the reserves, providing that it could be done "without giving much dissatisfaction to the Indians."¹⁴² He was asked to submit a report outlining his proposed manner of proceeding with the reduction. The proposal submitted on July 22nd, 1865, suggested that he be accompanied by a surveyor and the Native translator, Tonasket, and lay out the reserves in a permanent manner.¹⁴³ Haynes further asked for the Governor's authorization to proceed; his orders were sent on August 10th, 1865.¹⁴⁴

In November 1865, Surveyor Turnbull accompanied Haynes to Okanagan Lake to adjust the Indian Reserve boundaries there.¹⁴⁵ His report filed in January 1866

¹⁴¹ J.C. Haynes to the Colonial Secretary, A.N. Birch, May 27th, 1865. BCARS, GR 504, F. 1.

¹⁴² Birch to Haynes, June 12th, 1865. BCARS, GR 504, F.1.

¹⁴³ Haynes to the Colonial Secretary, July 22, 1865. BCARS, GR 1372, File 741/26.

¹⁴⁴ Colonial Secretary's Office to J. C. Haynes, J.P., Draft letter, August 10th, 1865. BCARS, GR 1372, File 741/26. Microfilm B-1333.

¹⁴⁵ The most complete account of Haynes' and Turnbull's work at Okanagan Lake is contained in Turnbull's own journal for the period November 25th-28th, 1865. On November 25th, Turnbull accompanied Haynes and a local settler, Captain Houghton, to the area now called Okanagan Landing where Haynes examined about 1,500 acres he intended to reserve. But after speaking with some Indians, he "found them very discontented with the locality." Negotiations continued until late the following day when it was decided that the Indians preferred "the land at the head of lake and also a portion shewn on 10 mile map about 6 miles below [south from the head of] the lake." British Columbia, *Columbia River Exploration, 1865-6*. Victoria: Government Printing Office (1866) pp. 33-34. See also Haynes to the Chief Commissioner of Lands and Works, November 28th, 1865, BCARS, GR 1372, F741/30., and Haynes to the Acting Colonial Secretary, November 28th, 1865, BCARS, GR 504, F.1.

contains descriptions of the three Okanagan Indian Reserves assigned by Haynes.¹⁴⁶

There is no indication that Haynes conducted a census of the Indian residents at the head of the lake, by which the size of the reserves could be adjusted using a per capita formula. Nor is it clear how he arrived at the boundaries that he did.¹⁴⁷

Haynes advised the Chief Commissioner of Lands that a notice should be inserted in the *Government Gazette* announcing that the former reserve lands were now open for settlement. Chief Commissioner Joseph Trutch decided otherwise. In a letter to the Acting Colonial Secretary dated February 5th, 1866, Trutch stated that publication should be postponed inasmuch as the status of the other Cox reserves, in the Shuswap area, remained undecided.¹⁴⁸

The Shuswap reserves laid out by Cox came to the attention of the government when Philip Nind, Gold Commissioner for Lytton, complained of the extent of the

¹⁴⁶ Mr. Turnbull's Report, January 17, 1866. *B. C. Papers*, pp. 35-36. A sketch of these reserves said by Turnbull to be enclosed with his report was in fact not published along with his report. Thomson, "Opportunity Lost," p.48, reconstructed the probable boundaries of the 1865 Haynes Reserves at the head of Okanagan Lake and its west side. There is, however, a sketch by Turnbull of these reserves that appears as map "26T1 Land Reserves" in the Maps and Plans Vault of the Surveyor General Branch, Victoria. The Haynes reserves were also indicated on a larger scale map Turnbull published as part of the report of the Columbia River Exploration (1866).

¹⁴⁷ It appears that a present was made to the Chief upon settlement of the Indian Reservation. E.H. Sanders submitted in his "Requisition for Expenses, 1866" a note that a present had been made from G.A. Vernon to the Indian Chief at Lake Okanagan on settlement of the Indian Reservation at a cost of £7 4sh 4 pence. BCARS, GR 1372, F.1560.

¹⁴⁸ Trutch to the Acting Colonial Secretary, February 5th, 1866. BCARS, GR 2900, V.11, pp.27-28; Microfilm B-11044. Copy in, *Papers Relating to the Indian Land Question*, p.34

Indians' allotments and their impediment to settlement in the interior.¹⁴⁹ Nind felt that it was undesirable for settlers to purchase or acquire title to lands from the native people, themselves, as it was his view that "this is the prerogative of the Government of the Colony which should alone be able to confer an indefeasible title to its lands."¹⁵⁰ The Governor deferred to Trutch for comment. Trutch, though, had little information available to him on these large reserves and requested from the Colonial Secretary that he be informed of:

what lands had been authoritatively reserved and assured to the various tribes, and to what extent such Reserves can be modified with the concurrence of the Indians interested in them--either with or without money or other equivalent.¹⁵¹

Trutch did, however, air his conviction that the Native people's non-use of their claimed lands was obstructing more appropriate growth in the colony.¹⁵² His concerns regarding the Shuswap reserves focused also on his opinion that the size of the reserves

¹⁴⁹ Philip Nind to Colonial Secretary, July 17th, 1865. *B. C. Papers*, p.29-30. BCARS, GR 1372, File 1259/30; Microfilm B-1351; BCARS, GR 504, File 1.

¹⁵⁰ *Ibid.*

¹⁵¹ Trutch to Colonial Secretary, September 20th, 1865. BCARS, GR 1372, File 942/17; BCARS, GR 2900, V.11 pp.3-4; Microfilm B-11043; Copy in, *Papers Relating to the Indian Land Question*, p.30.

¹⁵² Charles Good, Colonial Secretary's Office, to Trutch, September 26th, 1865. BCARS, GR 1372, File 1259; Microfilm B-1351; BCARS, GR 1372, File 334[2]; Microfilm B-1317; BCARS, C/AB/30.1J/9, pp.112-113. Microfilm B-4718; BCARS, GR 504, File 1.

was disproportionate to the number of Native residents.¹⁵³

Governor Frederick Seymour, who had succeeded James Douglas when Douglas retired in April 1864, agreed that the Shuswap and Kamloops parcels should be reduced immediately. But owing to the lateness of the season, it was decided that Walter Moberly, who was to be in the Interior, should be given a copy of Cox's report and be asked to reduce the lands or to provide a report on the situation.

Cox, himself, wrote to Nind respecting Indian Reserves in the Kamloops area, sending him a sketch of the Shuswap Reserves he assigned there in 1862 and informing him that "there could be no mistake."¹⁵⁴ The sketch was passed along to Moberly. Upon visiting the area and discussing the issue with the Native people, Moberly found discrepancies between Cox's sketch and the boundaries as claimed by the Indians. The prudent thing to do, he determined, was nothing.¹⁵⁵

In correspondence with the Colonial Secretary, Joseph Trutch discussed Moberly's report on the Shuswap reserves and queried whether Cox's work was binding upon the Government, and if the boundaries of the lands in question were indeed as assigned by Cox. Moberly's report had raised suspicion in this last regard. It

¹⁵³ Trutch to Walter Moberly, October 10th, 1865. *B.C. Papers*, p.31.

¹⁵⁴ Cox to Nind, July 16th, 1865. *B.C. Papers*, p.31.

¹⁵⁵ Moberly to Trutch, December 22, 1865. *B.C. Papers*, pp. 33-34. Earlier that same year, Moberly had passed through the area while undertaking explorations for the government; in a sketch map contained in his field journal for July 1865, Moberly drew the line of an Indian Reserve situated across the South Thompson from the mouth of Monte Creek. Moberly, *Field Notebook No.1, July-August 1865*. Maps and Plans Vault, Survey General Branch, Ministry of Environment, Lands and Parks, Victoria. Tray 1, Vol. 2.

was Trutch's opinion that once the dimensions of the original reserves were determined, then "there will remain only to be determined whether it is advisable to purchase back from them such portions of these lands as are valuable for settlement."¹⁵⁶

In the meantime, the matter of the large interior reserves was raised in the Legislative Council. The Honourable Mr. Cornwall, a member from the interior, asked the Acting Colonial Secretary H.M. Ball to inform the council what steps had been taken, or were about to be taken, with reference to the extensive Indian Reserves on the Okanagan Lake and the Thompson River.¹⁵⁷

Ball wrote to Trutch on May 29th, 1866, instructing him to proceed to Kamloops, assemble the Shuswap chiefs and their people, and arrange in an amicable fashion the reduction of their lands, paying only those who might be reluctant to relinquish the old reserve. A sum of \$500.00 was the maximum amount that the Governor authorized Trutch to spend without further consultation.¹⁵⁸

Over the next month, complaints of difficulties between the Shuswap and the settlers were responded to by announcing that the Chief Commissioner of Lands and

¹⁵⁶ Trutch to the Acting Colonial Secretary, January 17, 1866. BCARS, GR 1372, File 944/1: Microfilm B-1339.

¹⁵⁷ Minutes of the Legislative Council, February 12th, 1866. BCARS, C/AB/20.1A/1:254-255: Microfilm B-4717.

¹⁵⁸ H.M. Ball, Colonial Secretary to Trutch, May 29th, 1866. *B. C. Papers*, p.36-37; BCARS, GR 1372, F.335 [2], Microfilm B-1317.

Works would soon be going to Kamloops to adjust the reserves.¹⁵⁹ Trutch examined the lands and on October 5th, 1866, prepared a public notice describing the extent of the adjusted lands.¹⁶⁰ Edgar Dewdney, accompanied by the chiefs and others, set about surveying the proposed reserves as had been pointed out on the ground by Trutch. Dewdney informed Trutch that he supplied the Shuswap and Adams Lakes chiefs with a plan of their new reserves; the plan for the Kamloops chief was to follow.¹⁶¹

There is no indication that compensation was paid to the Shuswap Indians for the reduction of what they considered to be their reserves. In discussing this situation in an August 28th, 1867 letter to the Acting Colonial Secretary concerning the McColl reserves in the Fraser Valley, Trutch suggested that "they [the government] either disavow absolutely McColl's authority to make these reserves or to negotiate with the Indians for the relinquishment of the greater portion of these lands." He further noted that "the former method was carried out with the Kamloops and Shuswap Indian Reserves."¹⁶²

Although a notice announcing the adjustment of the Kamloops and Shuswap

¹⁵⁹ A.R. Howse to Mr. Pemberton, August 4th, 1866. Copy in, *Papers Relating to the Indian Land Question*, p.37.

¹⁶⁰ Notice of J.W. Trutch, Chief Commissioner of Lands and Works. Copy in, *Papers Relating to Indian Land Question*, p. 164.

¹⁶¹ Edgar Dewdney to the Chief Commissioner of Lands and Works, November 8th, 1866. BCARS, GR 1372, F461/17.

¹⁶² Joseph Trutch, Chief Commissioner of Lands and Works, Surveyor General, to the Acting Colonial Secretary, August 28th, 1867. BCARS, GR 1372, File 951/4: Microfilm B-1340.

Reserves appeared in the *Government Gazette*, October 5, 1866, it does not appear that a similar notice disclosed the reduction of the Okanagan Reserves.

The propriety of reducing the Cox reserves continued to be debated for many years.¹⁶³ But several pre-emption applications were submitted and approved for lands that had been marked on maps of Cox Reserves as Indian camps and gardens.¹⁶⁴ In the spring of 1868, settlers on the Bonaparte River petitioned the government to reduce the Indian Reserve situated there, and the issue of large reserves was raised again in the Legislative Council.¹⁶⁵ Reductions were later examined by the Indian Reserve Commission in 1877, although the Native people on several occasions in the intervening years proclaimed discontent with their lack of lands.

¹⁶³ The Indian at Kamloops proclaimed discontent with the size of their reserves during Indian Commissioner Powell's visit here in July 1874. NAC, RG 80, Vol. 494. In 1877, Indian Reserve Commissioner Anderson noted that Chief Chilliheetsa, who had been present when Cox initially laid out the Indian Reserve at the Head of the Lake, stated that Haynes' reduction had been done "without the consent, and only the partial knowledge of the Inds." NAC, RG 10, Vol. 1284.

¹⁶⁴ In the Okanagan, pre-emptions by Vernon in 1866, Girouard in 1867, Tronson in 1868, and Vernon in 1870, all applied for land formerly within the boundaries of the Indian Reserve. All of the records were signed by J. Haynes.

¹⁶⁵ Minutes of the Legislative Council, April 16, 1868. BCARS, C/AB/20.1A/1:509-512: Microfilm B-4717.

3.0 THE POST-CONFEDERATION ERA

The post-confederation era is identified for the purposes of this *Guide* as extending from 1871, when British Columbia joined the Confederation of Canada, to the end of the Indian Reserve Commissions in 1910.

This period was marked by profound disagreements between the Provincial and Dominion Governments with respect to Indian policy. Following the Terms of Union, disputes first concerned the amount of land to be allocated as Indian Reserves and, once Reserves were established, the necessity of the Native people to retain these lands.

A total of four Commissions was charged with the assignment and readjustment of Indian Reserves between 1871 and 1910: the Joint Indian Reserve Commission (1876-1878); the Sproat Indian Reserve Commission (1878-1880); the O'Reilly Indian Reserve Commission (1880-1898); and the Vowell Indian Reserve Commission (1898-1910).

At the time of the dissolution of the Indian Reserve Commission in 1910, Indian Affairs in British Columbia remained in an unsatisfactory state.

3.1 Terms of Union

Britain provided some direction in negotiations leading up to British Columbia's entry into Confederation, but little of this advice related to the situation of the aboriginal people. Instructions concerning the drafting of the Terms of Union were forwarded by the Colonial Office to Governor Musgrave on August 14th, 1869.

Included in this directive, which contains one of the few references to Native Indians, Musgrave was informed that:

It will not escape you, that in acquainting you with the general views of the Government, I have avoided all matters of detail on which the wishes of the people, and the Legislature will of course be declared in due time. I think it necessary, however, to observe that the constitution of British Columbia will oblige the Governor to enter personally upon many questions, as the condition of Indian Tribes, and the future position of Government servants, with which, in the case of a negotiation between two Responsible Governments he would not be bound to concern himself.¹⁶⁶

Governor Musgrave presumably interpreted Granville's instructions to mean that the Indian tribes were a special issue not to be addressed by the Colonial Councils themselves, for mention of them was absent from the initial Terms drafted by Legislative Council. On February 10th, 1870 Musgrave wrote to Lord Lisgar, Governor General of Canada, referring to the above-quoted despatch and noting that he intentionally disregarded any mention of the Native people in the Terms:

I have purposely omitted any reference to this subject in the terms proposed to the Legislative Council. Any arrangements which may be regarded as proper by her Majesty's Government can I think best be settled by the Secretary of State or by me under his direction with the Government of Canada. But "Indians and Lands reserved for Indians" form the twenty fourth of the classes of subjects named in the 91st Section of the Union which are expressly reserved to the Legislative authority of the Parliament of the Dominion.¹⁶⁷

¹⁶⁶ Lord Granville to Governor Musgrave, 14 August, 1869. Despatch No. 84. C.O. 398/5, p.320.

¹⁶⁷ Despatch of Anthony Musgrave, Governor of B.C., to Sir John Young Bart, 20 February 1871. BCARS, GR 1520, Box 1, File 1.

Indians were not mentioned in the terms initially drafted and debated in the House by the Legislative Council from March 9th to 25th, 1870. An attempt to have them mentioned was introduced by Henry Holbrook, Member from the Lower Fraser Valley, but others were critical, especially Joseph Trutch, and Holbrook's motion that a term be added giving the Indians' "the same protection under Confederation as now," was soundly defeated.¹⁶⁸

It was only after the B.C. delegation went to Ottawa and met with the Federal negotiators that a clause concerning Indians was added to the terms.¹⁶⁹ The final terms were taken to England by Trutch to be approved. On January 20th, 1871 after a debate described by Helmcken as "a poor affair" with "no amendments allowed," the Legislative Council of B.C. approved the final Terms of Union.

The Terms of Union upon which British Columbia entered Canada, *inter alia*, provided for the establishment of Indian reserves. Article 13 of the Terms of Union of 1871 stated:

The charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government, and a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after

¹⁶⁸ "British Columbia Legislative Council: Debate on the Subject of Confederation With Canada," Appendix A, In, *Journals of the Colonial Legislatures*. Editor, James Hendrickson. Vol. IV, p.461 and 541; Trutch's antagonism towards the inclusion of such a term is evident in his letter to H.P.P. Crease, dated March 24, 1870. BCARS, Trutch Collection.

¹⁶⁹ Helmcken noted in a diary that he kept during the Ottawa negotiations that a clause concerning Indians was fully discussed and then added to the Terms. "Helmcken's Diary of the Confederation Negotiations, 1870," *British Columbia Historical Quarterly*, Vol. IV(2):111ff.

the union.

