

BRITISH COLUMBIA INDIAN TREATIES IN HISTORICAL PERSPECTIVE

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for
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Department of Indian and Northern Affairs
1981

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THE HUDSON'S BAY COMPANY CONTEXT: HISTORICAL BACKGROUND

The prelude to the Vancouver Island treaties dates from 1821, when the Hudson's Bay Company received an exclusive licence (renewable in 21 years) to trade with the Indians in all unsettled parts of British North America. In 1838, the Company's mandate was renewed for another 21 years to include Indians west of Rupert's Land and again in 1849 to include Vancouver Island. To facilitate trade with the Indians, several posts were formed by the Company, including Fort Vancouver (1824), Fort Langley (1827), Fort Simpson (1831), Fort McLoughlin (1833), Fort Durham (1840), Fort Victoria (1843) and Fort Rupert (1849), the latter two posts being located on Vancouver Island.

The settlement and colonization of the Hudson's Bay Company's fur trade posts on Vancouver Island, while gradual, precipitated treaty negotiations. The stimulus to colonization was provided by the aggressive territorial ambitions of the United States. The land west of the Rockies, including Vancouver Island and the Oregon territory, was owned jointly by the British and Americans (since the Anglo-American Convention of 1818): therefore, the expansionist tendencies of the U.S. emanated from the prolonged negotiations between the two countries on the territorial claims to the shared areas. In 1844, the influx of 1,400 new settlers to Oregon and the subsequent formation of a provisional government created an alarming situation for the Hudson's Bay Company. Sir John Pelly, governor of the Company, wrote to Lord Palmerston at the Foreign Office that "should Britain lose Puget Sound the Americans would gain ... the command of the North Pacific and in a certain degree that of the China Sea, objects of the greatest commercial and political importance to Great Britain."¹ Furthermore, in 1844 James Polk was elected president on the slogan "Fifty-four forty or fight." This latitude would have extended American territory as far north on the coast as the Alaskan panhandle. By the Oregon Treaty of June 1846 (Treaty of Washington), the forty-ninth parallel was accepted as the international boundary from the Rockies to the middle of the channel between Vancouver Island and the mainland.

After the Oregon boundary settlement of 1846, the Colonial Office had to consider the

surest method of establishing a British colony on Vancouver Island to prevent further American expansion. The Colonial Office was fully aware of the serious implications of the Oregon boundary dispute, as evidenced by Lord Grey, Colonial Secretary, who noted on 16 September 1846:

Looking to the encroaching spirit of the U.S. I think it is of importance to strengthen the British hold upon the territory now assigned to us by encouraging the settlement upon it of British subjects.²

While the Oregon boundary dispute provided a stimulus to colonization, it also forced the Hudson's Bay Company to shift its main depot, Fort Vancouver, from its site on the Columbia River to Fort Victoria on the southeastern tip of Vancouver Island. Chief factor Douglas chose "the Port of Comosak," his version of the Indian name Camosun, because of its security and for a "tract of clear land sufficiently extensive for the tillage and pasture of a large agricultural establishment."³ George Simpson, governor of the Hudson's Bay Company's northern department from 1826 to 1860, reported the transfer to colonial authorities, who indicated that the fur trade on the lower Columbia River was not as vital to Hudson's Bay Company trade as it had previously been.⁴ The transfer proved to be significant as many of the Songhees, with whom Douglas later negotiated treaty, moved to Fort Victoria and "considered themselves specifically attached to the Establishment."⁵

Colonization of Vancouver Island in general, and the Fort Victoria area in particular, was first introduced by the Colonial Secretary, Lord Grey. As he pointed out, however, the main barrier to colonization, and ultimately to the introduction of representative government, was the presence of numerous Indians.⁶ Governor Pelly enquired whether the Company's possession of lands around Fort Victoria, which it occupied before the ratification of the Oregon Treaty, would be confirmed. In response, Grey suggested to his subordinates in the Colonial Office that the Company might be used as an instrument of colonization. Grey believed that the Company had the necessary financial resources and possessed extensive experience in "civilizing" the local Indians.⁷ Pelly

informed Grey on 24 October 1846 that the colonization of Vancouver Island could best be undertaken by the Company, either through a direct grant or otherwise:

It would be a superfluous task to enter into detail of the reasons which render colonization of Vancouver Island an object of great importance. I shall at present merely submit to Earl Grey's consideration whether that object, embracing as I trust it will the conversion to Christianity and civilization of the native population, might not be most readily and effectively accomplished through the instrumentality of the Hudson's Bay Company either by a grant of the Island on terms to be hereafter agreed upon, or in some other way in which the influence and resources of the Company might be made subservient to that end.⁸

One of the main problems confronting colonial authorities and Company officials, even before the rights of colonization were obtained, was the threat of Indian warfare. Indeed, isolated skirmishes before 1849 probably contributed to the treaty activity which initially occurred in the Fort Victoria area between the Songhees and Klallams in 1850. The Songhees of the Fort Victoria area and the Cowichan and Nanaimo tribes, who inhabited the area immediately north of Fort Victoria, clashed occasionally with the more northerly tribes, including the Kwakiutl and the Haidas. Furthermore, the Sooke tribe, a "warlike and hardy race" located west of Fort Victoria, was nearly annihilated in 1848 when the Cowichans, Klallams and Nitinats attacked them.⁹ The Royal Navy, however, provided the "power to compel" on the northwest coast and its presence, to a large extent, accounted for the comparatively peaceful nature of Indian-European relations.¹⁰

On 13 January 1849, the Hudson's Bay Company assumed responsibility for the colonization of Vancouver Island. No break would be made with established colonial policy. In recent experiments in New Zealand and Australia, private organizations had colonized new areas with the proviso that the Colonial Office retained absolute control while being spared financial responsibility.¹¹ The royal grant stated that Company officials should exercise all the powers necessary for colonization, the encouragement of trade and commerce, and the protection and welfare of the natives of Vancouver

Island.¹² Furthermore, since the colony had no assembly at this time, the matter of native control and welfare came under the scrutiny of the colonial governor and the Company. Finally, if the Hudson's Bay Company failed within five years (January 1854) to colonize Vancouver Island effectively, the British government could revoke the grant.

Notes

1. J. Arthur Lower, *Canada on the Pacific Rim* (Toronto, 1975), p. 56; Barry M. Gough, *The Royal Navy and the Northwest Coast of North America 1810-1914: A Study of British Maritime Ascendancy* (Vancouver, 1971), p. 65.
2. John S. Galbraith, *The Hudson's Bay Company As An Imperial Factor 1821-1869*. (Toronto, 1957), p. 283; Note by Grey, 16 September 1846, Colonial Office papers, (C.O.) 305/1. Public Record Office, London.
3. A.S. Morton, *A History of the Canadian West to 1870-71* (New York, 1937), p. 730.
4. Frederick Merk, *History of the Westward Movement* (New York, 1978), p. 327.
5. Robin Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890* (Vancouver, 1977), p. 29.
6. Earl Grey, *The Colonial Policy of Lord John Russell's Administration*, Vol. 1 (London, 1853), p. 27.
7. Barry M. Gough, "Official Uses of Violence Against Northwest Coast Indians in Colonial British Columbia," in *Historical Essays in Honor of Keith A. Murray*, ed. James W. Scott, (Bellingham, 1978), p. 45.
8. *Ibid.*, Sir John Pelly to Earl Grey, 24 October 1846, Colonial Office (C.O.) 305/1, Public Record Office, London.
9. John T. Walbran, *The British Columbia Coast Names 1592-1906 To Which Are Added A Few Names In Adjacent United States Territory: Their Origin and History* (Ottawa, 1909), p. 465.
10. Barry M. Gough, "The Power To Compel: White Indian Conflict in British Columbia During the Colonial Period, 1849-1871," Paper presented at Canadian Historical Association, June 1972, pp. 1-24.
11. Margaret A. Ormsby, *British Columbia: A History* (Vancouver, 1958), pp. 97-98.
12. Royal Grant, 13 January 1849, in F.W. Howay and E.O.S. Scholefield, *British Columbia from the Earliest Times to the Present*, Vol. 1 (Toronto, 1914), p. 500.

THE IMPERIAL FACTOR: ROLE OF THE HUDSON'S BAY COMPANY

The experience of colonizing Vancouver Island was somewhat unique, and policy guidelines formulated for such colonies as New South Wales, Cape Colony and the West Indies provided few precedents for administering Indian policy. Herman Merivale, permanent undersecretary from 1847 to 1860, suggested that the Colonial Office's power to direct Indian policy on Vancouver Island was limited:

To give orders from hence as to the conduct to be observed towards Indians in Vancouver Island seems rather unlikely to be of much service. If the colony is to maintain itself, as was the condition of its foundation, the local government much needs to be left very much to its discretion as to dealings with the natives in the immediate neighbourhood of the settled parts, although distant excursions against them may be discouraged.¹

In the Pacific northwest, therefore, Merivale relied heavily on the Company's chief factor, James Douglas, to develop British Indian policy, particularly since the Colonial Office possessed scant knowledge of west coast tribes.²

Before Vancouver Island could be opened for settlement as a Crown colony, the British practice of extinguishing the proprietary rights of the native people would have to be resolved. By 1850, the treaty concept had evolved to the point where it was considered proper to pay compensation and set aside reserve lands for the Indians' exclusive use, in order that they would not be overrun by advancing settlement. This task fell to James Douglas, chief factor of the Company and also, after September 1851, governor of Vancouver Island. As agent of the designated instrument of imperial policy, Douglas was the local representative of the Crown.³

In anticipation of increased settlement and to avoid conflict with the natives around Fort Victoria, Douglas initiated the policy of purchasing Indian title to land and in 1849 wrote to the Hudson's Bay Company in England to arrange for such purchases.⁴ In reply, the