To carry out such a policy, tracts of land of such an extent as it has hitherto been the 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 the case of disagreement between the two Governments respecting the quantity of such tracts of land to be so granted, the matter shall be referred for the decision of the Secretary of State for the Colonies.¹⁷⁰

After British Columbia joined Confederation there was much strenuous debate about how best to carry out the respective roles of the Provincial and Federal governments to redress Indian grievances, and precisely what those roles entailed. The Terms of Union provided that the Province would appropriate and convey tracts of land of such an extent as it had been previously the practise to allot, upon the request of the Dominion Government. The interpretation of this obligation, however, subsequently became the focus of controversy over the next few decades.¹⁷¹

3.2 Post-Confederation Indian Land Commissions

Pursuant to the Terms of Union, the administration of Indian Affairs after Confederation became the responsibility of the Federal Government. Initially, Dr. Israel Wood Powell, who was recommended by the Province and appointed as Indian

¹⁷⁰ Terms of Union (Order of Her Majesty in Council Admitting British Columbia into the Union), 1871, *Revised Statutes of British Columbia, Appendices*. (1979) Volume 7, pp.83-86.

¹⁷¹ A report concerning the "Province of British Columbia's Obligation to Provide Additional Lands for the Indians Under Article 13 of the Terms of Union," has been prepared by Peter Vranjkovic (1984). Copy held by the library of Specific Claims West, Vancouver.

Superintendent in British Columbia, was the one man entrusted with the job of directing Indian affairs. Dr. Powell was notified of his appointment as Indian Superintendent¹⁷² in October 1872, at which time he was provided with a letter from William Spragge, Deputy Superintendent General of Indian Affairs (D.S.G.I.A.), outlining the expectations of the Department concerning Powell's role. Powell's duties can be summarized as follows:

1. Collect information relative to the various Bands of Indians within the Province of British Columbia, including the position and extent of their reserves, the condition and general character of the Indians occupying the reserves, the progress in agriculture and their prospects in that area and any other potential means of support in the future;
2. Review the area of education identifying the number and conditions of schools established in the various Indian settlements, the manner in which schools are supported, and the authorities who have charge of them. He was to enquire into the salaries and the source of the salaries of the people running the schools. Powell was instructed to "render his opinion as to the advantage to be anticipated and the opportunities of a favorable character for the establishing of additional schools";
3. Examine medical treatment afforded to Indians and Indian Bands;
4. Examine the social and moral condition of the various Bands, and their cultural organization, including the appointment and authority of the Chiefs and other persons holding power among them;
5. Inquire as to whether or not gifts have been bestowed periodically upon any of the Bands or any particular member of the Bands;

¹⁷² I.W. Powell concurrently held the positions of "Indian Commissioner" and "Visiting Superintendent." The rank of "Indian Commissioner" connoted responsibilities as a member of the Board of Indian Commissioners; the title "Visiting Superintendent" implied more the duties of administration, travel and inspection. The organizational structure is described by Mary Ann Pylpchuk, "Organizational History of Indian Affairs in British Columbia." Paper prepared for Litigation Support Directorate, Indian Affairs and Northern Development, Vancouver (1990).

6. Furnish an outline of the existing policy of the local Government in the administration of Indian Affairs;
7. Maintain books, carefully preserved and devoted to statistics, on the different Indian Bands that he visits;
8. Recommend how monies which have been set aside by the Dominion Parliament should be spent and to detail the items at each season to which grants of money would be required. With his report he was also to list the grants which it has been the practice of the local government to make for the benefit of the Indians in the Province of British Columbia.¹⁷³

Powell's first report to Ottawa setting out his findings pursuant to the foregoing instructions was submitted on January 11th, 1873.¹⁷⁴

On February 20th, 1873 Powell acknowledged receipt of a letter from Joseph Howe, Secretary of State for the Provinces, informing Powell of his powers as Indian Commissioner. Powell's reply noted that he was "limited by the laws of British Columbia until legislative enactments, in respect to the Indian Affairs of the province

¹⁷³ Letter from William Spragge, D.S.G.I.A., to Israel Powell, 9th October 1872. NAC, RG 10, Vol. 3581, File 829.

¹⁷⁴ "Report of the Superintendent of Indian Affairs," I.W. Powell to the Secretary of State for the Provinces, Ottawa, January 11th, 1873, found on NAC, RG 10, Vol. 11209, File 8. This report presents Powell's observations on the following Native groups: Cowichan nation; Comox Nationality; Aht Nation; Quackewlth Nation; Bella Coola and Millbank Nations; Tsimpshean Nation; Hydah Nation; Tahelie and Siccanies Nation; Shuswap Nation; and Kootney Nation. A map entitled "Map of British Columbia, being a Geographical Division of the Indians of the Province, according to their Nationality or Dialect," compiled at the Office of "Superintendent of Indian Affairs," Victoria, B.C., 1872, was likely prepared coincident with or just prior to Powell's January 1873 report. The original of this map is held by the Cartographic and Architectural Division, NAC, Ottawa. RG 10m, Accession 901-10. Drawer D3950. Folder F3.

are passed by the Dominion Parliament."¹⁷⁵

According to Historian Robin Fisher, the appointment of Powell as Indian Superintendent was opposed by Joseph Trutch, the Lieutenant Governor, who believed that the position should be under his control.¹⁷⁶ Despite the seemingly-autonomous nature of the position of Indian Superintendent, in the ensuing years Joseph Trutch acquired the power he sought. Historical reviews of this period generally classify the Province's tactics during the decade following Confederation as those of an obstructionist.¹⁷⁷

Indian-White relations in post-Confederation British Columbia were marked by tension. Increasing numbers of White settlers necessitated immediate action as relatively few reserves had been established and some of these reserves were now considered to be too large. Moreover, Indian affairs in the Province were in a chaotic state as Provincial and Federal policies continued to differ significantly, with the Province clinging tenaciously to settler-dominated policies of White self-interest. Notably, in 1872, the Legislature removed the right to vote in B.C. elections from

¹⁷⁵ Powell to Joseph Howe, Secretary of State for the Provinces, February 20th, 1873. NAC, RG 10, Vol. 11209, File 8.

¹⁷⁶ Fisher, *Contact and Conflict*, p.182.

¹⁷⁷ See Cail, *Land, Man and the Law*, Chapter 12; Fisher, "Joseph Trutch and Indian Land Policy," *B. C. Studies*. 1971-2, 12:3-3; Fisher, "An Exercise in Futility: The Joint Commission on Indian Land in British Columbia, 1875-80," *Historical Papers*, 1975: 79-94.

Indian people.¹⁷⁸

Central to reviews of Indian land requirements subsequent to the Terms of Union was the interpretation to be placed upon the words: "a policy as liberal as that hitherto pursued by the British Columbia Government." Lieutenant-Governor Trutch, writing to the Secretary of State for the Provinces on September 26th, 1871 in reference to his government's policy, stated: "As to the Indian policy hitherto of the Government of British Columbia, for, although not a written code based on legislation, the policy of the Government in Indian Affairs has been 'definite and tangible.'"¹⁷⁹ Yet the Provincial Government was not truly apprised of just how liberal their policy had been, for there were available few reliable census data. This lack of information was referred to by B.W. Pearse, Chief Commissioner of Lands and Works (C.C.L.&W.), in a letter to the Colonial Secretary dated 16th October 1871: "I have no statistics as to the number of Indians in each tribe and have no means of obtaining them."¹⁸⁰ Debate next focused on the number of acres sufficient for each Indian family, with estimates ranging from ten suggested by the Province to eighty recommended by Ottawa; twenty acres was the figure settled on by Powell. Each of these positions was advanced as fulfilling the "as liberal" clause of the Terms of Union. The first step taken by Ottawa to ensure adequate land was being reserved for the Indians was to pass an Order-in-

¹⁷⁸ Fisher, *Contact and Conflict*, p.178.

¹⁷⁹ *B. C. Papers Connected With the Indian Land Question*, (1875) pp. 99-101.

¹⁸⁰ *B.C. Papers Connected With the Indian Land Question*, (1875) pp. 102-3.

Council dated 21st March 1873 recommending that 80 acres of land be allotted to every Indian family of five persons. This was in accord with Indian policy in eastern Canada, and with the recommendation of Powell, himself.¹⁸¹ The Province countered with their own Order-in-Council (BCOC 542) dated 25th July 1873 rejecting the Dominion Government's suggestion and instead recommending twenty acres per family. The Minister of the Interior later explained B.C.'s rejection of this recommendation as follows:

the Government of that Province peremptorily declined to accede, alleging that the quantity of land which the Order in Council proposed to assign to the Indians was greatly in excess of what was found to be sufficient by previous local Governments, and the Indian Commissioner was notified that the Government of British Columbia had decided that the land reserved for the Indians should not exceed 20 acres for each head of family. . .¹⁸²

It remained unclear, however, as to what size allotments would be granted if families consisted of only two or three members. Responding to Powell's inquiry concerning this issue, Robert Beaven, C.C.L.&W. for the Province, stated:

In answer to your question as to the interpretation placed by Government

¹⁸¹ The amount of land to be allotted as Indian Reserves was raised by Powell with respect to a situation at Alberni on the west coast of Vancouver Island. Here, Powell recommended "that each family be assigned a locality of 80 acres of land, of average quality, which shall remain permanently the property of the family for whose benefit it is allotted." The PCOC of March 21st, 1873, was published in the *British Columbia Sessional Papers, 1875*, pp.665ff. On June 21st, 1873, Powell wrote to Lieutenant Governor Joseph Trutch advising him that he was ready to begin the surveys confirming old reserves, establishing new allotments, and increasing acreage to 80 acres per family. BCARS, GR 526, Box 7, File 614/73.

¹⁸² Laird memo, November 2nd, 1874; The Province's acquiescence to a 20-acre rule can be found in a Minute penned by B.C. Attorney General Walkem on a letter from I.W. Powell to John Ash, Provincial Secretary dated 16th July 1873. BCARS, GR 526, Box 7, letter 589/73.

upon the allotment of Twenty acres to each Indian family of five persons, I am unable to answer you officially.

I can however inform you that both myself and Mr. Armstrong understand it as meaning, that to every five persons there shall be allotted twenty acres of land or to put it in other words that to each Indian (not half breed) over a defined age there should be allotted four acres of land.¹⁸³

Beaven then wrote to the Lieutenant Governor seeking concurrence on this position.¹⁸⁴

Powell, himself, agreed with the twenty acre rule but asked that it not be contingent upon a specific number of family members.¹⁸⁵

Discussions concerning the precise amount of land to be set aside continued, with Powell who anticipated the situation among the cattle and horse-owning tribes of the Interior, requesting agreement from the Provincial Secretary that forty-acres per family be reserved in the Interior where pasture lands were needed, or that an assurance of sufficient grazing lands be given. Powell was informed that considerable reserves had already been allotted in the Interior, but that the Attorney General would confer with him further on this subject.¹⁸⁶

Immediately prior to Powell's visit to the Interior, he was advised by Attorney

¹⁸³ Letter from Robert Beaven to Dr. I.W. Powell, 31st July 1873. BCARS, Mss. No. C/B/30.7J.

¹⁸⁴ Beaven to the Lieutenant Governor, 1st August, 1873. BCARS, Mss. C/B/30.7J.

¹⁸⁵ Powell to John Ash, Provincial Secretary, 23rd August 1873. BCARS, GR 526, Box 7, letter 684/73.

¹⁸⁶ Letter from Powell to Ash, 27th December 1873, with Minute in hand of Provincial Secretary. BCARS, GR 526, Box 8, File 984/73.

General George Walkem that reserves in the Interior were excessive and required reduction, although Indians could be granted an extra twenty acres if absolutely required for grazing purposes.¹⁸⁷ Despite Powell's pressuring the Province to adopt the original eighty-acre standard, a PCOC approved on April 24th, 1874 and based on a report of the 1st of April, rescinded the PCOC of March 21st, 1873 and recommended allotments of twenty acres per family. When Powell set out for B.C.'s Interior, however, he again suggested to the Provincial Government that the Indians would be greatly satisfied if land grants there were based on a forty-acre rule.¹⁸⁸ This approach did not receive endorsement from the Province. Powell, while at Lytton, received notification from Walkem that:

Twenty acres to each head of Indian family granted on condition agreed could not send sooner. Forty rejected.¹⁸⁹

This telegram embodied the BCOC 782/74 of 15th June 1874.

Powell experienced further frustration when he applied to the Province to grant an addition to the previously-allotted Musqueam Reserve. He was informed by the C.C.L.&W. that permission to make extensions was conditional upon the C.C.L.&W.'s being advised that Powell was:

¹⁸⁷ George Walkem, Attorney General for B.C., to I.W. Powell, 29th December 1873. BCARS, Mss. C/AB/30.7J/4.

¹⁸⁸ Powell to Ash, 15th May, 1874. BCARS, GR 526, Box 9, item 28/74.

¹⁸⁹ Telegram from George Walkem to I.W. Powell, 12th June 1874. BCARS, GR 526, Box 10, item 557/74.

authorized to reduce as well as increase such Reservations, and that you are prepared on behalf of the Dominion Government to guarantee that the Indians will agree quietly to reduction, if the Provincial Government agree to an increase.¹⁹⁰

Powell found the inequity of acreage being suggested by the C.C.L.&W. to be unjust. Writing to the Provincial Secretary on 15th August 1874, Powell remarked that the Order-in-Council agreed upon by the two Governments prevented Canada from exceeding the twenty-acre rule, but that all reserves, both new and old, should receive at least this same amount. He was also aware that the stock-raising Interior Indians would find the twenty-acre allotments insufficient for their needs.

BCOC 838/74 responded to Powell's concerns by stating that the Province was not prepared to make extensions to any Colonial reserves. Trutch's aversion to the more extensive reserves was grounded in his opinion that:

the lands conveyed would probably be of the best quality available. That such lands are in request for the purpose of actual and useful settlement and that it is contrary to the public welfare for such lands to be left uncultivated in the hands of a nominal and irresponsible proprietary.¹⁹¹

Coincident with the debate focusing on the extent of allotments, a Joint Management Board was set up in 1874 in an attempt to deal with the unresolved issue of Indian lands generally.¹⁹² An Order-in-Council approved by the Privy Council on

¹⁹⁰ Quote contained in Powell to John Ash, 15th August 1874. BCARS, GR 526, Box 10, item 557/74.

¹⁹¹ BCOC 838/74.

¹⁹² Cail. *Land, Man and the Law*, pp. 198-208, discusses post-Confederation disputes between
(continued...)

February 9th, 1874 established a Board of Indian Commissioners for B.C.. The Board consisted of three members: Indian Superintendents I.W. Powell and James Lenihan, as well as the Lieutenant Governor of B.C.. According to that PCOC, the Board's mandate was:

to suggest the general principles under which the Indians should be dealt with; and to arrange all negotiations and treaties with the Indian tribes, under the direction of the Superintendent General, and to report from time to time, the basis upon which the question of general policy in Indian Affairs should be settled.¹⁹³

Powell was notified of the Commission by telegram dated 10th February 1874 and requested to attend a meeting in Ottawa to discuss the organization of the Indian Department in B.C. specifically, and the Federal policy to be pursued towards the Indians generally. Prior to leaving for the National Capital, Powell was to appoint three local Agents to handle his job during his absence. James Lenihan, who had been appointed Indian Superintendent and Commissioner in 1874, was to attend the meeting with Powell before taking up his new positions based in New Westminster.¹⁹⁴

The Commission got off to a slow start, with Trutch vying for more authority over his fellow Board members, who took their instructions directly from Ottawa.

(...continued)

the two governments. This period is also summarized by Fisher, *Contact and Conflict*, pp. 177-183, though in less detail.

¹⁹³ PCOC 1874.

¹⁹⁴ Letter from David Meredith, Deputy of the Minister of the Interior, to the Lieutenant Governor of B.C., 12 February 1874. BCARS, A/E/Or3/T771.99

Trutch argued that the mandate of the Board was undefined. On June 30th, 1874 he wrote to David Laird, Minister of the Interior, expressing his dissatisfaction with the Board. In this same letter he withdrew his involvement in the conduct of Indian Affairs in the Province until the Board of Commissioners "shall have been fully empowered to give effect to its conclusions & the status and proper functions of the Lt. Governor as a member of that Board shall have been clearly defined."¹⁹⁵

Trutch's reaction came as no surprise to E.A. Meredith, Deputy Minister of the Interior, who realized that the appointment of the Lieutenant-Governor to such a Board would have to carry with it special powers.¹⁹⁶ Laird also recognized the problems of the Board, but believed that Trutch's position as Lieutenant-Governor of the Province made him unacceptable to Canada as the individual to direct and control the management of Indian Affairs in B.C. Nevertheless, Laird appreciated the necessity of proceeding with Powell's planned visit to the Interior in the late spring of 1874, thereby avoiding additional discontent among the Native tribes, and advised Trutch accordingly.¹⁹⁷

Powell visited the Interior between May and July 1874.¹⁹⁸ At that time, rumours

¹⁹⁵ Letter from Joseph W. Trutch, Lieutenant Governor of B.C., to David Laird, dated 30th June 1874. BCARS, A/E/Or3/T771.99. Trutch's refusal to participate meant that the Board of Management never became a fully functioning organization.

¹⁹⁶ Letter from David Laird, Deputy Minister of the Interior, to J.W. Trutch, dated 7th July 1874. BCARS, A/E/Or3/T771.99.

¹⁹⁷ Letter from David Laird to J.W. Trutch, dated 7th July 1874. BCARS, A/E/Or3/T771.99.

¹⁹⁸ During this trip to the Interior, Powell met with representatives of Thompson, Shuswap, Okanagan, Lillooet and Upper Stalo Indian tribes.

among the settlers of an imminent armed Native uprising were common, as the Indians expressed their grievances and continued their hostility to the intrusions of non-Indians on their lands. Powell had informed Ottawa with respect to the anticipated outbreak:

If there has not been an Indian war, it is not because there has been no injustice to the Indians but because the Indians have not been sufficiently united.¹⁹⁹

Once in the Interior, Powell assured the Native people that his duty was to protect their lands. On this occasion, Powell promised reserves containing property sufficient for twenty acres per family head, with the understanding that old reserves would be enlarged to fulfil this commitment. In each community Powell visited, Chiefs came forward with stories of being driven from ancestral villages and having their cultivated fields pre-empted by non-Indians. Their agricultural and stock-raising endeavours were thwarted by settlers fencing the land and hemming in the Indian communities. Eighty acres per family were requested by the Chiefs. Powell advised them that twenty should be adequate, and assured them that if they found it to be insufficient, he had no doubt that the government would permit them to pre-empt additional lands. Yet by the end of Powell's trip, he was convinced that the Indians had valid grievances, many of which resulted from the policies of Trutch and the Provincial Government.²⁰⁰

¹⁹⁹ Quoted in David Laird's Memorandum of November 2nd, 1874. BCARS, F52/C16.2. Copy in RG 10, Vol. 11,028, File SRR-2.

²⁰⁰ Notes on Powell's Interior trip can be found in his personal journal kept in May and June (continued...)

Lord Dufferin, the Governor General also placed responsibility for the unsatisfactory condition of Indian Affairs in B.C. at the feet of Trutch. In a November 26th, 1874 despatch to the Earl of Carnarvon, Dufferin referred to the unsatisfactory disposition of the Indian question in British Columbia:

That Province appears to be treating its Indian subjects with great harshness. It does not recognize any obligation to extinguish the Indian title, before dealing with the Crown Lands, and when it creates a reserve instead of allowing eighty acres to each family of five persons - as we do - it will not give more than twenty and this only in new reserves. In the old reserves they have not even half that quantity of land, and yet their Indians appear to be a rather superior race, and within the last few years have acquired a considerable stock of cattle and horses.²⁰¹

The newly-appointed Indian Commissioner James Lenihan also supported more extensive reserves being assigned. He argued in his letter to the Provincial Secretary dated 15th October 1874, that the practice of the Provincial government "which has hitherto been observed has been neither well defined, uniform, or regular." In this same letter the Indian Superintendent requested the Province to:

secure to each head of an Indian family at least 80 acres of good average

(...continued)

1874 entitled "Notes Documenting Interrogating of Various Tribes." NAC, RG 88, Vol. 494; his report to Ottawa, dated July 27th, 1874, is contained in NAC, RG 10, Vol. 11028, File SRR-1.

²⁰¹ Letter from Lord Dufferin to Lord Carnarvon, dated November 26, 1874. NAC, Lord Dufferin Collection, Microfilm A-406. The Dufferin-Carnarvon Correspondence 1874-1878 has been published as a volume of *The Publications of the Champlain Society*. Toronto: The Champlain Society. Lord Dufferin continued his criticism of Provincial policy for the next several years. A document dated September 20th, 1876, is an excerpt of the 2.25-hour speech given by Dufferin while in B.C. In this speech, Dufferin states that it is the duty of the Governor General to watch over the welfare of the Indians. He goes on to say that there has been an initial error of the Province in not recognizing Indian title, but that he is pleased that B.C. has now agreed to a Joint Commission. NAC, RG 10, Vol. 10031.

quality - free from rocks and swamps, together with continuing to them the right of Preemptions, and that such reservations may be made as far as possible adjacent to and in connection with, the present villages sites, Reservations, and favourite haunts of the Indians.

That in addition to the limit of eighty (80) acres to each family, those having large herds of Cattle and Horses should receive sufficient land over and above such limit to answer their requirements.²⁰²

There was little consensus between the Provincial and Dominion Governments late in 1874, and the inability of the Board of Indian Commissioners to resolve the situation was quickly apparent. Ottawa's perspective on the dilemma was discussed by Laird in a lengthy memo dated November 2nd, 1874 which became the basis of a Privy Council Order dated the 4th November 1874.²⁰³ Provided with the report of Powell's visit to the Interior, communications from both the Indian Commissioners, and letters published in the local newspaper by missionaries working among the Indians, the Minister of the Interior was confident in declaring in this memo that the Indian situation was "most unsatisfactory" and required the immediate attention of both governments. Laird exhorted the national benefits to be gained from a more liberal approach to the Indian land question than that advocated by the Terms of Union. An Indian war, he feared, was a very real possibility.

A copy of Laird's report was forwarded by the Governor General, Lord

²⁰² Letter from James Lenihan, Indian Commissioner, to John Ash, Provincial Secretary, 15th October 1874. BCARS, GR 526, Box 11, File 715.

²⁰³ Copy of a Report of the Honorable the Privy Council approved by His Excellency the Governor General on the 4th November 1874. BCARS, F/52/ C16.2.

Dufferin to the Earl of Carnarvon on December 4th, 1874. Again, Dufferin criticized Provincial policy, with specific references to intergovernmental disputes. Carnarvon, however, was reluctant to take action.²⁰⁴

Among the Provincial actions unpopular with the Dominion Government was the passage of a Bill, assented to on March 2nd, 1874, entitled *An Act to Amend and Consolidate the Laws Affecting Crown Lands in British Columbia*.²⁰⁵ Historian Cail suggests that the passage of this *Act* illustrates the Province's lack of interest in settling the Indian land question in accordance with Dominion policy.²⁰⁶ Ottawa disallowed the *Act*. A letter authored by the Minister and Deputy Minister of Justice pointed out that the Province had unwittingly erred in its definition of "Crown Lands," resulting in acknowledgement of Indian sovereignty to all lands of the Province, a position that would have met the approval of Ottawa. Yet the reason for the disallowance was the lack of provision for Indian Reserves or the allotment of lands for that purpose.²⁰⁷

Consequently, in April 1875, the Province passed a revision of the *Act* which included the following section:

60. The Lieutenant Governor in Council shall, at any time, by notice, signed by the Chief Commissioner of Lands and Works, and published

²⁰⁴ Letter from Lord Dufferin to the Earl of Carnarvon, 4th December 1874, with a reply dated 5th February 1875. NAC, RG 10, Vol. 3611, File 3756-1.

²⁰⁵ B.C., *Statutes*, 1874, 37 Vict. no. 2, s.86.

²⁰⁶ Cail, *Land, Man and the Law*, pp. 197-199.

²⁰⁷ *Ibid.*

in the British Columbia Gazette, reserve any lands not lawfully held by record, pre-emption, purchase, lease, or Crown Grant. for the Dominion Government, in trust, for the use and benefit of the Indians, or for railway purposes, as mentioned in Article 11 of the Terms of Union, or for such other purposes as may be deemed advisable.²⁰⁸

The *Act* was allowed to stand, despite some Federal misgivings, as they considered the problem resolved following the establishment of the Indian Reserve Commission.

On August 17th, 1875 the Attorney General of B.C. submitted for the consideration of a committee of the Executive Council a report vociferously defending B.C.'s policy.²⁰⁹ The memo begins with a review of the 13th Clause of the Terms of Union and the respective responsibilities of Canada and B.C. The Attorney General's argument was that British Columbia vitally required agricultural lands for settlement and that its consent to twenty acres per head of family, instead of ten, for new reserves was a generous concession and not an obligation. Walkem stated that it was with "great reluctance" that his government felt compelled to differ with Canada.

Cail suggests in his review of the Walkem memo that the impasse between the two governments was attributable to Canada's lack of information concerning the situation in B.C.²¹⁰ This same argument was advanced by the Attorney General, with support from William Duncan, a member of the Church Missionary Society.

²⁰⁸ BCOC, April 22, 1875.

²⁰⁹ Report accompanying BCOC 1071, dated 18th August 1875.

²¹⁰ Cail, *Land, Man and the Law*, pp. 201-204. Historian Fisher, *Contact and Conflict*, pp. 186-187, takes a less flattering view of Walkem's report and Provincial policy, arguing that it illustrated a continuation of B.C.'s obstructionist tactics.

Missionary Duncan had a long history of involvement in Indian affairs in the Province, and was an active critic of Indian policy. In 1873, after his appointment as Indian Superintendent, I.W. Powell had solicited Duncan's views on the management of Indian Affairs. Duncan proposed a land scheme, described in a lengthy memo, which promoted the establishment of ample reserves and an administrative policy with variation determined by the Native people's reputed level of "civilization." The greatest need for civilized Indians, according to Duncan, was to keep away Whites and lawless Indians. Duncan was prolific in his suggestions, and as the Dominion Government considered him an authority in such matters, Walkem's use of Duncan's argument was an effective weapon.²¹¹

Ottawa considered carefully the August 18th, 1875 memo from the Province, as it was the conventional wisdom of the time that the current situation was unsatisfactory. David Laird, Minister of the Interior, prepared a Memorandum dated October 11th, 1875, calling attention to the necessity of changing the organization of the administration of Indian Affairs in B.C.²¹² He proposed that the Indian Board be

²¹¹ A copy of William Duncan's letter of February 3rd, 1873, outlining his views on "what system of Government I would recommend for the civilization of our Indians" can be found in NAC, RG 10, Vol. 11209, File 8. As a model of his scheme, Duncan subsequently founded the Metlakatla mission where he implemented his model of a self-sufficient theocratic community. Duncan's career has been examined in several books and articles including the highly-readable: *The Devil and Mr. Duncan: A History of the Two Metlakatlas*, by Peter Murray (1985) Sono Nis Press; and the more academic, *William Duncan of Metlakatla, a Victorian Missionary in British Columbia*, by Jean Usher (1974) National Museums of Canada.

²¹² Memorandum from David Laird, Minister of the Interior, October 11th, 1875. NAC RG 10, Vol. 3525, File 5506.

replaced by a more economical system of Indian Superintendents and Agents administering two superintendencies. His memo was presented to and approved by the Privy Council.²¹³

On November 5th, 1875, further recommendations which took into account the views of missionary William Duncan, in addition to the Walkem memo, were drafted by R.W. Scott, the Acting Minister of the Interior. These were presented to the Privy Council and embodied in Order-in-Council 1088/75 of the 10th of November. Mr Scott's recommendations were as follows:

1. That with a view to the speedy and final adjustment of the Indian Reserve question in British Columbia on a satisfactory basis, the whole matter be referred to three Commissioners, one to be appointed by the Government of the Dominion, one by the Government of British Columbia, and the third to be named by the Dominion and the Local Governments jointly.
2. That the said Commissioners shall, as soon as practicable after their appointment, meet at Victoria, and make arrangements to visit, with all convenient speed, in such order as may be found desirable, each Indian nation (meaning by nation all Indian tribes speaking the same language) in British Columbia, and, after full enquiry on the spot into all matters affecting the question, to fix and determine for each nation, separately, the number, extent, and, locality of the Reserve or Reserves to be allowed to it.
3. That in determining the extent of the Reserves to be granted to the Indians of British Columbia, no basis of acreage be fixed for the Indians of that Province as a whole, but that each nation of Indians of the same language be dealt with separately.

²¹³ Copy of a Report of the Committee of the Honorable the Privy Council, approved by His Excellency the Administrator of the Government in Council, signed by W.A. Himsforth to the Minister of the Interior, December 7th, 1875. NAC, RG 10, Vol. 3625, File 5506.

4. The Commissioners shall be guided generally by the spirit of the Terms of the Union between the Dominion and the Local Governments, which contemplates a "liberal policy" being pursued towards the Indians, and, in the case of each particular nation, regard shall be had to the habits, wants and pursuits of such nation, to the amount of territory available in the region occupied by them, and to the claims of the white settlers.
5. That each Reserve shall be held in trust for the use and benefit of the nation of Indians to which it has been allotted, and, in the event of any material increase or decrease hereafter of the numbers of a nation occupying a Reserve, such a reserve shall be enlarged or diminished, as the case may be, so that it shall bear a fair proportion to the members of the nation occupying it. The extra land required for any Reserve shall be allotted from Crown Lands, and any land taken off a Reserve shall revert to the Province.
6. That so soon as the Reserve or Reserves for any Indian nation shall have been fixed and determined by the Commissioner as aforesaid, the existing Reserves belonging to such nation, so far as they are not in whole or in part included in such new Reserve or Reserves so determined by the Commissioners, shall be surrendered by the Dominion to the Local Government so soon as may be convenient, on the latter paying to the former, for the benefit of the Indians, such compensation for any clearings or improvements made on any Reserve so surrendered by the Dominion and accepted by the Province, as may be thought reasonable by the Commissioners aforesaid.²¹⁴

The above recommendations known as PCOC 1088/75, and based on BCOC 1071/75 of August 15th, were accepted by the Governor General in Council and then sent to the Government of B.C.

3.2.1 The Joint Indian Reserve Commission

The recommendations as stated in PCOC 1088 were reviewed by the Province

²¹⁴ PCOC 1088, November 10th, 1875.

and accepted with slight modification in B.C. Minute 1138/76. Together these documents established the Joint Indian Reserve Commission.²¹⁵ The Province found the recommendations embodied in PCOC 1088 close enough to the terms of their previously rejected proposal to be acceptable.²¹⁶ Thus, a note made at the B.C. Executive Committee's meeting at which the proposal was approved states that:

With respect to the appointment of the Commissioners as suggested instead of Agents, the Committee feels that strictly speaking, the Province should not be responsible for any portion of the expense connected with the charge or management of Indian Affairs which are entrusted by the Terms of Union to the Dominion government, but regarding a final settlement of the land question as most urgent and most important to the peace and prosperity of the Province, they are of the opinion and advise that all the proposals numbered one to seven inclusive, be accepted.²¹⁷

Two days later, Lieutenant Governor Joseph Trutch sent a copy of the Minute of the Executive Council to the Earl of Carnarvon.²¹⁸

Subsequent Orders-in-Council appointed three Commissioners. The Privy Council of the Dominion Government, by PCOC of May 6th, 1876 appointed Mr. Alexander Anderson as its Commissioner. The Province was notified of Mr. Anderson's appointment, and it, in turn appointed (by B.C. Order-in-Council 166/76)

²¹⁵ The JIRC was also known as the "Joint Committee on Indian Reserves" and the Board of Indian Reserve Commissioners.

²¹⁶ Memorandum from George Walkem, President Executive Council to Joseph Trutch. BCARS, GR 444, Vol. 32.

²¹⁷ BCOC 1138/76.

²¹⁸ BCARS, GR 443, Vol. 24, p.173.

Mr. Archibald McKinlay as its representative. By B.C. Order-in-Council 172/76, the Committee of the Executive Council then suggested that Mr. Gilbert Malcolm Sproat be appointed the third Commissioner, and on August 2, 1876 the Government of B.C. confirmed that suggestion. The Privy Council approved the recommendation on behalf of the Dominion government on 16th August 1876 (PCOC 779).

Alexander Anderson, the Dominion Commissioner, was given instructions by the Minister of the Interior on August 25th, 1876. These included the following directives as suggestions:

You will assure the Indians of British Columbia of the friendly feeling of the Government of the Dominion towards them, and that it is the anxious desire of the Government to deal justly and reasonably with them in the settlement of their reserve. The aim and object of the Dominion Government in their general Indian policy in British Columbia, as in other portions of the Dominion, is to assist the Indians in their efforts to raise themselves in the social and moral scale, so that they may ultimately enjoy all the privileges and advantages which are enjoyed by their fellow white subjects.

. . . You should bear in mind that the Dominion Government think it very important that in the settlement of the land question nothing should be done that could interfere with or militate against the establishment of friendly relations between the Dominion Government and the Indians of British Columbia. You should therefore, endeavour to allay the fears existing among the Indians in reference to land matters, and in all your subsequent dealings with them you should carefully avoid anything which might be calculated to alarm or disturb the Indian mind.

While it appears theoretically desirable as a matter of general policy to diminish the number of small reserves held by any Indian nation, and when circumstances will permit to concentrate them on three or four large reserves, thus making them more accessible to missionaries and school teachers, you should be careful not even for this purpose to do any needless violence to existing tribal arrangements, and especially not

to disturb the Indians in the possession of any villages, fishing stations, fur-trading posts, settlements or clearings, which they may occupy and to which they may be specially attached, and which may be to their interest to retain. Again it would not be politic to attempt to make any violent or sudden change in the habits of the Indians, or that those who are now engaged in fishing, stock-raising, or in any other profitable branch of industry should be diverted from their present occupations or pursuits, and in order to induce them to turn their attention to agriculture. They should rather be encouraged to persevere in the industry or occupation they are engaged in, and with that view should be secured in the possession of the villages, fishing stations, fur-posts, or other settlements or clearings which they occupy in connection with that industry or occupation, unless there are some special objections to so doing, as for example, where the Indian settlement is in objectionable proximity to any city, town, or to a village of white people.