Company cited the report of a committee of the House of Commons set up to examine the claims of the New Zealand Company. This report argued that aborigines had only “qualified Dominion” over their country.⁵ Consequently, much was left to Douglas’s discretion and knowledge of the local situation. The Company, moreover, authorized him to confirm the Indians in the possession of only those lands that they had cultivated or built houses on by 1846 when they came under the sovereignty of Great Britain. All other land was to be regarded as waste and therefore available for colonization.⁶

Archibald Barclay, Secretary to the Hudson’s Bay Company, in a despatch of December 1849, stated further the principles which Douglas was authorized to adopt in treating with the Indian tribes:

Where any annual tribute had been paid by the natives to the chiefs, a fair compensation for such payment is to be allowed. In other Colonies the scale of compensation has not been uniform, as there are circumstances peculiar to each which prevented them all from being placed on the same footing, but the average rate may be stated £1 per head of the tribe for the interest of the Chiefs, paid on the signing of Treaty. The principle here laid down is that which the Governor and Committee authorize you to adopt in treating with the natives of Vancouver Island but the extent to which it is to be acted upon must be left to your own discretion and will depend upon the character of the tribes and other circumstances. The natives will be confirmed in the possession of their lands as long as they occupy and cultivate them themselves, but will not be allowed to sell or dispose of them to any private person, the right to the entire soil having been granted to the Company by the Crown. The right of fishing and hunting will be continued to them and when their lands are registered, and they conform to same conditions with which other settlers are required to comply, they will enjoy the same rights of privileges.⁷

During the 1830's and 1840's British colonial policy espoused the theory that metropolitan control of Indian-European relations in British North America was essential for maintaining law and order, although the British Colonial Office attempted to tailor its

Indian policies to each region. In the Pacific northwest, the natives differed from other regions of British North America and also outnumbered their non-native counterparts. Since the imperial authorities knew little about the natives of Vancouver Island, Indian policy was largely dictated by the Hudson's Bay Company in general and by the laissez-faire policy of Chief Factor James Douglas in particular. Furthermore, in 1849, British administrators had developed a policy which recognized aboriginal possession and therefore the extinguishment of Indian land title had to precede actual settlement. The Vancouver Island treaties exemplified this policy.

Notes

1. David McNab, " 'Vacillation of Purpose': Indian Policies of the Colonial Office in British North America in the Mid-Nineteenth Century," Paper presented to the Canadian Historical Association, University of Western Ontario, June, 1978, pp. 20-21; C.O. 305/3 ff. 108.
2. *Ibid.*, p. 18.
3. Wilson Duff, "The Fort Victoria Treaties," in *B.C. Studies*, 3 (Fall 1969): 6.
4. Douglas to Barclay, 3 September 1849, Hudson's Bay Company Archives (HBCA), London and Public Archives of Canada, A-11/72, Fort Victoria, Correspondence Inward.
5. Fisher, *Contact and Conflict*, p. 66.
6. Barclay to Douglas, December 1849, HBCA and PAC, A-11/72, Fort Victoria, Correspondence Inward.
7. *Ibid.*

TREATY ACTIVITY: NEGOTIATIONS, AGREEMENTS

As chief factor of the Hudson's Bay Company at Fort Victoria (1849-1858) and as governor of Vancouver Island (1851-1864), James Douglas negotiated a series of "treaties" by which the Indians of southeastern Vancouver Island surrendered their land "entirely and forever" in return for a few blankets and certain reserve lands. At the same time, they retained their hunting and fishing rights on unoccupied lands.¹ This section analyzes the provisions of the fourteen "purchases" or "deeds of conveyance," as Douglas called them, negotiated with the Coast Salish natives, including the Songhees, Sooke, Saanich, Fort Rupert and Nanaimo tribes. The Vancouver Island treaties were rather simple agreements which provided for an outright sale of land in return for a lump sum payment.² The total area ceded, about one-fortieth of Vancouver Island, extended from "Victoria to a few miles beyond Sooke Harbour, and from Victoria to North Saanich, also the lands around Nanaimo."³

Before the Oregon boundary treaty was signed in 1846, Douglas, as chief factor of the Company, had marked out twenty square miles of the most arable land near Fort Victoria for settlement. In addition, the Puget's Sound Agricultural Company, a subsidiary of the Hudson's Bay Company composed of senior Company shareholders in England and chief factors in the Territories, marked out 15,000 to 20,000 acres between Esquimalt and Fort Victoria, from which land could be purchased.⁴ No settler could buy land within this area without consent of the Company. Eden Colville, acting governor of Rupert's Land in the absence of Sir George Simpson, suggested on 22 November 1849 that the reserves of the two aforementioned companies should be open to British subjects at a reasonable price:

I have had several conversations with Mr. Douglas with respect to the settlement of Vancouver's Island, a matter in which he takes great interest, and I agree with him in thinking that it would be advisable that he should be authorized to open a Land office in the Island and dispose of lots to British subjects making applications for the same, including such portions of the reserves of the HB and

Puget Sound Companies, as he may consider unnecessary for the carrying on the business of the respective concerns. He might also proceed forthwith to lay out lots in eligible situations on the said reserves or elsewhere, in the disposal of which I think he should not be bound down by any rigid instructions as to price etc., inasmuch as it is frequently desirable to encourage in the first instance, by placing a moderate or even a nominal price on these lots, the establishment of mechanics and others, whose presence will give an enhanced value to the lots in the vicinity.⁵

Furthermore, in 1850 Douglas was instructed by colonial officials to allocate £4,000 for colonization purposes and to purchase Indian titles to land. Experience in other British colonies had revealed that competition for land between settlers and natives produced conflict. Although settlers arrived slowly, they increasingly influenced colonial affairs in general and Indian policy in particular. They were able to gain control of the colonial political structure and to direct Indian policies, usually from an antagonistic stance.

Douglas's first step to facilitate settlement and to avoid conflict with the Indians was to pursue Archibald Barclay's (Secretary of Hudson's Bay Company) instructions of December 1849 to negotiate treaties with the Vancouver Island tribes. He summoned, therefore, "the chiefs and influential men" of the Songhees, Klannam and Sooke tribes of the Victoria District to a conference. After considerable discussion, an arrangement was made that their lands should be sold to the Company "with the exception of village sites and enclosed fields."⁶ Under these "Deeds of conveyance," the Songhees, Klannam and Sooke tribes surrendered their lands in return for a few blankets, small reserves and the freedom "to hunt over the unoccupied lands, and to carry on their fisheries" as before.⁷ Douglas favoured annuity payments so that the Indians would derive a continuing benefit, but apparently the Indian chiefs preferred a lump sum.⁸ In the final analysis, the Songhees sold their title to the District of Victoria for 371 blankets and a cap.⁹

In negotiating the treaties of 1850, Douglas followed the prevailing policies of the

imperial government. Implicit was the notion that the natives exercised some form of ownership over the land to be acquired by the colonial power, a view that was shared by Douglas and the Colonial Office:

In the case of the Indians of Vancouver Island and British Columbia, Her Majesty's Government earnestly wish that when the advancing requirements of colonization press upon lands occupied by members of that race, measures of liberality and justice may be adopted for compensating them for the surrender of the territory which they have been taught to regard as their own.¹⁰

Much of the groundwork, moreover, for future treaty-making procedures in Canada was being set by the Robinson-Superior and Robinson-Huron Treaties of 1850.¹¹ The Robinson Treaties (so named after the Crown's representative, the Honourable William Benjamin Robinson) did not establish a formula for future treaty activities but provided a tidier method.¹² The principal features included provision for annuities, Indian reserves, and freedom for the Indians to hunt and fish on unoccupied Crown lands. These features (except annuities provision) were somewhat similar to those included in the Vancouver Island treaties.

With the signing of the 1850 treaties, Douglas, as chief factor of the Hudson's Bay Company, had cleared the Indian title to "the seacoast and interior from Gordon Head on the Arro Strait to point Gonzales and also from thence running west along the Strait de Fuca, to Point Sheringham a distance of about 44 miles, which includes the Hudson's Bay and Puget Sound Company reserves."¹³ The Cowichans and other Indian tribes were also anxious to sell their lands, but Douglas declined their proposals because he has not prepared to acquire more land at that time.¹⁴ Furthermore, he maintained that possession should be taken immediately after the purchase, as the arrangements might be "forgotten and further compensations claimed by the Natives."¹⁵ Douglas, in obtaining the land surrenders, had acquired valuable land for the Hudson's Bay Company and the Puget's Sound Agricultural Company, which they could either open for settlement or hold as reserves.

Anthropologist Wilson Duff has suggested that the nine Songhee, Klannam and Sooke treaties of 1850 contained a number of “ethnographic absurdities”¹⁶ which resulted in irregularities. The working assumptions on which these treaties were based included the fact that “families or tribes” were the corporate groups that owned the lands and that each of them owned a single tract whose boundaries could be defined. The assumption, however, that each group owned just a single tract of land failed to take account of shared areas. The Chekonein (Songhee tribe) for example, were designated as the owners of Cadboro Bay, and therefore, the Chicowitch (Songhee tribe), who used the land for the same purposes and to the same degree, could not be considered the owners too. Duff also suggested that in establishing treaty boundaries, “Douglas was evidently content to accept the situation as it existed in 1850 rather than try to reconstruct what it had been originally.”¹⁷ Douglas, therefore, failed to account for those areas which natives occupied before 1850 and were still using. Consequently, there were some distortions of ethnographic facts that resulted in anomalies in the descriptions of treaty boundaries.

The treaties of 1850 also raised questions concerning Douglas’s use of Company money. Governor Blanshard, for instance, quarrelled with Douglas on many occasions regarding Indian matters, particularly Indian expenditures. He indicated to Lord Grey on 12 February 1851 that according to the Company’s financial accounts, Douglas had expended considerable amounts to extinguish Indian title “to the land about Victoria and Sooke Harbour.”¹⁸ Blanshard charged that the price demanded of the Indians for blankets was three times the customary price. At the same time, Douglas stated that he did not expect the Company’s Charter of Grant to be renewed at the expiration of the five years (January 1854) and that the Company would then be entitled to a reimbursement of their expenditure.¹⁹ Since Blanshard resigned as governor shortly afterward, the matter was dismissed. Blanshard’s clash with Douglas clearly indicated that even in the early Indian Treaties, Douglas was restricted financially. While Douglas concluded five more treaties with the Fort Rupert, Saanich and Nanaimo tribes between 1851 and 1854, financial problems were already apparent in 1850.

Anticipating increased settlement, Douglas continued treaty activity with two Fort Rupert (northeast corner of Vancouver Island) Kwakiutl tribes 1851, the Queackar and Quakeolth. Treaties with the two Saanich tribes north of Mount Douglas and the Saalequun tribe at Nanaimo followed in 1852 and 1854 respectively. The circumstances leading to treaty negotiations with the Fort Rupert tribes were similar to those existing in the southeastern part of Vancouver Island before 1849. As early as 1835, the Hudson's Bay Company had wished to introduce coal mining operations on the northeast coast after the discovery of coal at Beaver Harbour. There were problems, however, in making use of this discovery. For example, Roderick Finlayson, a Hudson's Bay Company employee, reported that the Company would have the expense of constructing a fort and maintaining a defence force to protect the tribes.²⁰ This fear was unfounded, as was proven by the Company's later experience with Fort Rupert as a trading post.

It was not until 1848 that the Hudson's Bay Company, under the direction of W.H. McNeill, started making plans to develop the coal fields at Beaver Harbour. It contracted to sell coal at 50 shillings a ton to the new Pacific Mail Steamship Company, formed to carry mail between Panama and the Oregon Coast.²¹ A year later, the officers of the Columbia District erected Fort Rupert to protect future mining operations, to establish a new trading post for the area, and to replace Fort McLoughlin, abandoned in 1849.²² The rapid growth of steam navigation in the Pacific had led the Hudson's Bay Company to develop mines off the northeast coast of Vancouver Island. Coal deposits, moreover, would add greatly to "the future value of the British Possessions on the North West Coast and contribute the means to extend their commerce, and to facilitate their defence."²³ As soon as the new post was started, at least four Kwakiutl tribes settled beside Fort Rupert and immediately posed a threat to the safety of the coal miners who had been transferred from Scotland. The conflicts between the coal miners and the Fort Rupert natives, combined with the threat of Indian uprisings from the Nahwitti (northern Kwakiutl band) and the Haidas from Queen Charlotte Island, and the appeal of the California mines eventually led to the failure of the Fort Rupert Establishment.

The threat of the Fort Rupert Kwakiutl to the safety of non-natives prompted action by the Hudson's Bay Company board of management. The Company realized that no arbitrary or severe measures could be adopted in dealing with the Kwakiutl, as they were too numerous and well armed. It decided on a policy of conciliation, not only to appease the Indians but also to secure access to the coal deposits at Fort Rupert. On 23 August 1850, Archibald Barclay wrote to Douglas advising him of the policy which should be pursued:

I am to state that the Governor and Committee consider it highly desirable that no time should be lost in purchasing from the natives, the land in the neighbourhood of Fort Rupert.²⁴

In the final analysis, the Fort Rupert treaties were made with the Kwakiutl to pacify them and thereby secure the coal deposits on northeastern Vancouver Island. There were no further reports of Kwakiutl resistance following treaty negotiations.²⁵

The Fort Rupert treaties were essentially the same in format as those signed with the Songhees, Klannam and Sooke tribes in 1850, although treaty payments were increased and the two tribes received a greater variety of trade goods, including blankets, tobacco, gunpowder, cotton and baize (goods worth £150 sterling). The Queackar tribe, for example, received goods worth £64 sterling while the Quakeolth tribe was paid goods worth £86 sterling.²⁶ With these agreements, Douglas purchased "the whole of the lands situate and lying between McNeill's Harbour and Hardy Bay, inclusive of these ports, and extending two miles into the interior of the Island."²⁷

In a letter dated 18 March 1852, Douglas reported to Barclay on the two Saanich treaties. A sawmill company wanted to operate on a section of land north of Mount Douglas "within the limits of the Saanitch Country," and the Indians demanded payment:

(F)inding it impossible to discover among the numerous claimants the real owners of the land in question, and there being much difficulty in adjusting such

claims, I thought it advisable to purchase the whole of the Saanich country, as a measure that would save much future trouble and expense.

I succeeded in effecting that purchase in general convention of the Tribe, who individually subscribed the Deed of Sale, reserving for their use only the village sites and potato patches, and I caused them to be paid the sum of £109.7.6 in woollen goods which they preferred to money.

The purchase includes all the land north of a line extending from Mount Douglas to the south end of the Saanitch Inlet, bounded by the Inlet and the Canal do Arro, as traced on the map, and contains nearly 50 square miles or 32,000 statute acres of land.²⁸

Both treaties were made with “the Chiefs and people of the Saanitch Tribes,” but obviously there were two different tribes. On February 7 1852, Douglas, chief factor of the Hudson’s Bay Company and governor of Vancouver Island (as of 1 September 1851), met the ten South Saanich men at the fort and purchased their territory lying “between Mount Douglas and Cowichan Head on the Canal de Arro and extending thence to the line running through the centre of Vancouver Island, North and South.”²⁹ He was unable to obtain agreement among the rest of the Saanich on which group owned what land, and on 11 February assembled “a general convention of the tribes” and purchased the entire Saanich peninsula. The lands surrendered by the North Saanich were described as:

commencing at Cowichan Head and following the coast of the Canal de Haro north-west nearly to Saanich Point, or Qua-na-sung; from thence following the course of the Saanich Arm to the point where it terminates; and from thence by a straight line across country to said Cowichan Head, the point of commencement, so as to include all the country and lands, with the exceptions hereafter named, within those boundaries.³⁰

The two Saanich treaties were identical in form to the Songhees agreements but, as in the Fort Rupert treaties, differed with respect to payment, particularly regarding the South Saanich tribe. With the South Saanich treaties, Douglas reverted to a system of giving an individual payment to each man. The ten South Saanich men received, without apparent reason, more than their share: about £4.3s. sterling, rather than £2.10s. sterling.³¹ The North Saanich tribe, on the other hand, was paid the same amount as the Songhees (averaged £2.10s. sterling).

Although the Fort Rupert mines proved to be a complete failure, Governor James Douglas did not abandon hope for developing an alternate source of supply to meet the growing coal demand. J.W. McKay, an employee of the Hudson's Bay Company, was given the responsibility of building Fort Nanaimo and developing the surrounding community. On 24 August 1852, Douglas ordered McKay to take over the mining operations of Fort Nanaimo:

You will proceed with all possible diligence to Wentuhuysen Inlet. (J.D. Pemberton, Colonial and Hudson's Bay Company surveyor, adopted Indian name Nanaimo) commonly known as Nanyimo Bay and formally take possession of the coal beds lately discovered there for and in behalf of the Hudson's Bay Company.³²

A sawmill was erected in 1853 to cut lumber for the requirements of the mine and the settlement of Fort Nanaimo. Indian tribal warfare had disturbed the settlement of Fort Nanaimo, although no attempt had been made to molest the non-natives until the winter of 1852-53, when Peter Brown, a shepherd, was killed by a Nanaimo Indian and a Cowichan native.

The discovery of coal at Nanaimo raised the question of non-natives assuming legal possession of the land. Although the Nanaimo Indians had not demonstrated as much resistance to mining operations as the Fort Rupert Kwakiutl, the Hudson's Bay Company decided to take measures to secure title to the Fort Nanaimo coal deposits.

In January 1853, Douglas received instructions from the Company's board of management advising him to extinguish Indian title to the Nanaimo coal district.³³ The Company decided on this policy for two reasons. It had learned from its Fort Rupert experience that Indians regarded minerals as trade items and would not allow settlers to secure control over production until they had been duly compensated. In addition, the Company knew that when, and if, its charter was revoked, the coal deposits would revert to the Crown's possession. It decided, therefore, that it should extinguish any Indian claim to the deposits and then buy the coal fields from the Crown itself.

Douglas assured the Hudson's Bay Company that in carrying out its instructions he would "select such portion of land as may be considered most valuable as containing seams of coal."³⁴ His first attempt at extinguishing the Nanaimo Indians' title was unsuccessful. In May 1853, Douglas assured the Company he would extinguish the Indian title when the time was right:

I observe the request of the Governor and Committee that I should take an early opportunity to extinguishing the Indian claim in the coal district and I shall attend to their instructions as soon as I think it safe and prudent to renew the question of Indian rights, which always give rise to troublesome excitements, and has on every occasion been productive of serious disturbances.³⁵

When the Nanaimo Indians realized that Douglas was trying to terminate their control over the production of coal, they resisted, and for over a year the Company was unable to negotiate a settlement with them. Douglas, however, finally "settled the claims of the Nanaimo Indians," concluding a treaty with the Saalequun tribe on 23 December 1854.³⁶

With the signing of this agreement, Douglas purchased about 6,200 acres of coal-bearing land for the Nanaimo Coal Company, a subsidiary to the Hudson's Bay Company, in return for £299 sterling in trade goods.³⁷ This document was curious in that it had no text, simple a set of signatures; that is, signatures or marks of Indian representatives were obtained on blank paper. Another peculiar feature of the "treaty"

was that it was signed by James Douglas as chief factor of the Hudson's Bay Company and not as governor of Vancouver Island.