...

With respect to that part of Clauses 5 and 6 (Agreed upon by the two governments) relative to the diminution or surrender of reserves once granted to the Indians, you must bear in mind and have it clearly understood *ab initia* that those clauses must be read by the light of the provisions of the 31 Victoria Chapter 42, extended and made applicable to British Columbia by the 37 Victoria, Chapter 21, and re-enacted in effect by the Indian Act of last session, whereby it is provided distinctly that no part of any Indian reserve once appropriated can be surrendered or alienated in any way without the sanction of the Indians to whom it has been assigned.

The Commissioners should lose no time in conferring with the Indian Superintendent in British Columbia, as to the general mode of proceeding in carrying out the labours of the Commission, after such conference, they will be in a position to decide as to the order in which they should proceed and so as to the particular nation with whom it is most important they should deal at once.

The Superintendents have been instructed to co-operate in every way with the Commissioners in the execution of their labours. . .

Reports of the proceedings of the Commission should be made from time to time to the Government, and I must impress upon you the importance

for many reasons, of the labours of the Commission being brought to a close as early as may be practicable and consistent with the satisfactory adjustment of this grace and long pending controversy.²¹⁹

The instructions given to Commissioner Anderson dated August 25th, 1876 do not indicate that the decision of the Commission was final. The instructions *do* advise him to confer with the Indian Superintendents.

Anderson was notified on the 25th August 1876 that a copy of his Memorandum of Instructions had been passed along to the other two Commissioners.²²⁰ Archibald McKinlay, the Provincial Commissioner, received his instructions from the Province, orally, soon after his appointment.²²¹ On the 12th of October 1876, the B.C. Provincial Secretary advised both McKinlay and Sproat in writing that they had been appointed under the Great Seal, commanding them to "do all such acts and things as may be necessary for the proper performance by you of your said office and as may be

²¹⁹ Memorandum of Instruction to the Dominion Commissioner on the British Columbia Indian Land Question 25th August 1876. NAC, RG 10, Vol. 3633, File 6425-1. Historian and lawyer Roland Wright brought to my attention the letter of 19 August 1876 from Z.A. Lash to the Secretary of State, in which Lash comments that he had drafted the Commissions to Anderson and Sproat; Lash described these Commissions as "exceedingly bald," and was of the opinion that the Commissioners required further written instructions. NAC, RG 10, Vol. 3633, File 6425-1.

²²⁰ Letter from Laird to Alexander C. Anderson, August 26th, 1876. NAC, RG 10, Vol. 3633, File 6425-1.

²²¹ Commissioners McKinlay and Sproat submitted a report to Attorney General A.C. Elliott dated 9th October 1876 in which they reviewed the establishment of the Joint Indian Reserve Commission. In this report, they noted that instructions were given first orally. Archibald McKinlay (Provincial Commissioner) and G.M. Sproat (Joint Commissioner) to A.C. Elliott, Attorney General, Victoria, 9th October 1876. BCARS, GR 526, Box 15, File 611/76.

contained in the written instructions as may from time to time be given to you."²²²

The Province was not entirely satisfied with the instructions given to Anderson and Sproat; in a letter dated 25th October 1876 Charles Good, Deputy Provincial Secretary took exception to the paragraph concerning the surrender of reserves, and the manner in which the Commissioners were to apply this section. The Provincial Government was particularly troubled by the fact that it was now out of the Commissioners' power to deal with the question of surrenders and diminishments of reserves. The Government of British Columbia suggested that the Indian Act would require revision to avoid a "miscarriage" of the Commission.²²³

The instructions given to Provincial Commissioner McKinlay on October 23rd, 1876 do not clearly indicate whether the JIRC's decision-making power was final.

Among the directives sent to McKinlay was the following:

It is, therefore, incumbent to point out to you as the Representative of the Province the necessity for extreme care and for the exercise of the mature and unbiased judgment in the carrying out of this arrangement so that while you endeavour in all cases to act with a liberal spirit toward the Indians, you do not imperil the progress of white settlement by conceding unnecessarily large reserves. . . You will report your proceedings from time to time and communicate any action on the part of the Commission which in your opinion may tend to militate against

²²² A copy of the appointment of both Archibald McKinlay and Gilbert M. Sproat under the Great Seal can be found in BCARS, GR 548, Box 1, pp. 155-156.

²²³ Letter from Charles Good, Deputy Provincial Secretary to the Honorable A. Mackenzie, &c. &c. BCARS, GR 494, Box 1, File 2; BCARS, F 52 B77.3.

the interest of the province or may require remedying. . .²²⁴

It should be noted that the instructions issued in 1876 do not include an explicit requirement that the Provincial Commissioner report back to the Province, or that the Commission's decisions be approved or signed by another Provincial official. Yet the copious quantity of correspondence from the Commissioners to their governments indicates that reporting was a customary and mandatory exercise, in accord with the spirit of the Commissioners' instructions.

Unlike the Federal Government's instructions to Commissioner Anderson, the Provincial Government's instructions to Commissioner McKinlay included a directive that he should ensure that no unnecessarily large reserves be apportioned.

To facilitate the progress of the Commission, the Minister of Justice issued a *Proclamation* in December 1876 excluding Indian lands and reserves in the Province of B.C. from operation of the *Indian Act*.²²⁵

The Commissioners themselves preferred the Dominion Memorandum of Instruction issued to Anderson as it freed them from concentrating Native populations on large reserves, an idea which the government found "theoretically desirable," but the Commissioners thought unworkable. Enactment of the provision was then

²²⁴ "Memorandum of Instructions to Archibald McKinlay Esq., the British Columbia Commissioner on the Indian Reserve Question," dated 23rd October 1876. BCARS, GR 494, Box 1, File 1.

²²⁵ Proclamation dated 15th December 1876, published in *The Canada Gazette*, December 30, 1876.

conditional on its practical applicability:

You should therefore, endeavour to allay the fears existing among the Indians in reference to land matters, and . . . you should carefully avoid anything which might be calculated to alarm or disturb the Indian mind.

. . . you will in determining the number of reserves to be assigned to any particular Indian nation be guided rather by the special circumstances of that nation, their habits, tastes, pursuits and physical surroundings, than by any fixed theoretical rule.²²⁶

Within a month of Mr. Sproat's appointment as an Indian Reserve

Commissioner, he began what became a voluminous correspondence providing his views relating to aboriginal rights, the policies of both the Dominion and Provincial Governments, and Indian lifeways in general.²²⁷ Among Sproat's first writing as Commissioner was his 81-page memo addressed to the Minister of the Interior and dated September 29th, 1876.²²⁸ In the Memorandum, Sproat outlines his understanding of the issues relating to Indian Affairs, including what he believed are the views of the Native people, the settlers, the missionaries, and the two governments.

During the winter of 1876-1877, the Joint Indian Reserve Commissioners began their work by travelling from village to village meeting with the Indians'

²²⁶ Letter from David Laird, Minister of the Interior, to Alexander Anderson, 25th August 1876. NAC, RG 10, Vol. 3633, File 6425-1.

²²⁷ A computer printout of typescripted Sproat letters was prepared in the 1980s under the direction of Dr. Robin Fisher, now with the University of the North, Prince George, B.C.

²²⁸ Memorandum from Gilbert Malcolm Sproat, Joint Commissioner, Victoria, B.C. to the Honorable, the Minister of the Interior, Ottawa Canada. BCARS, Add. MSS. 257, Vol. 1, File 15.

representatives and allotting or adjusting reserves. Their work commenced at Musqueam, on the North Arm of the Fraser River, proceeded to Burrard Inlet and Howe Sound where they allotted lands to the Squamish, on to Sechelt, and then crossed to Vancouver Island where they met first with the Comox and then made their way south, allotting lands among the Nanaimo, Chemainus, Cowichan and Saanich.²²⁹ The JIRC kept account of the acreage allotted per adult male and reported this figure, specifically to the Province, to indicate that reserve allotments were not too large. The Commissioners did not adhere to an acreage standard when setting aside lands for Native use, but did try to achieve equity of benefit. Although the Commissioners met with the headmen in determining the lands desired by the Native people, they did not attempt to resolve questions emanating from aboriginal title.

Reports prepared by the individual Joint Indian Reserve Commissioners and submitted to their respective governments, documented their decisions. A 29th March 1877 letter of G.M. Sproat to the Minister of the Interior outlines the reporting procedures:

²²⁹ The "Report of the Proceedings of the Joint Commission for the Settlement of the Indian Reserves..." dated March 21st, 1877, and signed by A.C. Anderson, Dominion Commissioner, Archibald McKinlay, Provincial Commissioner, and Gilbert Malcolm Sproat, Joint Commissioner, provides an account of the work undertaken among each of these groups. It can be found on NAC, RG 10, Vol. 3645, File 7936. Sproat, himself, submitted a summarized account dated 29th March 1877; found on NAC, RG 10, Vol. 3611, File 3756-11. "Minutes of Decision," reports prepared by the Commissioners for government outlining the nature and extent of lands allotted for individual Native groups, were submitted in June 1877 for the above-noted tribes.

Sir: I have the honor, herewith, to enclose a summarized report on the work of the Commission during the past winter. Details are contained in the "Field Reports" which I have sent to you from time to time.

The Commissioners for the Dominion, and for the Province, respectively, have forwarded summaries of their journal to their governments.

The formal minutes and maps of the Commission which, as soon as outstanding questions are settled, will be signed by the three Commissioners, are sent to both governments, as well as to the Indian Superintendents in this Province, will show the number and extent and locality of the reserves laid out. . .²³⁰

Additionally, reports signed by all three Commissioners were submitted to both governments. Commissioners Anderson and McKinlay kept daily journals.²³¹ According to a notation on the top of Anderson's journal, he forwarded this journal to the Indian Department in Victoria. It is not clear if Commissioner McKinlay's jottings were produced as a requirement of his position or for his private use.

While assigning reserves in the lower mainland, the Commissioners had the Lands Office near at hand in New Westminster where they could confirm the availability of acreage (unencumbered by pre-emption) that could be allotted to Natives. McKinlay's diary identified one procedure whereby the surveyor, Edward Mohun, examined the Lands Office records subsequent to the Commissioners

²³⁰ Sproat to the Minister of the Interior, 29th March 1877. NAC, RG 10, Vol. 3756-11.

²³¹ "Journal of Proceedings of the Commission for the settlement of the Indian Reserves in the Province of British Columbia, continued from Vol. 1, remaining in the Office of the Indn. Dept. at Victoria," signed Alex C. Anderson, 8th February 1878. NAC, RG 10, Vol. 1284; [Diary] of Archibald McKinlay, 1877. BCARS, E/C/M21/pt.2

identifying which lands they wished reserved.²³² While in the Interior, the Commissioners met with settlers and with surveyors working on behalf of settlers who advised them of claimed lands. Additionally, maps were requested from the C.C.L.&W. illustrating the locations of pre-emptions.²³³ These were not always provided in a timely manner and became the source of immense frustration.

The Commissioners were accompanied by enumerator George Blenkinsop who kept a census providing the names of household heads, the total number of family members and their ability to speak English, the type of residence in which they lived, as well as their occupation and religion.²³⁴

Problems with the Commission, particularly focusing upon its expense, were evident from the beginning. Thus it was not surprising that on January 27th, 1877 the B.C. Provincial Secretary prepared a report to the Minister of the Interior concerning the enormous expense to the Government of B.C. of the work of the JIRC. The Provincial Secretary recommended that the Commission be allowed to persevere, for the time being, but that its labours be restricted to those areas where Whites and

²³² Surveyors attached to the Joint Indian Reserve Commission include: Edward Mohun, W.C. Jemmett, and Ashdown Green.

²³³ McKinlay, Diary. BCARS, E/C/M21.

²³⁴ Draft and final copies of Blenkinsop's censuses provide variant data. Compare for example: "Census of Indian Tribes, Winter 1876-1877," found on NAC, RG 88, Vol. 494, and "Census of the Muskwam and Skwawmish Indians in British Columbia, November 27, 1876," found on NAC, RG 10, Vol. 10,010. An abstract of these data can be found in: BCARS, GR 494, Box 1, File 25. Census data collected among Interior tribes can be found in "Census of Indian Tribes, Summer 1877 and 1878." NAC, RG 88, Vol. 494.

Natives were living in close proximity, and to areas where there were difficulties. The Provincial Secretary also recommended that the JIRC be dissolved by the end of the year, proposing that the Indian Superintendents in B.C. instead apportion lands for reserves, subject to the approval of the C.C.L.&W., before being gazetted. The cost would be borne by Ottawa. It was the Provincial Secretary's recommendation that differences of opinion be referred to a Judge of the Supreme Court for a binding decision.²³⁵

The Provincial Secretary's report was adopted by the B.C. Executive Council on January 30th, 1877, then sent to the Minister of the Interior:

The lands thus apportioned should however be subject to the approval of the Chief Commissioner of Lands and Works, acting on behalf of the Provincial Government, before being finally gazetted as Indian reserves. In the event of any differences existing between the Chief Commissioner of Lands and Works and the Superintendents of Indian Affairs as to size or extent of lands to be allotted to any Indian tribe, the matter could be referred to one of the Judges of the Supreme Court, whose decision should be final.²³⁶

On February 22nd, 1877 the Federal Minister of the Interior wrote to the Privy Council in response to the Provincial Secretary's letter and suggested that the plan recommended by the Province (and subsequently approved by Indian Superintendent Powell) be adopted. The Governor General-in-Council approved the report of the Minister of the Interior on February 23rd, 1877 (PCOC 145). Thus, the Commission

²³⁵ A.C. Elliott, Provincial Secretary, to the Minister of the Interior, 27th January 1877. NAC, RG 10, Vol. 3641, File 7567.

²³⁶ BCOC 279, 30th January 1877.

continued under the authority of BCOC 279/77.

The Commissioners themselves submitted their views concerning the proposed restructuring of the JIRC, advising the government that the restructuring had not taken into consideration the wishes or expectations of the Native people. Such restructuring, they presumed, would undermine what little confidence the Indian people had in their work.²³⁷ Sproat described the proposal as "cumbrous, unworkable, confused, expensive on the face of it, and . . . unsuited to the work that had to be done." In a letter to Meredith, Sproat referred to it as "a grave joke."²³⁸

Despite these misgivings, the work that the Commissioners were authorized to engage in during the remainder of 1877 was consequently restricted to areas where there were "difficulties." Other than limitations being placed on the location of their activities, there does not appear to be an explicit change in the above-noted Orders which required the JIRC to obtain the approval of the C.C.L.&W. or of Canada before establishing a reserve. Such confirmation from the Chief Commissioner of Lands and Works was also proposed by both governments for the future, should the Commission be dissolved.

Once the Commissioners were in the Interior of B.C. in the summer of 1877,

²³⁷ "Memorandum by the Indian Reserve Commissioners upon an Order of the Canadian Privy Council dated 23rd February 1877," signed by A.C. Anderson, Archibald McKinlay and G.M. Sproat, April 7th, 1877. NAC, RG 10, Vol. 3641, File 7567.

²³⁸ Letter from G.M. Sproat to E.A. Meredith, 9th April 1877. NAC, RG 10, Vol. 3641, File 7567.

they wrote, collectively and individually, describing the exceedingly tense situation that existed amongst the Indians, and the real possibility of war. A telegram from the Secretary of State, R.W. Scott, was sent to Commissioners Anderson and Sproat advising them to inform the Indians that "both governments were endeavouring to remove the causes of irritation."²³⁹ Indian Superintendent Lenihan was also instructed to transmit the government's sentiments to the Natives at Kamloops.

The Commissioners continued writing to both governments regarding problems encountered throughout the Interior; yet only one response has been found providing additional guidance to the Commissioner during this time. This was the August 3rd, 1877 reply of the Minister of the Interior, David Mills, to G.M. Sproat, expressing Mills' hope that the Indians would be appeased by large land grants, which he anticipated would dispense with any discussion of aboriginal title and prevent an armed outbreak. Mills instructed Sproat:

I would therefore earnestly press upon the attention of the Commissioners the propriety of meeting every reasonable demand on the part of the Indians both as to the extent and locality of their Reservations.²⁴⁰

Mills blamed the current situation entirely on the policy the British Columbia Government took towards the Indian people, which he characterized as unwise; unjust,

²³⁹ Telegram from R.W. Scott, to Indian Commissioners Anderson and Sproat, 23rd July 1877, found on NAC, RG 10, Vol. 3651, File 8540.

²⁴⁰ Letter from David Mills, Minister of the Interior, Ottawa to Gilbert Malcolm Sproat, Esqr., Indian Land Commissioner, Kamloops, B.C., 3rd August 1877. NAC, RG 10, Vol. 3997, File 1353.

and illegal. Mills noted that British Columbia's position had always been that the Indians had no right to the soil, an assumption completely at variance with the policy of the Crown in dealing with Native peoples in other parts of North America.²⁴¹ Sproat, himself, informed the Lieutenant Governor on 2nd September 1877 that he did not consider the above letter to be an amended instruction.²⁴²

The Province's reaction to Mr. Mills' dispatch is contained in a letter dated September 27, 1877 and written by A.C. Elliott, the Provincial Secretary, to G.M.