There seems to be some discrepancy between Douglas's claim that he continued the practice of purchasing Indian land until 1859, and the fact that the last of the Vancouver Island Treaties was made at Nanaimo in 1854. While there is scant evidence to support this claim, Douglas's reference to 1859 in a letter to the Duke of Newcastle, dated 25 March 1861, probably related to a private purchase by W.E. Banfield, Indian Agent on the southwest coast of Vancouver Island, who on 6 July 1859 bought a small island from the Ohiat people of Barclay Sound.³⁸ Douglas's letter reads as follows:

As the native Indian population of Vancouver Island have distinct ideas of property in land, and mutually recognize their several exclusive possessory rights in certain districts, they would not fail to regard the occupation of such portions of the Colony by White settlers, unless with the full consent of the proprietary tribes, as national wrongs; and the sense of injury might produce a feeling of irritation against the settlers, and perhaps disaffection to the Government that would endanger the peace of the country.

Knowing their feelings on that subject, I made it a practice up to the year 1859, to purchase the native rights in the land, in every case, prior to the settlement of any district.³⁹

A lack of funds to purchase further Indian lands contributed to the termination of treaty negotiations.⁴⁰ Douglas's Indian policy no longer included negotiating treaties, but he maintained a generous policy of allotting reserves to the Vancouver Island treaty Indians and to those non-treaty tribes who were being overrun by settlers.

Notes

1. For the original texts of the Vancouver Island Treaties see Hudson's Bay Company, Land Office, Victoria, "Register of Land Purchased from the Indians, 1850-1859," Public Archives of British Columbia. Edited versions are contained in British Columbia, *Papers Connected with the Indian Land Question, 1850-1875*, (Victoria, 1875), pp. 5-11. These papers were also published with a different pagination in British Columbia, Legislative Assembly, *Sessional Papers, 2nd parl., 1st sess., 1876*, pp. 161-328B. Also, see copies of treaties, appendices, pp. 67-73.
2. R.W. McInnes, "Indian Treaties and Related Disputes," in *University of Toronto Faculty of Law Review*, 27 (August 1969):55; See T.R.E. MacInnes, "Report on the Indian title in Canada with Special Reference to British Columbia," House of Commons, *Sessional Paper No 47, 1914*, unpublished, pp. 57-58.
3. Canada, parliament, *Sessional Paper No. 17*, appendix: B.W. Pearse, "Memorandum of Treaties made with Indian Tribes for purchase of their Lands," 1873, p. 44. Pearse should also have included the land around Fort Rupert.
4. Galbraith, *Hudson's Bay Company*, p. 296.
5. E. Colville to Sir J.H. Pelly, 22 November 1849. Cited in E.E. Rich, ed., *London Correspondence Inward from Eden Colville, 1849-1852* (London, 1956), p. 11.
6. Douglas to Barclay, 10 May, 1850, from James Douglas's letterbook in Public Archives of British Columbia (PABC). Cited in Walter N. Sage, *Sir James Douglas and British Columbia* (Toronto, 1930), p. 160.
7. See copies of treaties, appendices.
8. Douglas to Barclay, 3 September, 1849, HBCA and PAC, A-11/72, Inward correspondence from HBC Posts, Victoria.
9. Duff, "Fort Victoria Treaties," p. 26.
10. Lord Carnarvon to Douglas, 11 April 1859, *British Columbia, Papers connected with the Indian Land Question, 1850-1875*, Victoria, 1875, p. 18. (Hereafter cited as *B.C. Papers*).
11. George Brown and Ron Maguire, *Indian Treaties in Historical Perspective* (Ottawa, 1979), p. 28.
12. *Ibid.*
13. Sage, *Sir James Douglas*, p. 161.
14. *Ibid.*, Douglas to Barclay, 16 May 1850 PABC.
15. *Ibid.*
16. Duff, "Fort Victoria Treaties," p. 52.
17. *Ibid.*, pp. 51-53.
18. See Vancouver Island, Governor, Despatches: Governor Blanshard to the Secretary of State, 26 December 1849 to 30 August 1851 (New Westminster, n.d), Despatch No. 11, 12 February 1851, PABC.
19. *Ibid.*

20. Helen Codere, *Fighting with Property: A Study of Kwakiutl Potlatching and Warfare, 1792-1930* (London, 1966), p. 22.
21. Patricia M. Johnson, "Fort Rupert," *The Beaver*, Outfit 302, 1972, p. 4.
22. *Ibid.*, Daniel T. Gallacher, "Early Coal Personalities: Some Neglected British Columbians," *B.C. Historical News* 12 (February 1979), p. 6.
23. Gough, *Royal Navy*, p. 100.
24. Barclay to Douglas, 23 August 1850, "Fort Victoria correspondence Inward, 1849-1859," PABC.
25. Gough, "Violence Against Indians," pp. 50-52.
26. See appendixes for copies of treaties between the Queacker and Quakeolth Tribes; "Conveyance of Land to Hudson's Bay Company by Indian tribes," *B.C. Papers*, p. 11.
27. *Ibid.*
28. Douglas to Barclay, 18 March 1852, "Fort Victoria - correspondence outward to Hudson's Bay Company on the affairs of the Vancouver Island colony. 16 May 1850-6 November, 1855." PABC.
29. See appendixes for copies of treaties between the south and north Saanich tribes. "Conveyance of Land to Hudson's Bay Company by Indian Tribes," *B.C. Papers*, p. 10.
30. *Ibid.*
31. Duff, "Fort Victoria Treaties," p. 25.
32. Douglas to McKay, 24 August 1852, Nanaimo Correspondence, 1852-1853, PABC; B.A. McKelvie, "The Founding of Nanaimo," *British Columbia Historical Quarterly* (July 1944): 175.
33. Barclay to Douglas, January 1853, "Fort Victoria Correspondence Inward, 1849-1859," PABC.
34. Douglas to Barclay, 12 July 1853, "Fort Victoria Correspondence Outward on the Affairs of Vancouver Island, 16 May 1850-6 May 1855," PABC.
35. Douglas to Barclay, 3 September 1853, "Fort Victoria Correspondence Outward on the Affairs of Vancouver Island, 16 May 1850- 6 May 1855,": PABC.
36. Hudson's Bay Company, London, "Statement Regarding Nanaimo District Lands;" see also *R. v. White and Bob* (1965) concerning the relevancy of the Nanaimo "treaty."
37. Dorothy Blakey Smith, *James Douglas: Father of British Columbia* (Toronto, 1971), p. 60.
38. See Hudson's Bay Company, Land Office, Victoria, "Register of Land Purchased from the Indians, 1850-1859," PABC.
39. Douglas to Duke of Newcastle, 25 March 1861, *B.C. Papers*, p. 19.
40. *Ibid.*

TREATY ACTIVITIES: RESERVE POLICY

The Vancouver Island treaties reserved Indian “village sites and enclosed fields” and provided that “the lands shall be properly surveyed hereafter.” In each treaty the description of reserves was identical:

They are to be kept for our own use, for the use of our children, and for those who may follow after us...(and)...that the land itself, with these small exceptions, becomes the entire property of the white people forever; it is also understood that we are at liberty to hunt over the unoccupied lands, and to carry on our fisheries as formerly.¹

In 1859, Douglas outlined his reserve policy in response to a despatch from Sir. E.B. Lytton, Colonial Secretary. Lytton advised him to “consider the best and most humane means of dealing with the Native Indians” and to see that “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.”² Douglas envisaged the settlement of Indians on reserves where they would be secure against the encroachment of settlers, lessening the possibility of Indians uprisings.³ On the reserves, each family would have a distinct portion for its own use, but they were to be denied the power to sell or alienate land. Finally, “reserves should in all cases 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.”⁴

The despatches from the Colonial Office were usually commendatory of Douglas’s policy. Lord Carnarvon, however, in the absence of Colonial Secretary, Sir E.B. Lytton, cautioned Douglas against allotting reserves in those areas which might impede the progress of settlers:

I am glad to find that your sentiments respecting the treatment of the native races are so much in accordance with my own, and I trust that your endeavours to

conciliate and promote the welfare of the Indians will be followed by all persons whom circumstances may bring into contact with them. But whilst making ample provisions under the arrangements proposed for the future sustenance and improvement of the native tribes, you will, I am persuaded, bear in mind the importance of exercising due care in laying out and defining the several reserves, so as to avoid checking at a future day the progress of the white colonists.⁵

To prevent settlers from buying land directly from the Indians, Governor Douglas inserted a notice in the *Victoria Gazette* in 1859. He reported further to the Secretary of State for the Colonies the reasons for inserting such a notice:

Attempts having been made by persons residing at this place (Victoria) to secure those lands for their own advantage by direct purchase from the Indians, and it being desirable and necessary to put a stop to such proceedings, I instructed the Crown Solicitor to insert a public notice in the *Victoria Gazette* to the effect that the land in question was the property of the Crown, and for that reason the Indians themselves were incapable of conveying a legal title to the same, and that any person holding such land would be summarily ejected.⁶

None of the Vancouver Island treaty reserves, however, were made by official notice in the *Gazette* until 1871.⁷

Another important part of Douglas's reserve policy was to allow Indians to select as much land as they wanted. On 5 March 1861, Douglas directed the Chief Commissioner of Lands and Works, R.C. Moody, to "take measures... for marking out distinctly the sites of the proposed Towns and the Indian Reserves."⁸ He added that "the extent of the Indian Reserves to be defined" was to be "as they may be severally pointed out by the Natives themselves."⁹ For example, the Discovery Island and Chatham Islands reserves, located in Songhees territory in the Victoria district, were set apart in this manner by Douglas on 10 June 1863.¹⁰ Douglas's successors, however, considered his reserve policy to be too lenient. They were less generous in establishing

new reserves and in many cases reduced some of the old ones.

During the early 1870's, a series of tentative agreements existed between the federal and provincial governments over the amount of land to be reserved for Indians on Vancouver Island and mainland British Columbia. No final decision was reached and the administration of Indian land policy remained chaotic. The result was the formation in 1876 of a Joint Commission which would allot reserves according to local situations.¹¹ The commissioners, A.C. Anderson and A. McKinlay, who represented Canada and British Columbia respectively, and G.M. Sproat, joint commissioner, were instructed to lay out reserves, including those on Vancouver Island, with regard "to the habits, wants and pursuits of (each) Nation, to the amount of territory available in the region occupied by them, and to the claims of White Settlers."¹² Furthermore, in special instruction, the provincial government advised Commissioner McKilay "not to allow allotments of any unnecessarily large reserves such as would interfere with White Settlement."¹³ Finally, the commissioners were "officially enjoined as little as possible to interfere with any existing tribal arrangements; and... they were to be careful to not disturb the Indians in the possession of any villages, fishing stations, fur trading posts, settlements, or clearings which they might occupy, and to which they might be specially attached."¹⁴

During the years 1876-78 the Joint Commission allotted several reserves for the treaty Indians on Vancouver Island. Although fourteen tribes had surrendered their lands to the Hudson's Bay Company, only six had reserves allotted to them: Nanaimo, Esquimalt, Victoria, Sooke Inlet, North Saanich and South Saanich.¹⁵ The assignment of reserves to the Vancouver Island tribes by the Indian Reserve Commission seems to have followed the policy of guaranteeing fishing stations, hunting grounds and village sites. Deputy Superintendent General Vankoughnet, moreover, indicated on 31 December 1877 that the problems associated with the "Indian reserve question" in British Columbia had decreased:

Suffice it to state those Indian Bands who have been allotted Reserves, are, on the whole, satisfied with the land given them, and that the uneasy feeling which

at one time existed among the Indians in connection with the Reserve question, has almost entirely subsided: and it is trusted that by a fair and liberal policy being adopted towards them by both Governments the sentiment of loyalty will be perpetuated in the Indian mind of the Province. The non-recognition, however, in some instances, by the Provincial Government, of the title of the Indians to lands occupied by them, has for some time agitated the minds of the Indians of this Province. Some of these lands have already been, and others are being sold without reference to the Indian title thereto. Unless the equitable claims of the Indians, in respect to the lands in question, are recognized, and met in a liberal spirit, serious trouble may be the result.¹⁶

The Indian Reserve Commission encountered numerous problems in allotting reserves for the Vancouver Island tribes. The settling of long-standing disputes and grievances, particularly regarding the Nanaimo band and the Victoria reserve, are worthy of note. The treaty preamble had promised surveys to stake out the boundaries of Indian lands. A survey, however, had not been completed at Nanaimo by 1860 when the acting surveyor-general, B.W. Pearse, indicated that Hudson's Bay Company officials were selling lands and that a survey was urgently needed.¹⁷ Nevertheless, a survey was not conducted until 1874 (with another in 1878). Subsequently, Indian Commissioner Powell reported in 1875 that reserves could be apportioned to several bands including Nanaimo.¹⁸ On 20 December 1876, the Indian Reserve Commission allotted reserve Nos. 1,2,3 and 4 and on 23 December 1876, the Fishing Stations (Gabriola Island) Indian Reserve No. 5 was set aside for the Nanaimo Band.¹⁹

The problems resulting from Indian reserves being located in urban areas have produced many complicated proposals and constitutional issues. The history of the Songhees near Victoria is a case in point. In 1850, the Songhees tribe surrendered most of their land by treaty, but retained a small area on the western shore of Victoria harbour. Instead of extinguishing title to the land by cash payment, Douglas suggested that annual payments should be made to the Songhees in perpetuity rather than in one lump sum. The suggestion was rejected by the British Columbia Legislative Council.

The result was the beginning of a series of differences between the local and Dominion governments.²⁰

In 1859, Governor Douglas was petitioned by the House of Assembly to remove the Songhees from their reserve. In a memorandum on the history of the Songhees reserve, J.W. Trutch, who in 1864 became Chief Commissioner of Lands and Works, explained the circumstances regarding the removal of the Indians from Victoria:

In February, 1859, the residence of the Indians on this reserve having become obnoxious to the inhabitants of Victoria, by that time grown into a town of considerable importance, and the land included in the reserve having greatly increased in value, and being much desired for building sites, and especially as affording extended frontage on the harbour, the Legislative Council of Vancouver Island presented an Address to Sir James Douglas, then commissioned by the Imperial Government as Governor of the Colony, enquiring whether the Government had power to remove the Indians from this reserve, and suggesting that if this could be done, the land so held under reservation should be sold and the proceeds devoted to the improvement of the town and harbour of Victoria.²¹

Governor Douglas replied that removing the Indians from the reserve would be unjustified. Agreements had been signed with various tribes of Vancouver Island and reserves had been set aside for their use. He also intended to lease portions of the Songhees reserve and to apply the revenue to the benefit of the Songhees Tribe.²² This leasing arrangement worked successfully until Douglas retired in 1864, after which disputes concerning the legality of the leases resulted in their cancellation.

After the cancellation of the leases, a long series of negotiations followed whose purpose it was to move the Songhees. Indian Commissioner Powell reported on 1 October 1875 that a suitable replacement was difficult to find:

Negotiations have been opened with the Songhees Indians in regard to their

removal to a more suitable place. The Reserve at present occupied by them being in the suburbs of Victoria, and consequently open to the visits of whiskey settlers, and other disreputable characters.

Two tracts of land were selected for this purpose, Sallas Island lying about 20 miles from the City, and a farm at Cadboro Bay about 3 miles distant. Neither of these places seems altogether acceptable to them, for various reasons, the former from its distance and consequently liability to be exposed to raids from marauding bands of Northern Indians, and the latter, though favoured by the young men of the tribe, was considered to contain too limited an extent of arable land. Much opposition has been given to any intended removal of these Indians by traders and others, who regard such an intention as most detrimental to their interests... Added to this, the Indians cling with great tenacity to their old village sites and burial grounds...

An appropriate place for these Indians in lieu of their present Reserve is exceedingly difficult to be found, owing to the scarcity of suitable locations in this vicinity; but I trust at no distant day that a favourable selection may be made, when I may be able to effect their much required removal, peaceably and without any great difficulty.²³

The Indian Reserve Commission of 1876, moreover, refused to treat the removal of the Indians until the Indian title question had been resolved.

By 1910, an agreement was finally reached. The Indians surrendered 112 acres by O/C P.C. 1142 dated 22 May 1911 and were moved to a new reserve of 163 acres at Esquimalt (New Songhees Indian Reserve No. 1A). On 2 August 1911, Frank Pedley, Deputy Superintendent General of Indian Affairs, reported that the province of British Columbia purchased the old reserve. The fee simple was conveyed to the Superintendent General in trust for the Indians. In addition, each of the 44 bands of families was given a substantial cash payment.²⁴

Many of the difficult Indian land problems which surfaced during the colonial period were resolved by the implementation of James Douglas's policies. The imperial government provided him with broad policy statements and little in the way of specific advice. Indeed, Indian land policy on Vancouver Island was so dependent on Douglas's personalized rule that no official land policy was established; the effect was that his policies were open to "misinterpretation and manipulation" by his successors.²⁵ As colonization progressed, Douglas's main concerns were to purchase Indian ownership rights to their land and to set aside reserves. Douglas took the usual British view that although absolute title to the land was vested in the Crown, the Indians had some proprietary rights which should be extinguished by treaty. The Vancouver Island treaties reflected the Hudson's Bay Company tradition of dealing with natives only if they interfered with the property or lives of settlers or when settlement was planned. Historian E.E. Rich provides a good summary of Douglas's Indian policy:

To relations with the Indians Douglas brought the knowledge and the sureness of touch which he had acquired in the fur trade. In a series of treaties he secured from the tribes the titles to the lands required for settlement, and by not insisting too literally upon European standards of justice and punishment he maintained a growing respect for life and property.²⁶

Notes

1. See "Conveyance of Land to Hudson's Bay Company by Indian Tribes," *B.C. Papers*, pp. 5-11.
2. Lytton to Douglas, 31 July 1858, *B.C. Papers*, p. 12.
3. Douglas to Lytton, 14 March 1859, *B.C. Papers*, pp. 16-17.
4. *Ibid.*, p. 17.
5. Carnarvon to Douglas, 20 May 1859, *B.C. Papers*, p. 18.
6. Douglas to Secretary of State for the Colonies, 9 February 1859, *B.C. Papers*, p. 15.
7. See Robert E. Cail, *Land, Man, and the Law: The Disposal of Crown Lands in British Columbia* (Vancouver, 1974), pp. 294-296. "Return of Indian Reserves," *B.C. Journals*, 1st Parl., 2d sess., 1872-73, appendix, *Sessional Papers*.