Sproat:

Referring to your letter of the 2nd inst. to His Excellency the Lt. Governor, and to the letter of the Hon. the Minister of the Interior, dated the 3rd. Ult. & of which you have been good enough to forward a copy to this Department, I have the honour to inform you that the Provincial Government note with satisfaction your statement you 'do not consider the above letter as an amended instruction.'

It is greatly to be hoped that the interference of Mr. Mills with the settlement of the Indian Land Question on the basis of agreement between the two Governments under which the Commission was appointed, will not result in the Provincial Government being placed in the position of being forced to reject the result of the labour of the Commissioners.

If the Hon: the Minister of the Interior--at a distance of thousands of miles from the scene & without any knowledge of the merits of the question or of the facts connected therewith--presumes first to charge to the policy of the Provincial Government the discontent of a portion of the Indians of British Columbia, & also undertakes to place a definite minimum on the amount of land to be apportioned to the native race, it obviously follows that the necessity for the Commission has ceased to exist.

²⁴¹ *Ibid.*

²⁴² Sproat to the Lieutenant Governor, 2nd September 1877. BCARS, GR 495, Box 1, File 1.

If the Local Government were to place a maximum--& that an absolutely small one--on the amount of land to be set apart for the use of the Indian tribes & forward the same as amended instructions to you as Joint Commissioner, it is obvious that a deadlock would at once ensue if the instructions of both Governments were attempted to be carried out.

It is the most earnest wish of the Provincial Government that the Indians of British Columbia should be dealt with not only justly but generously--and the instructions issued to Mr. McKinlay the Provincial Commissioner conclusively prove that fact--but at the same time justice requires that the interests of the old settlers of the Province should not be sacrificed.²⁴³

Over the winter of 1876-1877 the Commissioners occupied themselves in Victoria finishing reports and accounts, and assigning reserves to the Becher Bay, Sooke and Esquimalt people.²⁴⁴

The second (and last) expedition of the JIRC occurred in the summer of 1877. Rumours had reached Victoria of a great council being held among the Okanagan and Shuswap Indians at the head of Okanagan Lake to debate whether or not to drive the Whites from the Interior. Such tales alarmed the settlers and induced the Government to despatch the Commissioners with great urgency. These rumours were not groundless; the Interior Indians were in constant communication with their American relatives some of whom *were* engaged in armed battles with United States troops.

Arriving in Kamloops, the Commissioners found the Indian village there mostly

²⁴³ A.C. Elliott, Provincial Secretary, to G.M. Sproat, 27th September 1877. BCARS, GR 540 (1877) p.89.

²⁴⁴ "Second Condensed Report by the Joint Commissioners Appointed by the Governments of Canada and British Columbia," dated December 1st, 1877, and submitted by G.M. Sproat. BCARS, GR 494, Box 1, File 46.

deserted, as the Shuswap who lived there were attending the Okanagan Lake council. The disturbing potential of large confederacies rising against the settlers prompted the Commissioners to review their procedures in dealing with tribal entities, and they set about meeting with individual Bands to allot reserves for the use of the local community alone. No longer were large concentrations of Indians on reserves seen as propitious.

Native people in the Interior were engaged in farming and stock raising, both pursuits requiring extensive acreage. Moreover, they were acutely aware of just how much land was being pre-empted by Whites involved in these same activities. Hence, land was highly valued by the Interior Natives, and the Commissioners confronted profound problems in satisfying Indian demands while at the same time appeasing anxious settlers. Within a six-month period between June and December 1877, the Commissioners assigned reserves for seven Shuswap Bands and four Okanagan Bands. Also assigned were two "Commonages," i.e., grazing lands to be used jointly by Indians and Whites in the area Okanagan Lake.²⁴⁵

3.2.2 The Sproat Indian Reserve Commission

Gilbert Malcolm Sproat, in his critique of the Province's proposed new

²⁴⁵ "Second Condensed Report by the Joint Commissioners Appointed by the Governments of Canada and British Columbia," dated December 1st, 1877, and submitted by G.M. Sproat can be found in BCARS, GR 494, Box 1, File 46. A second copy of this report, dated 1st January 1878, was signed by both Archibald McKinlay and G.M. Sproat. BCARS, GR 494, Box 2, File 53. Correspondence concerning the JIRC can be found in BCARS, GR 494.

arrangement, had put himself forward as a willing candidate to be sole Commissioner, thereby replacing the three-person body.²⁴⁶ This suggestion met with the approval of the Dominion government. The subject had been raised before with the Provincial government; on February 4th, 1878 Canada telegraphed the Province:

No answer to Confidential Despatch twentieth December respecting Indian Commission. Does your Government desire Continuance of present Commission or would they prefer Mr. Sproat as sole Commissioner. Answer.²⁴⁷

Also on 4th February 1878, the Province, anticipating the imminent dissolution of the Commission, prepared an Order-in-Council with the following message to be submitted to the Secretary of State:

Dominion Government wish arrangement approved by order Privy Council 23rd February last respecting Indian land Commissioners to take effect now.²⁴⁸

Ottawa responded on the 16th February 1878:

Government think continuance of Indian Commission necessary either as it stands or as suggested by letter of December. Arrangement proposed by Order of Council of February would not satisfy Indians. Answer.²⁴⁹

Several weeks passed and the Province informed the Dominion government that B.C. would not "recede from position taken regarding discontinuance of Indian

²⁴⁶ Sproat to the Lieutenant Governor, 12th June 1878. GR 494, Box 1, File 45.

²⁴⁷ Telegram from David Mills, Minister of the Interior, to the Lieutenant Governor of B.C., February 4th, 1878. BCARS, GR 443, Vol. 27.

²⁴⁸ BCOC 519, February 4th, 1878.

²⁴⁹ Telegram of David Mills to the Lieutenant Governor, February 16th, 1878. BCARS, GR 443, Vol. 27.

Commission.²⁵⁰ Ottawa responded further by issuing Order-in-Council 170/78 dated March 8th, 1878 noting that the Provincial government's suggestion of having the Indian Superintendents allot reserves was impracticable and unwise, and instead proposing that G.M. Sproat be appointed sole Commissioner. The PCOC relied substantially on the March 2nd, 1878 letter of David Mills, which is appended to the Order-In-Council:

With the additional knowledge which we now possess from the detailed reports of the Commissioners of the critical condition of affairs among the Indian Tribes in the interior of British Columbia and of the many difficulties which beset the question of assigning the Reserves in such a way as to satisfy the white settlers and the natives, it is submitted that it would be highly impolitic & inexpedient to bring into effect the arrangements proposed by the Order in Council last cited until all the reserves in the vicinity of white settlements are made. . .

Bearing in mind then the widespread discontent which prevailed last year among the Indian communities in British Columbia, the general distrust of the Indians in the feelings of the Government towards them, recollecting how narrowly the Province escaped last year from the very untoward Indian complications, involving possibly a general rising of the Indians, it is a matter of paramount importance, not merely in the interests of British Columbia, but of the Dominion itself, that no steps should be now taken which would be calculated to again disturb the Indian mind and bring about a renewal of those feelings of distrust and discontent now happily allayed by the judicious conduct of the Commission during the past season . . .

It is therefore recommended that instead of assigning the task of primarily allotting the Reserve to the Indian Superintendents in their respective Superintendencies as proposed by Order in Council of the 23rd February 1877 the present Commissioner Mr. Sproat be appointed to discharge that important duty subject to the approval of the Commissioner of Lands and Works of British Columbia and in the event

²⁵⁰ BCOC 541/78, March 2nd , 1878.

of any difference between the Commissioner and Mr. Sproat the matter to be referred to one of the Judges of the Supreme Court as provided by that Order in Council.

By this means the continuity of the present Commission would be preserved and the Indians would have a guarantee that the same policy which has hitherto guided the Commission in dealing with their Reserves would be continued in the future.²⁵¹

On 15th March 1878 the Minister of the Interior telegraphed the Lieutenant

Governor:

Please carry out order of February seventy seven respecting Indian Commission substituting Sproat for Indian Supt. Notify Commissioner accordingly.²⁵²

Sproat was notified the following day. He does not appear to have received a new set of instructions with which to be guided in his work. A year later, reflecting on his earlier discussions and correspondence with the C.C.L.&W., Sproat wrote to the S.G.I.A. on the 28th May, 1879:

You will observe that the Ch. Comr. of Lands does not consider that any Provincial Order in Council is required to empower me. I presume he considers that as single Commissioner, succeeding by agreement to the three Commissioners, I have the powers which they had by the original agreement between the two govts. contained in the proposals that by the Sec. of State to the Lt. Governor 15 Decr 1875 and accepted as per letter of the Lt. Governor to the Secty of State 8 Jany 1876 transmitting a Provincial Order in Council.

This simplifies matters, but it was necessary to have it clearly

²⁵¹ Letter from David Mills, March 7th, 1878, appended to PCOC 170, dated March 8th, 1878.

²⁵² Telegram from Mills to the Lieutenant Governor, March 15th, 1878. BCARS, GR 443, Vol. 27.

understood, and I should have been glad to have had the information sooner, in reply to my letter upon the subject to the Prov. Govt dated 3 June 1878.²⁵³

On March 18th, 1878 Sproat informed the Superintendent General of Indian Affairs that he had received notice from the Lieutenant Governor of B.C. concerning his appointment.²⁵⁴ A further communication dated the 18th March 1878 advised the S.G.I.A. that Sproat had an interview with Mr. Elliott of the Province on the same day. In addition to the Province's reticence regarding a contribution to the costs associated with the settlement of the reserve allotments, Elliott expressed reluctance at permitting Sproat's decisions to be final. In reviewing this conversation in his letter to the S.G.I.A., Sproat raised arguments countering Elliott's insistence that Sproat seek the approval of the Chief Commissioner of Lands and Works before reserves could be finalized. Sproat concluded that he was still hopeful that the Provincial government would "leave the matter virtually in my hands, with an apparent control exercised by the Land Office to satisfy the sentiment of the public in the Province" [underlining as in original].²⁵⁵

Possibly as a consequence of his meeting, Sproat requested further direction from the C.C.L.&W. in a letter dated 19th March 1878:

²⁵³ Sproat to S.G.I.A., 28th May 1879. G.M. Sproat letterbook No. 3, pp. 243-45. Indian Land Registry, Indian and Northern Affairs Canada, Ottawa.

²⁵⁴ Sproat to S.G.I.A., 18th March 1878. NAC, RG 10, Vol. 3641, File 7567.

²⁵⁵ Sproat to S.G.I.A., 18th March 1878. NAC, RG 10. Vol. 3641, File 7567.

Having been appointed by the Dominion Government to take the place of the Indian Superintendents for the work in relation to Indian Lands mentioned in the Canadian Order in Council 23rd February 1877, I have the honor to respectfully request that you will have the goodness to let me know, as soon as possible, which procedure it is proposed to adopt in reference to the approval by you of the apportionment of the Lands to the Indians from time to time.

Such approval or notice of appeal, must of course be given on the spot, and at the time of my decision in the case of each reserve. It will not be prudent to give any information to the Indians as to the proposed Reserves until the question has been finally arranged between yourself and me.

It is necessary also that I should be able in cases appealed, to give some assurance to the Indians that the final decision would be given by the Judge of the Supreme Court within a reasonable time. I shall be glad if you will inform me, within what time, on an average, from the lodging of the appeal is it likely the Judge will be able to undertake his duty?

I presume the whole cost of the appeals will be paid by the Provincial Government.²⁵⁶

An official notification of his appointment was sent to Sproat on March 25th, 1878, again confirming that the approval of the Chief Commissioner of Lands and Works would be required, and that unresolved differences would be referred to a Judge of the Supreme Court of B.C.²⁵⁷ Also on March 25th, 1878, the Deputy Minister of the Interior, E.A. Meredith, advised Sproat by this letter "not to take any action until notified that the Local Government has approved of the scheme submitted to their

²⁵⁶ Sproat to F.G. Vernon, C.C.L.&W., 19th March 1878. G.M. Sproat Letterbook No. 2, p. 1. Indian Land Registry, Indian and Northern Affairs Canada, Ottawa.

²⁵⁷ Although disagreements arose, the Supreme Court was never called upon to resolve any disputes.

consideration by the Government of the Dominion.^{*258}

Likely resulting from Sproat's anxiety anticipating the procedural problems he would encounter in the field if he could not make decisions relating to reserve allotments "on the spot," Ottawa telegraphed the Provincial government with a proposal:

Will your government regard Sproat's allotments of Reserves as final with merely apparent control by land officers. If so all expenses will be paid by Dominion. If otherwise Commissioner of Lands and Works must accompany Sproat at expense of Province and in case referee is required his expenses must be shared equally.²⁵⁹

The Province replied by passing an Order-in-Council (BCOC 598/78) directing that a telegram be sent to the Dominion in response to their query about the extent of Sproat's authority. They were not prepared to accept Sproat's decisions as final:

On a memorandum from the Honble Chief Commissioner of Lands and Works dated the 16th day of April 1878 reporting upon the Telegram . . . and recommending that the following Telegram be sent to the Minister of the Interior by His Honor the Lieutenant Governor. "Government are not prepared to regard settlement of reserves by Sproat as final but will not interfere with his action except in extreme cases. The Dominion Government to pay all expenses of Sproat and half the cost of referee. Answer."²⁶⁰

The above-noted telegram was sent on April 18th, 1878. This proposal was accepted by the Dominion government and notification telegraphed to the Province on April 24th,

²⁵⁸ E.A. Meredith, Deputy Minister of the Interior, to G.M. Sproat, 25th March 1878. NAC, RG 10, Vol. 4405, pp. 126-131.

²⁵⁹ Mills to Lieutenant Governor Richards, April 4th, 1878. BCARS, GR 443, Vol. 27.

²⁶⁰ BCOC 598/78, April 17th, 1878.

1878.²⁶¹ The Province passed BCOC 615/78 on the 26th April 1878 recommending:

that all Mr. Sproat's decisions regarding Indian land questions in the Electoral District of Yale be regarded as final excepting those of which he shall have received notice from either Mr. Teague or Mr. Ussher Government Agents to lay over.²⁶²

Concurrent with the finalizing of these Provincial/Dominion negotiations, the Chief Commissioner of Lands and Works approached the Government Agents, at least in the Electoral District of Yale, to inquire about the state of affairs in the district. William Teague, Government Agent, wrote from Yale on April 12th, 1878:

I have the honor to inform you that there is not any particular grievance that I am aware of to report existing between the Indians and Whites that will call the attention of the Indian Commissioners to arrange in my division of the Yale district, however, in the meantime I have to report that the Indian Chiefs have been labouring under an impression that the commissioners would before this have given them some decided information upon the question relative to their allotments of land. They are also anxious to meet the Commissioners on this important question to arrange with some definite information relative of settling upon some land. A great number of Indians have been constantly enquiring of me about their land and who appear to be very anxious to settle thereon with the intention of improving it.²⁶³

A reply dated 20th April 1878 from Mr. Ussher, the Government Agent in charge of the Kamloops area of Yale District, and addressed to the C.C.L.&W., described the situation at Nicola. Ussher informed the C.C.L.&W. that there was only one important

²⁶¹ Telegram to the Lieutenant Governor from R. Scott, April 24th, 1878. BCARS, GR 443, Vol. 27.

²⁶² BCOC 615/78, April 26th, 1878.

²⁶³ Letter from William Teague, Government Agent, to the C.C.L.&W., 12th April 1878. BCARS, GR 1440, letter 900/78.

dispute between the Indians and Whites in his district, but that "other cases of which I have no knowledge may arise when the Indian Commissioner is on the spot - the tribes unsettled with are very reticent."²⁶⁴

Consequently, at the time the Province announced the passage of BCOC 615/78 to the Dominion government on the 26th April 1878, the Province was already aware that at least one of the Government Agents had no immediate concerns that would impede Sproat's work. More significantly, the C.C.L.&W. and Sproat were soon informed that a problem existed at Nicola that was going to require the attention of the Indian Reserve Commissioner.

Coincident with the several-month-long discussion of the Indian Reserve Commissioner's authority in the Yale District that was on-going between the two governments, Sproat submitted several letters to the Dominion government complaining of his restricted powers of authority.²⁶⁵ On the 29th April, 1878, after Sproat had received a copy of BCOC 615/78, he replied to a telegram of 4th April from the S.G.I.A. regarding the finality of his decisions:

I have been engaged in discussing the question with the Provincial government under the disadvantage of its members being actively employed in attending to their interests in the general election now taking place.

²⁶⁴ Letter from John Ussher, Government Agent, to George Vernon, April 20th, 1878. BCARS, GR 868, Box 3.

²⁶⁵ See Sproat to S.G.I.A., 18th March 1878, found on NAC RG 10, Vol. 3641, File 7567; Sproat to S.G.I.A., 29th April 1878, NAC, RG 10, Vol. 3641, File 7567; and Sproat to S.G.I.A., 6th May 1878, NAC, RG 10, Vol. 3663, File 9803.

I have conversed also with His Honour the Lieut Governor.

Mr. Attorney General Elliott has shown me your telegram to the Governor, and the Order in Council, and I noticed with great satisfaction that the Canadian Government appreciate the necessity for avoiding any appearance of a change of policy towards the Indians in this important land adjustment.

As regards the general question, it is admittedly difficult to reconcile the necessities of a Provincial Government dependent upon parliamentary support, and the requirements of a single Commissioner undertaking this land adjustment, but after considering the whole question fully, I made up my mind that the occasion required that my decisions should be final in all cases with the exception of those which the Government Agents in the districts might, on examination, request me to lay over for the opinion of the Provl Government.

I stated this view to the Provincial Government, and after tedious negotiations, thought that they would agree to it, but it appears, that without notifying me, they sent a telegram to you stating that "they would not interfere with my actions except in extreme cases." I have since been told by Mr. Elliott that your government have approved this arrangement, but I have not seen your telegram.

Knowing, from the Order in Council of your Government, that you did not wish the policy of Canada towards these Indians to be changed, and Knowing that, practically, the above telegraphic arrangement would change that policy, I told the Provincial Government that in my first conversations on this subject I had gone to extreme length that you would be likely to go to, and that I would not undertake the work, unless my powers were extended to the extent I at first proposed.

After some delay I have today obtained the following copy of a report of a Committee of the Hon. The Executive Council approved by His Excellency The Lieut Governor on the 26th Apl 1878 [text of OIC of April 26th, 1878]. . .

The "electoral district of Yale" is nearly the whole southern interior of the mainland.

When I go to other districts, my powers must be similarly extended.

His Honour Governor Richards, in conversation, expressed an opinion that I should not press the Provincial Government too much in this matter seeing that they were so dependent on the House of Assembly, and would probably be criticised if they gave away their power of control, and to what His Honour said I listened with due respect, but at the same time the Provincial Government, it seemed to me, had by their proposal to abolish the three-composed commission, relinquished the opportunity of being fully represented in the field in this Indian work, and they did so to save money. It was not reasonable that they should do nothing and pay nothing, and yet retain their powers. At the same time, of course, the facts of the position of the government might fairly be considered, but subject to the necessity that there should be no change of policy towards the Indians, and this latter I could judge of. . . ²⁶⁶

On May 6th, 1878, Sproat reported to the S.G.I.A. that his powers were restricted to the Yale District:

I can act at present only within the Electoral District of Yale, and there only with reference to what the agents of the Prov. Govt do not ask me to lay over.

As regards even these latter, I have notified the Prov. Govt that they must let me know in time about them, while I am working up the wagon road from Yale to Lytton, or I will not visit Nicola and other places, but will leave the Indians and the Provincial Govt face to face, the result of which would be that the Indians would take possession of the district. ²⁶⁷

Sproat's view of BCOC 615/78 was that it largely extended his powers. ²⁶⁸

BCOC may have removed the requirement of seeking the approval of the C.C.L.&W., but it still required Sproat to consult with the local Government Agents. Sproat's

²⁶⁶ Sproat to S.G.I.A., 29th April 1878, found on NAC, RG 10, Vol. 3641, File 7567.

²⁶⁷ Sproat to S.G.I.A., 6th May 1878. NAC RG 10, Vol. 3663. File 9803.

²⁶⁸ Telegram from Sproat to S.G.I.A., 28th April 1878. G.M. Sproat Letterbook No.2, p. 49. Indian Land Registry, Indian and Northern Affairs Canada, Ottawa.

correspondence demonstrates that he was in close contact with the relevant Government Agents, Teague and Ussher.²⁶⁹ His letterbooks also indicate that he communicated regularly with the C.C.L.&W., the Attorney General and the Government Agents regarding problems in the field, principally those involving non-Indians. While working in the Lytton area, Sproat wrote to the C.C.L.&W. with a request:

The state of matters disclosed by my examination, which has been carefully and impartially made, causes me to request in this instance, the advice and co-operation of the Prov. Govt before attempting an adjustment by my decision.

If the Prov. Govt. will have the goodness, at their earliest convenience, to state the principles on which in their opinion my decision in this matter would be based, particularly as regards water for irrigation, I will if I approve the principles submit a scheme of adjustment involving the minimum of expenditure and of disturbance to existing interests, and show at the same time, as far as may be, what the practical effect will be on all concerned [underlining in original].²⁷⁰

Sproat was adamant that he retained the right to veto the Provincial recommendation.

A major problem Sproat encountered was brought to his attention by a delegation of Indians Chiefs from the Fraser Valley. It was their concern that lands they wished reserved for their own use were being pre-empted by settlers prior to the Commissioner having visited their area. Repeatedly, albeit unsuccessfully, the

²⁶⁹ On 27th May 1878, Sproat wrote to Ussher inquiring if any issues had arisen that should receive the attention of the Provincial government. Sproat to John Ussher, Government Agent, 27th May 1878. G.M. Sproat Letterbook No. 2, p. 129. Indian Land Registry, Indian and Northern Affairs Canada, Ottawa.

²⁷⁰ Sproat to the C.C.L.&W., 24th July 1878. G.M. Sproat Letterbook No.2, pp.185-6. Indian Land Registry, Indian and Northern Affairs Canada, Ottawa.

Commissioner beseeched the Provincial Government through the C.C.L.&W. to avoid issuing additional pre-emptions until the land question had been fully settled.²⁷¹ Sproat spoke also with local land agents, but purchases and pre-emptions continued to be registered, although it is evident that the Province did recognize lands set aside by the Commission and refrained from granting these same lands to non-Indians.

In one situation involving an inter-racial land dispute at Spuzzum, in the Yale District, Sproat wrote directly to the C.C.L.&W., but had the Government Agent deliver the communication so that the two Provincial representatives could discuss the issue personally. In this correspondence, the extent of Sproat's authority was also discussed. He wrote:

If the Prov Govt do not agree with my view as stated in the memo on the case what procedure do they intend to adopt under their proposal for the intervention of a Judge of the Supreme Court? Who is to pay such an arbiter and how and when will he act in this case?

If these questions are left over the work of the Comr is damaged, the satisfaction of the Indians is lessened and a heavy expense is caused to the Dom Govt.²⁷²

This particular incident ended when the C.C.L.&W. ordered the cancellation of the non-Indian pre-emption and notified the Government Agent of his action, the results of which were then relayed to Sproat.

²⁷¹ Sproat to the C.C.L.&W., 12th April 1878. G.M. Sproat Letterbook No.2, pp.10-13. Indian Land Registry, Indian and Northern Affairs Canada, Ottawa.

²⁷² Sproat to the C.C.L.&W., 4th June 1878. G.M. Sproat Letterbook No. 2, pp.146-147. Indian Land Registry, Indian and Northern Affairs Canada, Ottawa.

At Nicola, Sproat believed that C.C.L.&W. Forbes Vernon had left him "full written authorization" for him to settle all matters as best he could.²⁷³ It is apparent from his later communications that Sproat assumed that his authority extended beyond the specific problem involving one settler referred to by Vernon, for much of Sproat's time was spent settling disputes between other settlers and Natives. At one site near Nicola Lake, Sproat established a "special temporary reserve," the final establishment of which was dependent upon the Native people's cultivation of lands already in their possession. Yet Sproat was not sure of his powers in dealing with settlers. In July 1878, he requested from the C.C.L.&W. a formal ruling regarding his authority to set aside Commonages:

The plan of laying off grazing Reserves to some extent, in common [underlined in original] for both white settlers and Indians is in my judgement likely to be mutually beneficial and satisfactory in some parts of the country, but I am not clear if this is within my power though doubtless it is within the spirit of my instructions.

Will you oblige me by stating, as soon as you can, whether it is understood by the Prov. Gov. that I have the power of making common [underlined in original] as well as absolute reserves, on terms varying with the circumstances of each case.²⁷⁴

²⁷³ G.M. Sproat to E. Mohun, 2nd June 1878. G.M. Sproat Letterbook No.2, p. 140, 19 March 1878 to 28 January 1879. Indian Land Registry, Indian and Northern Affairs Canada, Ottawa; G.M. Sproat to Superintendent General of Indian Affairs, 12th June 1878. G.M. Sproat Letterbook No. 2, pp. 152-154; also found in NAC, RG 10, Vol. 3612, File 3756-17.

²⁷⁴ G.M. Sproat, Nicola River near Cook's Ferry, to the Chief Commissioner of Lands and Works, Victoria, July 17th, 1878. G.M. Sproat Letterbook No. 2, 19 March 1878 - 28 January 1879, page 181. Indian Land Registry, Indian and Northern Affairs Canada, Ottawa.

Without the benefit of a response from the Province, Sproat set aside an 18,553 acre Commonage in the vicinity of Douglas Lake. Like the North and South Okanagan Commonages, Sproat specified an intent for the grazing land to become an Indian Reserve if he did not have the authority to establish a Commonage.²⁷⁵

Commissioner Sproat also reported on his work to Dominion representatives including the Indian Superintendent, and the Deputy and the Superintendent General of Indian Affairs. Mostly, he discussed problems resulting from the apparent lack of cooperation he perceived on the part of the Provincial representatives. Writing to the S.G.I.A. on November 26th, 1878, Sproat stated:

I am very sorry to feel, after two years and a half of the Reserve Comsn work, constrained to say that the indifference and inaction of the prov. Govt. are great difficulties in the way.²⁷⁶

With this same letter, Commissioner Sproat provided a copy of a list of matters requiring the attention of the Provincial Government that he had forwarded to the C.C.L.&W., mentioning the length of time that each issue had been before the government.²⁷⁷

²⁷⁵ In August 1888, the Province passed Order-in-Council 243 approving a recommendation from the C.C.L.&W. that all the Commonages be thrown open to sale. After an investigation by Commissioner O'Reilly, who concluded that the Commonage was not required by the Native people, B.C. Order-in-Council 309, passed August 11th, 1890, cancelled the Douglas Commonage.

²⁷⁶ Sproat to the S.G.I.A., 26th November 1878. G.M. Sproat Letterbook No.2, pp.301-310. Indian Land Registry, Indian and Northern Affairs Canada, Ottawa.

²⁷⁷ A similar letter summarizing "Matters Unattended by the Provincial Government," dated 18th April 1879, was sent from Sproat to the C.C.L.&W., with a copy to the S.G.I.A. G.M.

(continued...)

Meanwhile, Sproat continued allotting reserves throughout Thompson, Shuswap and Okanagan territory. His procedure, at least in the Interior, included observing the desired lands in the presence of the Natives, and preparing detailed "Field Minutes"²⁷⁸ showing the surveyors what was to be done and the reasons for it.²⁷⁹ "Minutes of Decisions" recorded the results of the land allotments. Following the compilation of these documents, the surveyors were instructed to conduct surveys of each reserve and to submit their field notes, sketches and plans. These were then to be sent to both governments.²⁸⁰

The Commissioner was informed in 1879 that only reserves laid out in conformation with the recently-passed *Land Amendment Act* would now be permitted, but that all surveys would be acceptable if conforming to the *Act*. This meant that natural topographical features could not be used as boundaries. Consequently, Sproat revised his "decisions" and his "instructions to surveyors" prior to their leaving for the

(...continued)

Sproat Letterbook No. 3, pp. 171-176. Indian Land Registry, Indian and Northern Affairs Canada, Ottawa.

²⁷⁸ Sproat's Field Minutes describe reserve allotments assigned between June and September 1878 for the following groups, as identified by the Commissioner: Boston Bar; Lytton; Lower Nicola; Nicola River; Nicola-Mameet Reserve; Nicola; Upper Nicola: Nicola and Douglas Lakes. The originals of these Field Minutes are held by the Indian Land Registry, Indian and Northern Affairs Canada, Ottawa. A copy of the Lytton Field Minute can be found on NAC, RG 10, Vol. 3666, File 10,176, pt.2.

²⁷⁹ Sproat to the S.G.I.A., 7th February 1879. G.M. Sproat Letterbook No. 3, pp. 14-15. Indian Land Registry, Indian and Northern Affairs Canada, Ottawa.

²⁸⁰ The *Annual Reports of the Department of Indian Affairs*, from 1879 to 1910 contain reports of the Indian Reserve Commission.

field.²⁸¹

The allotments of Sproat were to be submitted to the C.C.L.&W. and then Gazetted. But in February 1879, Sproat complained to the S.G.I.A. that after two years the public was still not aware of the Commissioner's earlier decisions, as the lands remained ungazetted:

The House of Assembly here has passed a resolution that the Local Government shall gazette the decision of the Reserve Commission. The Government have had decisions for nearly two years in their hands, and have not made them public - I believe they have never themselves looked at them.²⁸²

As Sproat's extended powers related only to the Yale District, he wrote several times to the government asking that he be given the same authority in other districts.²⁸³ On March 19th, 1878 he requested from the C.C.L.&W. to be "furnished with the requisite authority from the Provincial government, so far as they are concerned, for prosecuting the adjustment of the Indian land question in the districts not yet examined."²⁸⁴ At one point he was told that his "powers were ample."²⁸⁵

²⁸¹ Sproat described the process of his work in the Interior in a letter to the S.G.I.A., 27th May 1879. NAC, RG 10, Vol. 3679, File 12,068.

²⁸² Sproat to the S.G.I.A., 25th February 1879. NAC, RG 10, Vol. 3679, File 12,068.

²⁸³ The authority of the Joint Indian Reserve Commission, and that of Mr. Sproat as sole Commissioner, has been scrutinized subsequent to the dissolution of the Commission, and continues to be examined today. Divergent views have been expressed.

²⁸⁴ Sproat to the C.C.L.&W., 17th March 1879. G.M. Sproat Letterbook No. 3, pp. 87-88, Indian Land Registry, Indian and Northern Affairs, Ottawa.

²⁸⁵ Sproat to L. Vankoughnet, D.S.G.I.A., 29th July 1879. G.M. Sproat Letterbook No. 3, pp. (continued...)

Hampered in his work by not receiving replies to questions addressed to the Chief Commissioner of Lands and Works regarding his powers of authority with respect to future work, Sproat made a personal visit to the C.C.L.&W. and left him with a Memorandum dated 26th May, 1879.²⁸⁶ Sproat then submitted to the S.G.I.A. a copy of the reply of the C.C.L.&W., dated the 28th May 1879, and Sproat's response dated the 29th.²⁸⁷ The C.C.L.&W., Sproat noted, did not consider that a Provincial OIC was required to empower Sproat:

I presume he considers that as single Commissioner, succeeding by agreement to the three Commissioners, I have the power which they had by the original agreements between the two govt. contained in the proposal sent by the Sec. of State to the Lt. Governor 15 Decr 1875 and accepted as per letter of the Lt. Governor to the Sec. of State 8 Jany 1876 transmitting a Provincial Order in Council.²⁸⁸

Commissioner Sproat's report on what was to be his final year, 1879, described his work in the Johnstone Strait area among the Mainland Comox (Sliammon, Klahoose, and Homalco), and among the Lekwiltok and other Kwakwala-speaking tribes. Furthermore, his completion of reserve allotments in the Fraser Valley and the environs of Yale meant that Indian land matters along the entire proposed railway route

(...continued)

364-66, Indian Land Registry, Indian and Northern Affairs, Ottawa.

²⁸⁶ Sproat to the S.G.I.A., 28th May, 1878. G.M. Sproat Letterbook No. 3, pp. 243-45, Indian Land Registry, Indian and Northern Affairs, Ottawa.

²⁸⁷ Sproat to the C.C.L.&W., 29th May 1879. G.M. Sproat Letterbook No. 3, p. 242, Indian Land Registry, Indian and Northern Affairs, Ottawa.

²⁸⁸ Sproat to S.G.I.A., 28th May 1879. G.M. Sproat Letterbook No. 3, pp. 243-45, Indian Land Registry, Indian and Northern Affairs, Ottawa.

were now adjusted.²⁸⁹ Sproat's 1879 work was later criticized rigorously by Indian Superintendent I.W. Powell who maintained that there had been no problems on the north end of Vancouver island which required the Commissioner's immediate attention, while conversely, Sproat had neglected the important areas of Cache Creek, Williams Lake and Lillooet. Powell further proposed that many of Sproat's reserves required adjustment, especially since he had allotted some of the coastal ones by examining an Admiralty chart instead of examining the lands "on the spot," as the two governments had agreed upon.²⁹⁰

Throughout 1879 and the first few months of 1880, public pressure had mounted to such an extent against the Indian Reserve Commission, and against Sproat personally, that he was eliminated from any role in directing Indian policy.²⁹¹ The growing discontent with Sproat was shared by Indian Superintendent Powell.