8. Charles Good to R.C. Moody, 5 March 1861. *B.C. Papers*, p. 21.
9. *Ibid.*
10. See *Schedule of Indian Reserves in the Dominion for 1913* (Ottawa, 1913), p. 63.
11. See Robin Fisher, "An Exercise in Futility: The Joint Commission on Indian Land in British Columbia, 1875-1880." In Canadian Historical Association, *Historical Papers*, 1954, p. 80.
12. A copy of the agreement can be found in RG10, file 3756-2, PAC.
13. Memorandum of Instructions to Archibald McKinlay, 23 October 1876, RG 494/1/2, PABC; Terry Eastwood, "The Indian Reserve Commission of 1876 and the Nanaimo Indian Reserves," *B.C. Historical News* 12 (February 1979):10.
14. DIAND, *Annual Report*, 1876, p. xv-xvi: David Mills, Minister of Interior, to Governor General of Canada, 15 January 1877.
15. PAC, RG10 (Black Series) file 1/11-11-18, Vol. 1: Memorandum to the Deputy Minister of Indian Affairs, 30 June 1950.
16. DIAND, *Annual Report*, 1877, p. 16: L. Vankoughnet, Deputy Superintendent General of Indian Affairs, to the Honourable David Mills, Superintendent General of Indian Affairs, 31 December 1877.
17. Pearse to Douglas, 26 March 1860, Vancouver Island, Surveyor General Letterbook, 1857-1864, p. 72, PABC: Eastwood, "Indian Reserve Commission," p. 10.
18. DIAND, *Annual Report*, 1875, p. 65: I.W. Powell, Indian Commissioner for B.C., to Indian Office, Victoria, 4 February 1875.
19. PAC, RG10 (Black Series) file 1/11-11-1-8, Vol. 1: Memorandum to the Deputy Minister of Indian Affairs, 30 June 1950: DIAND, *Annual Report* 1878, pp. Lvi-lviii: A.C. Anderson, Dominion Commissioner Indian Reserves, to Minister of the Interior, 21 March 1877.
20. Duff, "Fort Victoria Treaties," p. 43.
21. J.W. Trutch, Memorandum as to the Songish Indian Reserve at Victoria, 30 December 1869, *B.C. Papers*, p. 66.
22. Dugg, "Fort Victoria Treaties," p. 43.
23. Canada, Parliament, *Sessional Paper No. 28(a)*, Annual Report of Indian Commissioner Power to Indian Office, Victoria, 1 October 1875, p. 49.
24. Duff, "Fort Victoria Treaties," pp. 43-44; DIAND, *Annual Report*, 1912, p. xxi, Frank Pedley, Deputy Superintendent General of Indian Affairs, to Frank Oliver, Superintendent General of Indian Affairs, 2 August 1911.
25. Fisher, *Contact and Conflict*, p. 156.
26. E.E. Rich, *The History of the Hudson's Bay Company 1670-1870*, Vol. 3 (Toronto, 1960), p. 764.

THE SIGNIFICANCE OF THE VANCOUVER ISLAND TREATIES

The Vancouver Island treaties did not provide a precedent for continuing treaty activity either on Vancouver Island or on mainland British Columbia (except Treaty 8 portion in northeast corner). The purpose of this section, therefore, is to discuss the historical rationale for the non-resumption of treaty activity, including Joseph Trutch's views of the Douglas treaties and his role in preventing further treaty activity. Finally, there is a brief analysis of British Columbia Indian policy at the time of its admittance into Confederation (1871). Some comparisons are also made with Treaties 1 and 2 (signed in 1871).

The limited area covered by the Vancouver Island treaties (358 square miles) was due to the fact that treaties were made only when settlement was planned and to a lack of funds to purchase lands. By 1854, when the last of fourteen Vancouver Island treaties was negotiated, settlement was exceedingly slow and there was no pressing need for further treaties. Indeed, by 1855 only 774 non-natives resided on Vancouver Island, concentrated at Fort Victoria and Nanaimo.¹ Fort Rupert returned to being a fur trade port and generally the colony was still a fur trade region. Along the coast and throughout the interior, the only non-Indian population was the fur trade staff attached to trade posts. Even by 1858, this pattern had not changed.

The total Indian population of Vancouver Island and mainland British Columbia was about 50,000 (with 11,700 on Vancouver Island).²

The termination of the Hudson's Bay Company Charter in 1858 raised the question of financial responsibility for further treaty activity. The discovery that the Fraser River contained substantial quantities of gold ended the dominance of the fur trade and precipitated the termination of the Company's charter.³ Also, its exclusive licence to trade with the Indians west of the mountains expired in 1858. On 2 August 1858, the British government passed an act establishing direct rule over Vancouver Island and the mainland colony (formerly New Caledonia and now British Columbia), and the Hudson's

Bay Company's control ceased.⁴ Douglas, who until then was solely an imperial representative, became governor of Vancouver Island and British Columbia, but was no longer chief factor of the Company.

When Douglas relinquished his position as the Company's chief factor in 1858 he could no longer use Company resources to encourage Indians to surrender their land. Sir E.B. Lytton, Secretary of State for the Colonies, informed Douglas on 29 May 1859 that there was less interest in subsidizing colonial expenses than there had been in the 1840's. The imperial government was unwilling to finance the colonies of Vancouver Island and British Columbia, particularly the latter "which has been forced into existence by its gold discoveries."⁵ Dependent on public sources of finance, Douglas was unable to compensate the Indians for surrendering their lands because the Vancouver Island House of Assembly and the imperial government each argued that the provision of funds was the other's responsibility.

In a despatch dated 25 March 1861, Douglas indicated to the Duke of Newcastle, Secretary of State for the Colonies, that he required funds to extinguish the native title to lands in the districts of Cowichan, Chemainus and Barclay Sound, all of which were being opened for settlement:

All of the settled districts of the Colony, with the exception of Cowichan, Chemainus, and Barclay Sound, have been already bought from the Indians, at a cost in no case exceeding £2.10s. sterling for each family. As the land has, since then, increased in value, the expense would be relatively somewhat greater now, but I think that their claims might be satisfied with a payment of £3 to each family; so that taking the native population of those districts at 1,000 families, the sum of £3,000 would meet the whole charge.⁶

Since all other settled districts on Vancouver Island had been purchased, he felt justified in asking for the loan. Furthermore, he offered to repay it from the sale of public lands, the price of which had only two months previously been reduced from ten to four

shillings two-pence per acre.⁷

Newcastle replied to Douglas on 19 October 1861 that he recognized the importance of extinguishing the Indian title on Vancouver Island.⁸ He indicated further, however, that purchasing Indian land was a purely colonial matter and the British taxpayer could not be burdened with the expense. The Colonial Office simply handed the matter back to the local legislature, indicating that it should give Douglas the power to raise the loan locally.⁹

With the appointment of Joseph Trutch to the position of Chief Commissioner of Lands and Works, under Governor Frederick Seymour's administration (after Douglas's retirement in 1864), there was a shift in Indian land policy. In a report on Indian claims to certain lands which had been set aside as reserves (on Douglas's instructions) Trutch commented:

(T)he 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 the Government *or to individuals*.¹⁰

While Trutch's views on Indian land differed from those of James Douglas and the imperial government, they were clearly in accord with those of the settlers and local government authorities. Douglas, in effect, had embodied many of the attitudes of the old fur trading frontier, whereas Trutch represented the attitudes of the new settlement frontier.¹¹

Hence, the Vancouver Island treaties did not provide a precedent for resuming the purchase of Indian lands in British Columbia. In fact, Trutch claimed that the payments made under these treaties were "for the purpose of securing friendly relations between those Indians and the settlement of Victoria, then in its infancy, and certainly not in acknowledgment of any general title of the Indians to the land they occupy."¹²

“Whatever their rights, there was something more than mere friendship bargained for.”¹³ Historian Robin Fisher has suggested that Joseph Trutch’s views of Indian treaty concepts were in direct contrast to those of Douglas:

Trutch’s actions, moreover, involved a break with the usual British policy. In her haphazard way, Britain seems to have developed a policy whereby, if territory was occupied in a regular way, aboriginal possession was recognized, and therefore had to be extinguished before settlement could proceed. There was some kind of threshold over which Britain would recognize native rights to the land. The land ownership concepts of the Australian aborigine, for example, were not sufficiently clear for Britain to recognize, whereas those of the New Zealand Maori were. Given this threshold, then, were the concepts of territory and ownership of British Columbia’s Indians sufficiently precise to be recognizable? It seems clear that they were. There were variations in different parts of the colony, but the Indians had precise concepts of territorial boundaries or ownership of specific areas. Douglas knew the Indians well enough to be aware of this aspect of their society and he tried to recognize it in his policy. When it was financially possible he compensated the Indians for giving up their rights to territory. His attitude was sustained by the imperial government, and was clearly in accord with British policy throughout the rest of North America. Trutch, on the other hand, was not the least interested in Indian social usages. He denied that they had any rights to land at all.¹⁴

If Joseph Trutch’s Indian policy reflected the aspirations of the settlers, then the Indians hoped that, with British Columbia’s entry into Confederation,¹⁵ Indian policy would be more representative of their needs. During the negotiations that preceded Confederation, however, there was only minor discussion on Indian affairs. A motion for the protection of the Indians was defeated 20 to 1 in the B.C. Legislature and another, advocating the extension of Canadian Indian policy to British Columbia, was withdrawn.¹⁶ The mover of the second motion, John Robson, premier of British Columbia from 1889 to 1892, wished to see the system of appointing Indian agents to

consider Indian interests extended to British Columbia.¹⁷ Consequently, the Terms of Union proposed by the governor in council of British Columbia contained no reference to Indians.

The Act of 1871, which admitted British Columbia into Confederation, contained the following provision (Article 13) concerning Indian policy:¹⁸

The charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government, and a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the union. To carry out such a policy, tracts of land of such an extent as it has hitherto been the practice of the British Columbia Government to appropriate for that purpose, shall from time to time be conveyed by the Local Government to the Dominion Government in trust for the use and benefit of the Indians, on application of the Dominion Government; and in case of disagreement between the two Governments respecting the quantity of such tracts of land to be so granted, the matter shall be referred for the decision of the Secretary of State for the Colonies.¹⁹

With the passage of this Act any hopes that the Indians had for securing title to their lands ended. The wording of Article 13 was very peculiar, particularly the stipulation that “a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the union.” Moreover, David Laird, Minister of the Interior from 1873 to 1876, stated that the framers of Article 13 “could hardly have been aware of the marked contrast between the Indian policies which had, up to that time, prevailed in Canada and British Columbia respectively.”²⁰ He suggested further that to describe colonial policy prior to union in 1871 as liberal “seems little short of a mockery of their claim.”²¹ One can only speculate that if James Douglas had remained governor until 1871 or had negotiated more treaties with the Indians before he resigned, the situation might have been different.

The introduction of responsible government in British Columbia shortly after Confederation only worsened the situation. Responsible government held no advantage to the Indians since no one in government was responsible to them. As in other colonies of the British Empire, protecting native interests seemed to be inconsistent with granting self-government to colonists.²² Neglect by the settlers meant that Indian administration in British Columbia remained a shambles in the two decades after Confederation. The 1870's and 1880's saw the continuation and consolidation of policies designed by settlers to meet their own requirements, while Indian needs continued to be ignored.

Many of the British Columbia Indians were aware that, with the signing of the numbered treaties, the Canadian government had allocated larger reserves on the Prairies.²³ They hoped that this more generous policy would be extended to them after Confederation, when responsibility for Indians and Indian land was assumed by the federal government. The allocation of 160 acres per family in Treaties 1 and 2, for example, was a much larger allocation of reserve land than given in British Columbia. There was also provision in the numbered treaties for initial payments followed by annuities and other forms of assistance. On 14 October 1872, Trutch advised Sir John A. Macdonald, Prime Minister of Canada and Minister of the Interior, that similar treaties signed with the Prairie Indians in 1871 would not work in British Columbia:

The Canadian treaty system as I understand it will hardly work here - we have never brought out any Indian claims to lands nor do they expect we should - but we reserve for their aid and benefit from time to time tracts of sufficient extent to fulfil all their reasonable requirements for cultivation or grazing. If you now commence to buy out Indian title to the lands of British Columbia - you would go back of all that has been done here for 30 years past and would be equitably bound to compensate the tribes who inhabited the district now settled and farmed by white people equally with those in the more remote and uncultivated portions. Our Indians are sufficiently satisfied and had better be left alone as far as a new system towards them is concerned...²⁴

After 1871, the federal government took a strong position in favour of the recognition and extinguishment of native rights in British Columbia. The province, however, refused to recognize the problem. The injustice of Trutch's view, as exemplified in his statement to McDonald on 14 October 1872, was almost equal to his misunderstanding of the attitude of the Indians who continued to press for legal recognition of their claims.²⁵

The need to deal fairly and equitably with the Indians of British Columbia regarding their claims was emphasized in 1876 by the Earl of Dufferin, Governor-General of Canada.

At this very moment the Lieutenant-Governor of Manitoba has gone on a distant expedition in order to make a treaty with the tribes to the northward of the Saskatchewan. Last year he made two treaties with the Chippewas and Crees; next year it has been arranged that he should make a treaty with the Blackfeet, and when this is done the British Crown will have acquired a title to every acre that lies between Lake Superior and the top of the Rocky Mountains.

But in British Columbia - except in a few cases where under the jurisdiction of the Hudson Bay Company or under the auspices of Sir James Douglas, a similar practice has been adopted - the Provincial Government has always assumed that the fee simple in, as well as the sovereignty over the land, resided in the Queen. Acting upon this principle, they have granted extensive grazing leases, and otherwise so dealt with various sections of the country as greatly to restrict or interfere with the prescriptive rights of the Queen's Indian subjects. As a consequence there has come to exist an unsatisfactory feeling amongst the Indian populations.²⁶

When the Joint Commission was formed in 1876 to investigate the Indian land question, Commissioner G.M. Sproat suggested that the Commission should be instructed on the principle of Indian title in order to permit them to make treaties.²⁷ The remarks of the Earl of Dufferin and Commissioner Sproat, nevertheless, went unheeded. The Indian tribes of the west coast continued their own pressures in 1887 and 1906 for the

recognition of their own rights and compensation for their lands.²⁸ This struggle continued today.

Notes

1. Rolf Knight, *Indians at Work: An Informal History of Native Indian labour in British Columbia* (Vancouver, 1978), p. 236.
2. *Ibid.*
3. Fisher, *Contact and Conflict*, p. 95.
4. *Ibid.*, p. 96
5. Lytton to Douglas, 29 May 1859, Great Britain, Colonial Office, Despatches to British Columbia, PABC; Robin Fisher, "The Impact of European Settlement on the Indigenous Peoples of Australia, New Zealand, and British Columbia: Some Comparative Dimensions," *Canadian Ethnic Studies* 12 (1980), p. 10.
6. Douglas to Secretary of State for the Colonies, 25 March 1861, *B.C. Papers*, p.19
7. *Ibid.*
8. Newcastle to Douglas, 19 October 1861, *B.C. Papers*, p. 20.
9. *Ibid.*
10. Trutch, Report on the Lower Fraser Indian Reserves, 28 August, 1867, *B.C. papers*, p. 42
11. Robin Fisher, "Joseph Trutch and Indian Land Policy," in J. Friesen and H.K. Ralston, eds. *Historical Essays on British Columbia* (Toronto, 1976), p. 266.
12. Trutch, "Memorandum on a letter treating of conditions in Vancouver Island, addressed to the Secretary of the Aborigines' Protection Society," by Mr. William Sebright Green, enclosure in Musgrave to Granville, 29 January 1870. *B.C. Papers*, appendix, p.11.
13. G.E. Shankel, "The Development of Indian Policy in British Columbia," (Ph.D. Thesis, University of Washington, 1956), p. 39: *Sproat Memorandum*, p. 34.
14. Fisher, "Joseph Trutch," p. 266.
15. Fisher, *Contact and Conflict*, p. 176.
16. *Ibid.*
17. *Ibid.*
18. Clause 13 was probably added by Trutch as he was closely involved with colonial Indian policy.
19. British Columbia, British North America Act, 1867, Terms of Union with Canada, Rules and Orders of the Legislative Assembly, p. 66.

20. Memo to David Laird, 2 November, 1874. *B.C. Papers*, p. 152.
21. *Ibid.*
22. Fisher, *Contact and Conflict*, p. 178.
23. *Ibid.*, pp. 174-175, "Petition of the chiefs of Douglas Portage, of the Lower Fraser, and other tribes of the mainland to Bute Inlet," 14 July 1874, *B.C. Papers*, p. 137; F.E. LaViolette, *The Struggle for Survival: Indian Cultures and the Protestant Ethic in British Columbia* (Toronto, 1961), p. 103.
24. PAC, MG 26A, Sir John A. Macdonald Papers, pp. 127650-51, Trutch to Macdonald, 14 October 1872.
25. Peter A. Cumming and Neil H. Mickenberg., eds., *Native Rights in Canada*, 2nd ed. (Toronto, 1972), p. 185.
26. Quoted in G. Stewart, *Canada Under the Administration of the Earl of Dufferin* (Toronto, 1879), pp. 491-93.
27. Schenkel, "Indian Policy," p. 131.
28. Cumming and Mickenberg, *Native Rights*, p. 188.

TREATY 8: THE PRECLUDE TO TREATY NEGOTIATIONS

Indians on the mainland of British Columbia were not involved in treaty negotiations until 1897-1898. There were discussions in 1891 for a proposed treaty north of Treaty 6 that would extinguish Indian title in the District of Athabasca and the Mackenzie River country following the discovery of large quantities of mineral wealth and the construction of railways.¹ The boundaries of the proposed treaty, however, excluded British Columbia. Treaty proposals were not resumed until after the discovery of gold in the Klondike in 1896 when miners began migrating towards the Yukon via the Pacific coast.

In December 1897, L.W. Herchmer, Commissioner of the North West Mounted Police, advised the federal government that a treaty should be made with those Indians who might resist the Klondikers:

I have the honour to draw your attention to the advisability of the Government taking some immediate steps towards arranging with the Indians not under Treaty, occupying the proposed line of route from Edmonton to Pelly River. These Indians although few in number, are said to be very turbulent, and are liable to give very serious trouble when isolated parties of miners and travellers interfere with what they consider their vested rights.

At the present time the Half-breeds of Lesser Salve Lake are dissatisfied with the presence of the Police in that District, and the numerous parties of Americans and others between that point and Peace River will not improve the situation. The Beaver Indians of Peace River and the Nelson are said to be inclined to be troublesome at all times, and so also are the Sicanies and Nahamies and the Half-breeds are sure to influence them.²

A.E. Forget, Indian Commissioner of the Northwest Territories, agreed with Herchmer's recommendations regarding treaty activity and added that "the territory which the Indians should be asked to cede be confined to the Provisional District of Athabasca

and North Western British Columbia.”³

Treaty negotiations were precipitated by the intrusion of miners via a route between Fort St. John and Peace River Crossing. A sign of serious Indian resistance occurred at Fort St. John in June 1898 when 500 Indians refused to allow police and miners to enter the area until a treaty was signed. They protested that some of their horses were taken by miners and that the influx of so many men would drive away fur-bearing animals.⁴ A.E. Forget declared on 28 June 1898 that “no time should be lost in notifying the Indians of the intention of the Government to treat with them next Spring.”⁵

Departmental officials indicated at this point the need for a treaty to help resolve some of the problems brought about by the Klondike Gold rush. On 30 November 1898, Clifford Sifton, Minister of the Interior and Superintendent General of Indian Affairs, suggested the desirability of a treaty with the Beaver and Sekani Indians of the Peace and Nelson Rivers since he believed that they might antagonize isolated parties of miners or traders.⁶ Charles Mair, a member of the Treaty 8 Halfbreed Commission, commented further on the government’s rationale to make treaty:

(T)he gold seekers plunged into the wilderness of Athabasca without hesitation, and without as much as ‘by your leave’ to the native. Some of these marauders, as was to be expected, exhibited on the way a congenital contempt for the Indians’ rights. At various places his horses were killed, his dogs were shot, his bear-traps broken up. An outcry arose in consequence, which inevitably would have led to reprisals and bloodshed had not the Government stepped in and forestalled further trouble by a prompt recognition of the natives’ title.⁷

To administer the conditions of Treaty 8, Superintendent General Sifton appointed a commission (by O/C P.C. 2749, dated 6 December 1898) with two functions: to draft the treaty and secure adhesion of the various tribes and, at the same time, to extinguish the halfbreed title.⁸ David Laird, lieutenant-governor of the Northwest Territories and the architect of the Blackfoot Treaty (1877), was appointed Treaty 8 commissioner. The

other treaty commissioners were James Ross, Minister of Public Works in the Territorial Government, and J.A. McKenna, then private secretary to the Superintendent General of Indian Affairs. Associated with them in an advisory capacity was Rev. Father Lacombe, O.M.I., who had been identified for fifty years with the Canadian Northwest.