In March 1880, a final rift between Sproat and his colleagues came after Sproat had reported on a meeting held among the Thompson Indians for the purpose of establishing a constitution for the reorganization of their tribal life. Forbes G. Vernon, C.C.L.&W. for the Province, complained in his "Memorandum on Indian Matters in

²⁸⁹ "Summary of Year's Work," submitted by G.M. Sproat, Commissioner, 24th November 1879. *Canada Sessional Paper* (1880):3:141-142.

²⁹⁰ Report of I.W. Powell, Indian Superintendent, 15th November 1880. *Canada Sessional Paper for 1880-1881*. Vol. 8:117-122. Included in Powell's report is a list of reserves allotted, as stated in Sproat's Minutes of Decision, as well as a list of surveys undertaken by Mohun and Jemmett.

²⁹¹ Fisher, *Contact and Conflict*, pp. 198-99. Fisher reviews some of the bitter criticism levelled against Sproat which contributed to his resignation.

B.C." about many of Sproat's actions, including his involvement with these meetings the interior tribes were holding.²⁹² Having received instructions to discourage the Native people in this activity, Sproat, who was vehemently adverse to doing so, submitted his resignation:

Under these circumstances, it seems to me that the only proper course open to me is to cease to act in the laborious and responsible position of Reserve Commissioner.²⁹³

His resignation was accepted by Deputy Superintendent General of Indian Affairs Lawrence Vankoughnet on 31st March 1880.²⁹⁴ Sproat continued to act in the position of Indian Reserve Commissioner until July, 1880, during which time he finalized his Minutes of Decisions and oversaw the production of survey maps and field notes. On July 3rd, 1880, however, D.S.G.I.A. Vankoughnet wrote to Sproat advising him to complete his work by the month's end.²⁹⁵

3.2.3 The O'Reilly Indian Reserve Commission

For a few months following the resignation of Sproat the two governments debated the relative qualifications and merits of individuals being considered to replace

²⁹² "Memorandum Upon Indian Matters in British Columbia," by Forbes G. Vernon, December 1879. NAC, RG 10, Vol. 3705, File 18,019.

²⁹³ Sproat to the S.G.I.A., 3rd March 1880. NAC, RG 10, Vol. 3711, File 19,581.

²⁹⁴ L. Vankoughnet, D.S.G.I.A. to Sproat, 31st March 1880. NAC, RG 10, Vol. 19,581.

²⁹⁵ Vankoughnet to Sproat, 3rd July 1880. NAC, RG 10, Vol. 1022.

the Indian Reserve Commissioner. Among the contenders was Peter O'Reilly, who in addition to being a County Court Judge and Stipendiary Magistrate, was the brother-in-law of Joseph Trutch. O'Reilly was selected.

A draft Order-in-Council was prepared by the Acting Minister of the Interior sometime in July 1880 outlining the proposed mandate of the Commissioner.²⁹⁶ Finally, on July 19th, 1880, Privy Council Order 1334 appointed "Patrick" [sic, Peter] O'Reilly as Indian Reserve Commissioner.²⁹⁷ With respect to O'Reilly's duties, the PCOC embodied a recommendation submitted by Joseph Trutch to Sir John A. Macdonald on 19th May 1880.²⁹⁸ The final PCOC read as follows:

That it consequently became necessary to procure the services of a suitable person to fill the position rendered vacant by Mr. Sproat's resignation; the responsible duties connected with which consist mainly in ascertaining accurately the requirements of the Indian Bands in that Province, to whom lands have not been assigned by the late Commissioner & allotting suitable lands & grazing purposes.

That his Department has recently been advised by the Hon. J.W. Trutch, Confidential Agent at Victoria of the Dominion that after consultation with the Hon. Mr. Walkem, Chief Commr of Lands and Works & Dr. I.W. Powell, Indian Superintendent for British Columbia, they had

²⁹⁶ Acting Minister of the Interior to the Privy Council, July 1880. NAC, RG 10, Vol. 3711, File 19,581.

²⁹⁷ Historians have argued that apart from Peter O'Reilly's affinal relationship to Trutch, the new Commissioner's concern with "the public interest" (referring to the appeasement of settler's demands), was in accord with that of Trutch, himself, and others in the Walkem government. See Fisher, *Contact and Conflict*, pp.198-201.

²⁹⁸ Joseph W. Trutch to Sir John A. Macdonald, 19th May 1880. NAC, RG 10, Vol. 3711, File 19,581.

agreed as to the suitability for the position of Patrick [sic] O'Reilly. . .

That Mr. Trutch suggests that the Reserve Commission instead of being placed, as at present, under the direction of the Indian Superintendent for British Columbia should act on his own discretion in furtherance of the joint suggestions of the Chief Commissioner of Lands and Works representing the Provincial Government, and the Indian Superintendent, representing the Dominion Government, as to the particular points to be visited, and Reserves to be established; and that the action of the Reserve Commissioner should in all cases be subject to confirmation by those Officers; and that failing their agreement any and every question at issue between them should be referred for settlement to the Lieutenant Governor, whose decision shall be final and binding.²⁹⁹

Instructions to O'Reilly drafted by Lawrence Vankoughnet, 9th August 1880,

advised the new Commissioner to:

act in your own discretion upon the joint suggestions of the Hon. the Chief Comr of Lands and Works for British Columbia . . . and Mr. Powell . . . and you should be guided generally by the spirit of the terms of Union between the Dominion and local Governments which contemplated a "liberal policy" being pursued towards the Indians. You should have special regard to the habits, wants and pursuits of the Band, to the amount of territory in the Country frequented by it, as well as to the claims of the White settlers (if any).

You should assure the Indians of the anxious desire of the Government to deal justly and liberally with them in the settlement of their Reserves as well as in all other matters; informing them also that the aim and object of the Government is to assist them to raise themselves in the social and moral scale so as ultimately to enjoy all the privileges and advantages enjoyed by their White fellow subjects.

. . . The Government consider it paramount importance that in the settlement of the land question, nothing should be done to militate against the maintenance of friendly relations between the Government and the Indians, you should therefore interfere as little as possible with any fur trading posts, settlements, clearings, burials places and fishing

²⁹⁹ PCOC 1334, dated 19th July 1880. NAC, RG 10, Vol. 3716, File 22,195.

stations occupied by them and to which they may be specially attached . . . You should in making allotments of lands for Reserves make no attempt to cause any violent or sudden change in the habits of the Indian Band for which you may be setting apart the Reserve land; or to divert the Indians from any legitimate pursuits or occupations which they may be profitably following or engaged in; you should to the contrary encourage them in any branch of industry in which you find them so engaged. . . [underlining in original].³⁰⁰

It was Indian Superintendent Powell's opinion, expressed to the S.G.I.A. on August 23rd, 1880, that the restrictions on O'Reilly's authority were antithetical to a quick and satisfactory resolution of the Indian land allotments. Powell suggested that "the Yale District, which includes Nicola and Okanagan, could not have been settled satisfactorily to this Department upon the plan now arranged." The inference was that Powell considered Sproat's allotments in the Yale District to be final, and that the same extensive powers should be granted to the new Commissioner.³⁰¹

Late in 1880 Peter O'Reilly assumed his role as Indian Reserve Commissioner. A Dominion Order-in-Council (PCOC 532) dated 5th April 1881 corrected O'Reilly's name from Patrick to Peter and confirmed his appointment.

Coincident with the appointment of O'Reilly was the establishment of Indian Agencies in British Columbia, with each district to be administered by an Indian Agent who lived among the Indians and was accessible to them. The Agents were to serve

³⁰⁰ L. Vankoughnet [signature missing] to Peter O'Reilly, Indian Reserve Commissioner, 9th August 1880. NAC, RG 10, Vol. 3716, File 22,195.

³⁰¹ I.W. Powell, Indian Superintendent, to the S.G.I.A., 23rd August 1880. NAC, RG 10, Vol. 3716, File 22,195.

under a single superintendent, responsible to the Minister of the Interior. By an Order-in-Council approved 3rd April 1881, six local Agents were appointed: three for Vancouver Island, and one each for the lower Fraser River, Kamloops and Okanagan.³⁰² Powell was retained as Indian Superintendent.

For the next eighteen years,³⁰³ Peter O'Reilly toured the Province allotting lands where needed, adjusting Sproat's work, and reducing reserves thought to be excessive for the Indians' actual requirements.³⁰⁴ The procedure that O'Reilly was to follow for the approval of reserve assignment was not formalized, although he did establish a customary process. After visiting a Native community, meeting with its representatives and allotting lands, O'Reilly forwarded for approval "Minutes of Decision" to both the Chief Commissioner of Lands and Works, as representative of the Province, and the Indian Superintendent of B.C. as representative of the Dominion. The C.C.L.&W. would then inform O'Reilly whether or not the reserves were acceptable. The Indian Superintendent does not appear to have rejected any of the O'Reilly allotments. Once approved, the reserves could be surveyed. The completed survey plans were then signed by the C.C.L.&W. In the cases where O'Reilly's initial allotments were

³⁰² Cail, *Land, Man and the Law*, p.192. The announcement of the appointment of the Agents was published in the "Report of the Department of Indian Affairs," *Canada Sessional Papers*, 4th Parl., 4th sess., 1882, no.6, p.139. Reports submitted by the Indian Agents were published annually in the "Report of the Department of Indian Affairs," *Canada Sessional Papers*.

³⁰³ O'Reilly's work was suspended temporarily in 1885 due to an injury he sustained prior to leaving for the field. Canada, *Sessional Paper*, 5th Parl., 4th sess., 1886, p.iv.

³⁰⁴ During this time O'Reilly kept daily diaries noting his whereabouts and including a brief mention of his activities. BCARS, Microfilm 12A & 13A.

rejected, he adjusted the reserves in accordance with instructions from the C.C.L.&W. and resubmitted an amended Minute.

During his first year, 1880, Commissioner O'Reilly completed some of the reserve assignments left unfinished by Sproat, such as those around Yale.³⁰⁵ Additionally, he visited the area between Quesnel and Lytton, where profound problems awaited him, since all good land had already been taken up by settlers. In one instance, the Dominion Government purchased several pre-emptions in order to allot a reserve of sufficient size, as throughout the Chilcotin and northern Shuswap areas the situation was the same--the best lands were gone. Moreover, the chiefs alleged that several ancestral settlements were now occupied by non-Indians. O'Reilly marked off graveyards within these pre-emptions but did not attempt to evict the settlers from these settlements, despite their contravention of the *B. C. Land Act*.³⁰⁶

Fisher points out that O'Reilly's procedures "were in marked contrast to the meticulous care with which Sproat worked."³⁰⁷ Fisher characterized O'Reilly's style as "a return to the earlier method of rushing into an area, making a decision with little or

³⁰⁵ A memorandum prepared for the Deputy Minister of Indian Affairs by Sam Bray, dated 13th March 1888, tabulates the reserves established or partly defined by Commissioner Sproat, as well as the number of those lands for Bands that Commissioner O'Reilly revised, either completely or partly. Additionally, Bray provides an indication of the number of reserves approved by the C.C.L.&W. The handwritten manuscript of this tabulation can be found in: Minutes of Decision and Correspondence--O'Reilly, File 29858-4, Vol. 5. Indian Land Registry, Indian and Northern Affairs, Ottawa.

³⁰⁶ O'Reilly to the S.G.I.A., 22nd September 1881. "Report of the Department of Indian Affairs," *Canada Sessional Paper*, 4th parl., 4th sess., no. 6, 1882, pp. 177-195.

³⁰⁷ Fisher, *Contact and Conflict*, pp. 200-1.

no consultation, imposing it on the Indians, and then wondering why they were dissatisfied."³⁰⁸

The early years of O'Reilly's work as Commissioner were relatively uneventful, but by 1884, with the increase in numbers of settlers and the changes in governments, the question of the size of Indian Reserves once again came under review. As noted also by Fisher "at a meeting of the Legislative Assembly on 14th January 1884, a resolution was passed recommending to the Dominion Government that it rearrange Indian Reserves so that unused agricultural or timber lands could be thrown open to settlers."³⁰⁹ Even remote areas of the Province were now in demand. With the completion of the Canadian Pacific Railway in 1886, the white population was growing at an accelerating pace, surpassing, for the first time in B.C., the ever-declining Native population.³¹⁰ Increasingly, words appeared in Provincial correspondence of this

³⁰⁸ The level of O'Reilly's personal consultation with the Native people varied considerably. Prior to O'Reilly's trip to the west coast of Vancouver Island, IRC surveyor A. Green advised Indian Agent Harry Guillod of the Commission's plans, requesting that he supply them with specific information: "We expect you to get all information as to the allotments of land necessary for each tribe of Indians." See Ashdown Green to Indian Agent Harry Guillod, Barclay Sound, May 9th, 1889, found on NAC, RG 10, Vol. 1277, pp. 177-178. As the Commission was accompanied by Guillod, O'Reilly spent only four days among the Nitinat. His report indicates that he actively discouraged the Nitinat from claiming all the lands upon which they had constructed temporary houses, telling them "that it would not be advantageous to them should they be allowed to occupy the lands they wished for, as when this part of the country became more populated they would find themselves constantly in difficulties with their neighbours." Peter O'Reilly, Indian Reserve Commissioner, to Deputy Superintendent General L. Vankoughnet, Ottawa, August 29th, 1890. RG 10, Vol. 1277, pp. 333-334.

³⁰⁹ Fisher, *Contact and Conflict*, p. 200.

³¹⁰ Fisher, *Contact and Conflict*, pp. 201-2.

time, referring to undeveloped Reserve land in a manner denoting displeasure with the Natives' non-White land use: "uncultivated lands," "immense areas of land lying in a wild, waste condition."

The tenure of O'Reilly is now regarded as the period in which reserve allocations followed Provincial Indian policy--driven mostly by the interests of settlers--leaving mass Indian dissatisfaction in their wake.³¹¹

An example of the Province's view on reserve allocations was evident during an interview between O'Reilly and Smithe, Chief Commissioner of Lands and Works, early in 1886. O'Reilly was informed that Smithe's predecessors Walkem and Beavan refused "to sanction the reserves made by Mr. Sproat, on account of their vast extent, an opinion with which he fully concurred in."³¹² As pointed out by Cail and Fisher,³¹³ Smithe's criticism extended occasionally to O'Reilly, himself, such as in the Kootenay district, where the Commissioner was accused of having "over-estimated the

³¹¹ Tennant, *Aboriginal Peoples*, pp. 50-1. Although Tennant argues that reserve reductions were the hallmark of O'Reilly's reserve allocations, he has relied substantially on the work of Fisher, *Contact and Conflict*, pp. 180-211, to support his conclusion. A thorough study focusing on the O'Reilly years remains to be done. Concerning Indian grievances, Tennant (pp.55-67) does present a more detailed description of the Indian delegations visiting Ottawa and Victoria, the increasing number of Native gatherings that were being held at this time for protesting the government's Indian land policy, and the eloquently-stated complaints aired by the Native representatives attending the joint Provincial-Federal North Coast Enquiry of 1887. This public enquiry is mentioned briefly in the work of Cail, *Land, Man and the Law*, p.225. Sixty pages of letters and reports of the enquiry, known as the Planta-Cornwall Commission, were published in the *B. C. Sessional Papers*, 1888.

³¹² Peter O'Reilly, Indian Reserve Commissioner, to the S.G.I.A., 10th May 1886. NAC, RG 10, Vol. 3704, File 17,867.

³¹³ Cail, *Land, Man and the Law*, p.220; Fisher, *Contact and Conflict*, p. 203.

requirements of the Indians and under-estimated those of the whites." Generally, though, O'Reilly's allotments were approved by the Provincial Government, despite the vocal dissatisfaction of the Indians. At one point, Smithe, comparing Peter O'Reilly to the previous Commissioner, stated that O'Reilly showed "a much fairer and more accurate appreciation of the duties and responsibilities of the office."³¹⁴ Ironically, in defence of the Kootenay allotments, which Fisher³¹⁵ characterizes as being illustrative of O'Reilly's "customary clumsiness," O'Reilly wrote to Smithe insisting that the seemingly-large allotments were necessary in light of the Kootenay Indian people's close relationship to the American tribes, who had vast reservations.³¹⁶

Much of O'Reilly's time was spent reviewing earlier allotments and ascertaining if reduction was feasible. One issue that required investigation was the setting aside of "Commonages" by the former Commissioner, G.M. Sproat. This issue was raised by the Provincial Government, who, when asked to establish a new reserve at Westbank for a branch of the Okanagan Indians, took the opportunity to complain about the size of existing Reserves. Being uncertain if the lands were actually needed by the Indians, the Federal Government asked Commissioner O'Reilly to visit the Interior and report back before Canada would agree to any reduction of the Indian Lands. O'Reilly's

³¹⁴ Smithe to O'Reilly, 29th November 1884. B.C. *Sessional Papers*, 1885.

³¹⁵ Fisher, *Contact and Conflict*, p.203.

³¹⁶ O'Reilly to Smithe, 10th December 1884. B.C. *Sessional Papers*, 4th Parl., 3rd sess., 1885, p.xxi, following p.410.

investigation of the Okanagan Commonages in 1888, and later the Nicola (Douglas Lake) Commonage in 1889, resulted in their disallowance. He found their reserves ample, and the grasslands overgrazed.³¹⁷ Amidst protestations from the Native ranchers, the Commonages were opened to pre-emption.

O'Reilly was guided in his allotments by his original instructions to consider the "legitimate pursuits or occupations which they [Native people] may be profitably following or engaged in." It is common for the Commissioner's reports to describe the quality and purpose of his allotments with respect to the activities of the individual Bands for whom he set aside reserves. In the Interior, farming and stock-raising dominated economic endeavours and O'Reilly's allotments reflected this change from traditional subsistence activities. On the Coast, however, where agricultural lands were not as readily available, O'Reilly recognized the aboriginal people's dependence on marine resources, particularly salmon, by assigning fishing reserves and, in the first few years of his appointment, by assigning "an exclusive right to fish" in areas apart from or adjacent to reserves. An extended correspondence between the Department of Indian Affairs and the Department of Fisheries focusing on these latter assignments resulted in O'Reilly's discontinuance of reserving fisheries for *exclusive* use after 1882. None of the fishery allocations forwarded to the Department of Fisheries for approval

³¹⁷ O'Reilly to the S.G.I.A., 5th December 1888, found on NAC, RG 10, Vol. 3704, File 17,867; O'Reilly to the S.G.I.A., 23rd November 1889, found on NAC, RG 10, Vol. 1277, pp. 236-240.

were ratified.³¹⁸

Regardless of the disallowance of exclusivity, fishing Reserves *were* assigned and assurances *were* given to Native people that their fishing rights were protected. These rights were restricted to food fishing by the 1888 fishing regulations which prohibited the Indians' "sale, barter or traffic" in salmon.³¹⁹

By 1891, the seemingly-benevolent attitude expressed in O'Reilly's original instructions, had ceased to exist, and D.S.G.I.A. Lawrence Vankoughnet informed O'Reilly to impress upon the Native people:

the fact that in extending to them the privilege which they at present enjoy, of taking fish for their own use whenever and howsoever they choose, such permission is not to be considered by the Indians as a right, but as a privilege extended to them as an act of grace on the part of the Government which may at any time be withdrawn should it be found that the same is abused, or used for other purposes than those for which it is granted, or in such a manner as to embarrass the action of the Department of Fisheries, and interfere with its Officers in the performance of their duties.³²⁰

With the assistance of the local Indian Agents, O'Reilly continued allotting

³¹⁸ This point is noted in the published (1993) Court of Appeal Judgement of Mr. Justice Hutcheon, *The Queen v. N.T.C. Smokehouse*. CA 011962, Vancouver Registry, where it is stated: "The historical documents filed on behalf of the Canadian National Railway Company, establish beyond question the adamant stand of the Department against such grants. The public was not to be deprived of the right to fish in tidal waters."

³¹⁹ *Canada Gazette*, December 1st, 1888. The 1990 *R. v. Sparrow* case [4 W.W.R. 410 (S.C.C.)] found that Native people have a right to fish for food and ceremonial purposes, and that Canada has a fiduciary duty to protect the Native people's access to the fishery as a first priority among users.

³²⁰ Lawrence Vankoughnet, D.S.G.I.A., to Peter O'Reilly, 2nd September 1891. NAC, RG 10, Vol. 11,011.

reserves throughout British Columbia. After 1890, he was aided in his work by A.W. Vowell, the new Indian Superintendent in B.C., following the resignation of I.W. Powell.³²¹ Yet the process of assigning reserves was prolonged. Cail observes that by 1885, 621 reserves had been allotted, but of these, only 477 had been surveyed, while only 239 had been approved.³²² By 1897, the majority of the reserves had been granted, but the funds provided by the Dominion Government for surveying these lands had been exhausted for several years. As a result, the survey crews were discharged with work left undone. At that time, a total of 718,568 acres of land had been allotted as Indian Reserve, and as calculated by Titley, with an Indian population of 23,620, the acreage per capita amounted to 30.42 acres.³²³ The distribution and quality of these lands was extremely uneven.

Peter O'Reilly continued as Indian Reserve Commissioner until his retirement in 1898.³²⁴ He was succeeded by Indian Superintendent Vowell, who assumed the position as Indian Reserve Commissioner in addition to his regular duties.³²⁵

³²¹ Titley, *A Narrow Vision*, p.137.

³²² Cail, *Land, Man and the Law*, p. 224. Cail's figures come from the B.C. *Sessional Paper*, 4th Parl., 3rd sess., 1885, pp. 402-412.

³²³ Titley, *A Narrow Vision*, p.137.

³²⁴ Pylypchuk, "Organizational History," p.33.

³²⁵ The recommendation that A.W. Vowell assume the position of Indian Reserve Commissioner came from a memorandum prepared by J.A. McKenna and submitted to the Minister of the Interior, 10th December 1897. This same Memorandum reviews the history of the Commission and its current state. NAC, RG 10, Vol. 3716, File 22,195.

3.2.4 The Vowell Indian Reserve Commission

Little remained to be done when A.W. Vowell became Indian Reserve Commissioner in 1898. Most reserves had been allotted, although Vowell occasionally went into the field to assign additional areas as fisheries, hay meadows or gardens, and to resolve land disputes between neighbouring Bands. Not all of Vowell's suggestions concerning reserve allotments were approved. For example, at the request of the Kamloops Indians, Vowell recommended the reservation of a 40-acre ancestral fishing and camping site at Trout Lake, only to be told that the Department of the Interior objected to the reserve on the grounds that it was required for a permanent timber reserve for protecting the water supply.³²⁶

Throughout the period that Vowell acted as Indian Reserve Commissioner, discussions between the Provincial and Federal Governments still centred on the readjustment of Indian lands. Of particular concern was the issue of the "reversionary interest."

The "reversionary right" stemmed from clause 5 of the August 18th, 1875 Order-in-Council that had established the three-member Joint Indian Reserve Commission, which itself was based largely on William Duncan's recommendations. As historian Cail explains, the reversionary interest:

³²⁶ J.D. McLean, Secretary, Department of the Interior, to P.G. Keyes, Secretary, Department of the Interior, 19th August 1904. Keyes to J.D. McLean, 3rd October 1904; A.W. Vowell, I.R.C., to J.D. McLean, 15th December 1904; McLean to Keyes, 26th January 1905. Minutes of Decision - Vowell, File No. 29858-8, Vol. 9. Indian Land Registry. Indian and Northern Affairs Canada, Ottawa.

established a joint ownership which made it impossible for the Dominion to dispose of any agricultural or timber lands reserved but not required by the Indians without the concurrence of the province. As a result, no excess Indian lands had ever been sold in British Columbia.³²⁷

It was the position of British Columbia that the Provincial Crown owned the land while the Indians had a right of use to Crown lands "reserved" for them for so long as they made use or benefit of the land.³²⁸ The Federal Government took the position that they had the right to sell excess land and use the proceeds for the administration of Indian Affairs. The result was that Canada found it impossible to obtain surrenders, as the Bands would receive no benefit.

In 1901, Premier James Dunsmuir of British Columbia submitted a request to Canada for the negotiation of "Better Terms," [of Union] including a motion that reserves be re-assessed with respect to their size.³²⁹ By April of 1901 discussions had escalated to a point where the Province recommended the formation of yet another Commission to resolve the impasse. Clifford Sifton, Minister of the Interior in the Laurier government, responded to a letter from Premier Dunsmuir, agreeing that:

while I consider the position of both governments in respect to lands set apart for Indians rather unsatisfactory, I fear that the remedy suggested would be slow and expensive, while lacking the most desirable element

³²⁷ Cail, *Land, Man, and the Law*, p.230.

³²⁸ David Borthwick, "The Provincial Reversionary Interest in Indian Reserves: A Unique Proposition" (1975). Copy held by Specific Claims West Reference Library, Indian and Northern Affairs, Vancouver.

³²⁹ Dunsmuir to Sifton, 2nd February 1901. B.C. *Sessional Papers*, 9th Parl., 2d sess., 1901, p.581-2.

of finality. The Commission could scarcely undertake to deduct from or add to Indian reserves without making an examination, and the time that has been consumed in the allotting of the reserves under the agreement, a work which has not yet been completed, will give a fair measure of the time it would take the proposed Commission to complete its work; and at the end of its labors, it might be shown that there was as good reason for its beginning all over again as there was for its starting.

...

When the question is taken up, it seems to me it would be better to take it up with a view to getting rid of the reversionary right by an agreement under which such lands as might be agreed upon as necessary to meet the requirements of the Indians should be held by the Dominion for them in the same manner as Indian reserves are held in other Provinces.

The reversionary right, which is an impediment to the administration of Indian Affairs in British Columbia, was not created by the motion of the Province. It is clear that the Provincial authorities, when negotiations were entered into for the setting aside of reserves for Indians, were prepared to set apart what they considered a reasonable acreage of land for each band without any intimation of a reversion. It was on the suggestion of Mr. Duncan, a missionary, that the unsatisfactory arrangement out of which the reversionary right grew was made.³³⁰

The reversionary interest issue intensified in 1905 with respect to the Tsimshian Reserve on Kaien Island in Prince Rupert Harbour. This situation has been described thoroughly by Cail³³¹ and by Shankel.³³² They report that during the previous year, the Province had been asked by the Grand Trunk Pacific Railway to sell a portion of the Reserve for railway purposes. The Province advised them that the Federal Government

³³⁰ Clifford Sifton, Minister of the Interior, to James Dunsmuir, Premier of British Columbia, 2nd April 1901. BCARS, GR 441, Vol. 16, File 5, Item 130/01.

³³¹ Cail, *Land, Man and the Law*, pp. 228-230.

³³² Shankel, "The Development of Indian Policy," pp. 214-221.

would have to be willing to remove the Indians from the reserve before any action could be taken. However, when this matter was put before the Dominion Government, Canada approved a PCOC dated 2nd April 1906 requesting that the Province waive their reversionary interest in these lands. B.C. refused as it would receive no benefit from the sale. The Province, citing the 10th November 1875 agreement that "any land taken off a Reserve shall revert to the Province," continued to take an uncompromising stance. Moreover, Victoria was of the view that B.C. retained the reversionary right to reserves laid out within the Railway Belt prior to the creation of the Belt in 1884.³³³ Believing that the reversion to the Province was to occur only in those cases where a Band became extinct, and that Canada held all interest to lands within the Railway Belt, the Federal government turned to the Department of Justice for a legal opinion.

Before the legal opinion had been obtained, Victoria took further action. On February 28th 1907, the Executive Council approved a Minute (BCOC 125/1907) in which B.C. strongly asserted its right to reclaim lands that were in excess of what had been agreed to by the Province and Canada as necessary for the use and benefit of the Indians. The report asserts:

It is further abundantly clear that the title of the Indians in these reserves is simply a right of use and occupation, and that the Dominion Government holds no proprietary rights on their reserves (and this letter was admitted by the Minister of the Interior in debate in the House of Commons on 25th of January last) and that when any Indian Band or Nation abandons or surrenders its rights or title to reserve, the entire beneficial interest in such reserve or portion of a reserve, immediately

³³³ Titley, *A Narrow Vision*, p.148.

becomes vested in the Province, freed from incumbrances of any kind. The cases of *St. Catherine's Milling and Lumber Company v. the Queen*, 14 App. Cas, 46 and *Ontario Mining Company v. Seybold*, 1903, App. Cas, 73 and certain dicta in *Attorney General of Canada v. Attorney General of Province*, 1898, A.C. 700 it is submitted settle this conclusively.³³⁴

Recommendation was also made that:

wherever any Indian Reserve, or portion of a reserve, has been leased, surrendered, granted or transferred, immediate steps be taken to assert and establish the right and title of the Province to such reserve or portion of reserve. And further that the Dominion Government be asked to confer with this Government on the question of Indian Reserves generally and to readjust the same, and arrange for the reversion to the Province of all surplus lands over and above what are reasonably sufficient for the use of the Indians.³³⁵

Around April of 1907 the Province approved a Minute of the Executive Council calling for the return to the Province of 175,200 acres of land which in their opinion was in excess of what was sufficient for the Native residents of B.C.³³⁶

Subsequent to both Ottawa's and Victoria's review of the reversionary issue and the impasse concerning reserve allocation, a letter was sent from A.B. Aylesworth, Minister of Justice for Canada, to A.J. Bowser, K.C., Attorney General for B.C. In this letter, Aylesworth acknowledged receipt of a letter of April 1st, 1908 with respect to a proposed reference to the Supreme Court of British Columbia for the decision of

³³⁴ BCOC 125/1907. Copy of a Report of a Committee of the Honorable Executive Council, 28th February 1907. BCARS, GR 441, Vol. 149, f.2.

³³⁵ *Ibid.*

³³⁶ Minute of the Executive Council, Government of B.C. BCARS, GR 441, Box 27, File 4.

questions affecting Indian Reserves in British Columbia. Aylesworth, however, recommended that the decision be put to the Supreme Court of Canada instead. In this same communication, the Minister recommended suspension of any dealings with reserves pending the settlement of the dispute.³³⁷ This was in accordance with a decision of the Executive Council of B.C. and relayed to Ottawa in a letter from Commissioner Vowell to the D.S.G.I.A. dated 3rd April 1908, in which he quoted the C.C.L.&W., R.G. Tatlow, as stating:

owing to the unsatisfactory state of affairs between the Dominion and the Province in relation to the question of Indian Reserves, the Executive considers it inadvisable in the meantime to make further allotments.³³⁸

At this point, the Province would consider only sales or land exchanges. Although the notice effectively ended Vowell's role as Indian Reserve Commissioner, he stayed on with the department as Indian Superintendent until his retirement in 1911. The work of the Indian Reserve Commissions, that had over the previous four decades allotted almost 1,000 reserves, was now put in abeyance until the question of title had been decided.³³⁹

Without the involvement of Canada, the Executive Council of the Province, by

³³⁷ Letter from A.B. Aylesworth, Minister of Justice, Ottawa, to the Honourable, A.J. Bowser, K.C., Attorney General, Victoria, B.C., April 1908. BCARS, GR 429, Box 15, f.4, Item 2891/08. As both Ottawa and Victoria contemplated reverting to the Courts to have this matter resolved, the McBride Government in B.C. refused to co-operate in the laying out of any new reserves.

³³⁸ This decision of B.C.'s Executive Council was announced in a letter from Vowell to the D.S.G.I.A., dated 3rd April 1908. See also Titley, *A Narrow Vision*, p.139.

³³⁹ *Annual Reports*, 1908, p.273; 1909, p.265-66; 1910, p.252.

BCOC 511/1908, prepared a list of questions concerning aboriginal title which they referred to the Supreme Court of B.C. for a ruling. But as Shankel³⁴⁰ explains, the absence of the Dominion Government in the proceedings meant that when the question came before the Court, the case was not recognized, inasmuch as there was no agreement between the two governments as to what questions affecting Indian lands *could* be referred to Court. It had first to be decided what rights the Indians possessed before it could be determined how much land they could hold.

An additional and final step ending the Indian Reserve Commission was the eventual agreement of the two governments to proceed to the Supreme Court of Canada for resolution of the stalemate.³⁴¹ For the next several years, the Federal and Provincial Governments debated the nature of the questions to be resolved, deciding finally upon a list of ten questions.³⁴² Also entering the debate at this time was a non-Indian lobbying group known as "the Friends of the Indians," led by lawyer A.E. O'Meara. This organization desired a direct reference to the Judicial Committee of the Privy Council on aboriginal title.³⁴³

³⁴⁰ Shankel, "The Development of Indian Policy," p.220.

³⁴¹ British Columbia initially agreed only to take the issue before the Full Court of the Province, with a right of appeal to the Judicial Committee of the Privy Council. See Shankel, *The Development of Indian Policy*, p.254. The Province proceeded without the Federal government, but consequently accomplished nothing.

³⁴² E.L. Newcombe, Deputy Minister of Justice, to J.D. McLean, Secretary, Depart. of Indian Affairs, 4th June 1910. NAC, RG 10, Vol. 7780, File 27150-3-2.

³⁴³ Titley, *A Narrow Vision*, p.139.



When Premier McBride of British Columbia refused to allow consideration of some of the ten questions drafted by his Chief Law Officer, his objections focused on his government's determination that "there is no issue with regard to Indian title" and "therefore no such question to be adjudicated upon by the Courts."³⁴⁴ By May 1911, the Federal government, failing to conclude an agreement with the Province with respect to the determination of the questions, decided to proceed to the Exchequer Court of Canada in the hope of finding resolution.³⁴⁵ But as reported by Titley, "the dispute between the two governments raged until after the federal election of 1911," after which the Conservative government of Robert Borden took over negotiations and a more cordial relationship developed between the two governments.³⁴⁶

³⁴⁴ Premier Richard McBride to Bishop Perrin, 23rd December 1910. NAC, RG 10, Vol. 7780, File 27150-3-2.

³⁴⁵ Shankel, "The Development of Indian Policy," pp. 221-222. NAC, RG 10, Vol. 7780, File 27150-3-2.

³⁴⁶ Titley, *A Narrow Vision*, p.139.