In addition to establishing a commission, Dominion Order-in-Council, P.C. 2749 authorized the extension of Treaty 8 to include part of northeastern British Columbia. This portion is described as Territory "A" to distinguish it from the rest of Treaty 8, all which was located in the Northwest Territories:

The Minister, in this connection, draws attention to the fact that that part of the territory 'A' on the plan attached is within the boundaries of the Province of British Columbia, and that in the past no treaties such as have been made with the Indians of the Northwest have been made with any of the Indians whose habitat is west of the mountains.⁹

Before the conditions of Treaty 8 could be extended into British Columbia, the commissioners had to request that the province "formally acquiesce in the action"; in 1876 an agreement between the federal government and the province of British Columbia stipulated that the province would be responsible for negotiating with the Indians for title to their land and setting up reserves.¹⁰ Clifford Sifton reported on 30 November 1898 the importance of British Columbia being included in the treaty:

As it is in the interest of the Province of British Columbia, as well as in that of the Dominion, that the country to be treated for should be thrown open to development and the lives and property of those who may enter therein safeguarded by the making of provision which will remove all hostile feeling from the minds of the Indians and lead them to peacefully acquiesce in the changing conditions, the undersigned would suggest that the Government of British Columbia be apprised of the intention to negotiate the proposed treaty; and as it is of utmost importance that the Commissioners should have full power to give

such guarantees as may be found necessary in regard to the setting apart of land for reserves, the undersigned would further recommend that the Government of British Columbia be asked to formally acquiesce in the action taken by Your Excellency's Government in the matter and to intimate its readiness to confirm any reserves which it may be found necessary to set apart.¹¹

A month later, Commissioner McKenna indicated that a despatch had been forwarded to the government of British Columbia asking it to confirm any reserves in that section of the province which would be included in the treaty.¹²

Another problem encountered by the Indian Commission regarding British Columbia concerned treaty boundaries. All of British Columbia situated east of the Rocky Mountains was added to the 1891 treaty proposal because it was on the route to the Klondike, and a natural boundary appealed more to the natives than an artificial one. On 30 November 1898, Clifford Sifton indicated the reasons for including a natural boundary:

As the Indians to the west of the Mountains are quite distinct from those whose habitat is on the eastern side thereof, no difficulty ever arose in consequence of the different methods of dealing with the Indians on either side of the Mountains. But there can be no doubt that had the division line between the Indians been artificial instead of natural such difference in treatment would have been fraught with grave danger and have been the fruitful source of much trouble to both the Dominion and the Provincial Governments.

It will neither be politic nor practicable to exclude from the treaty Indians whose habitat is in the territory lying between the height of land and the eastern boundary of British Columbia, as they know nothing of the artificial boundary, and, being allied to the Indians of Athabasca, will look for the same treatment as is given to the Indians whose habitat is in that district.¹³

The northeastern part of British Columbia, therefore, was included in the treaty and comprised the districts of Fort St. John, Fort Nelson, Fort Halkett and Hudson's Hope.¹⁴

There has been some confusion regarding the western boundary of Treaty 8. The treaty describes the boundary as the "central range of the Rocky Mountains," while the maps accompanying both the treaty and the enabling Order-in-Council, P.C. 2749, dated 6 December 1898, authorizing the signing of Treaty 8, indicate the westerly boundary to the treaty to be the height of land separating the Arctic Drainage system from the Pacific Drainage system, a more westerly range of mountains.¹⁵ The boundary question has been addressed by the Department of Indian Affairs on several occasions and it has been concluded that the more westerly range of mountains was the intended boundary of Treaty 8.¹⁶ The province of British Columbia agrees with this interpretation of the treaty boundary.

Notes

^{1.} Public Archives of Canada, RG10, Black Series, Vol. 3848, File 75,236-1, Privy Council report, 26 January 1891.

^{2.} *Ibid.*, L.W. Herchmer to the Comptroller, NWMP, 2 December 1897.

^{3.} *Ibid.*, *Ottawa Citizen*, 30 June 1898.

^{4.} *Ibid.*, *Ottawa Citizen*, 30 June 1898

^{5.} *Ibid.*, Forget to J.A.J. McKenna, Department of Indian Affairs, Ottawa, 28 June, 1898

^{6.} *Ibid.*, Clifford Sifton to His Excellency the Governor General In Council, 30 November 1898.

^{7.} Charles Mair, *Through the Mackenzie Basin: A Narrative of the Athabasca and Peace River Expedition of 1899* (Toronto, 1908), pp. 23-24.

^{8.} Canada, Privy Council, Order-in-Council (O.C) No 2749, 6 December 1898.

^{9.} *Ibid.*

^{10.} *Ibid.*

^{11.} PA, RG10, Black Series, Vol. 3848, File 75,236-1, Sifton to His Excellency the Governor General in Council, 30 November 1898.

^{12.} *Ibid.*, McKenna to David Laird, 5 December, 1898.

13. *Ibid.*, Sifton to His Excellency the Governor General in Council, 30 November 1898.
14. René Fumoleau, *As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939* (Toronto, 1975), p. 59.
15. Canada, Privy Council, O.C. No. 2749, 6 December 1898: Department of Indian Affairs and Northern Development (DIAND), *Treaty No. 8, Made June 21, 1899 and Adhesions, Reports, etc.* (Ottawa, 1966).
16. PA, RG10, Black Series, File 336, 877, W.E. Ditchburn to Duncan Scott, 19 November 1920, *Ibid.*, Scott to Ditchburn, 4 December 1920. *Ibid.*, File 1/1-11-5, Vol. 4, George Brown to D.F. Pearson, 17 May 1974; Wilson Duff, *The Indian History of British Columbia*, Anthropology in B.C. memoir no. 5 (Victoria, 1964), p. 70, J. Bruce Melville, *Report: Indian Reserves and Indian Treaty Problems in Northeastern B.C.*, Prepared for B.C. Hydro and Power Authority (Vancouver, 1981), pp. 13-21.

TREATY NEGOTIATIONS AND ADHESIONS

While Treaty 8 was concluded in 1899 with most bands outside the province, British Columbia Indians did not sign treaty until 1900.¹ The commissioners' original intention was to include all those bands who traded with the Hudson's Bay Company posts at Fort St. John and Fort Nelson, both posts being located in northeastern British Columbia in the upper Peace River country. Treaty commissioners James Ross and J.A. McKenna intended to make treaty with the Beaver Indians at Fort St. John on 21 June 1899, but there was some confusion over the signing of the treaty, as explained in the report of the commissioners:

Unfortunately the Indians had dispersed and gone to their hunting grounds before the messenger arrived and weeks before the date originally fixed for the meeting, and when the Commissioners got within some miles of St. John the messenger met them with a letter from the Hudson's Bay Company officer there advising them that the Indians after consuming all their provisions, set off on the 1st June in four different bands and in as many different directions for the regular hunt ... It may be stated, however, that what happened was not altogether unforeseen. We had grave doubts of being able to get to St. John in time to meet the Indians, but as they were reported to be rather disturbed and ill-disposed on account of the actions of miners passing through their country, it was thought that it would be well to show them that the Commissioners were prepared to go into their country, and that they had put forth every possible effort to keep the engagement made by the Government.²

The Commissioners met with part of the Fort St. John Beaver Band of the upper Peace River the following spring and an adhesion to Treaty 8 was signed by 46 Beaver Indians on 30 May 1900.³ Many of the Indians of the Fort St. John Beaver Band signed subsequent adhesions to Treaty 8, but there was some difficulty in bringing them into treaty. Indeed, early Indian Affairs reports following the treaty reflect a general mood of indifference. For example, on 5 October 1903, H.A. Conroy, Inspector for Treaty 8,

reported that the Indians at Fort St. John were reluctant to adhere to treaty:

The Indians at this place are very independent and cannot be persuaded to take treaty. Only a few families joined. The Indians there said they did not want to take treaty, as they had no trouble in making their own living. One very intelligent Indian told me that when he was old and could not work he would then ask the government for assistance but till then he thought it was wrong for him to take assistance when he did not really require it. ⁴

By 1907, reports indicated that only half of the Indians in the Fort St. John area had been given assurances that would guarantee hunting, fishing and trapping rights and freedom of movement, to justify signing treaty. Inspector Conroy emphasized the fact that “a great many of them have a great antipathy to treaty.”⁵

Apparently the treaty commissioners saw no urgent need to obtain adhesions from other B.C. Indian bands located within the limits of Treaty 8, until it was reported in 1909 that the Fort Nelson natives were “becoming troublesome” and should be approached to sign treaty.⁶ A number of upper Hay River treaty Indians were trespassing on the hunting grounds of the Slaves and Sekani of the Fort Nelson Band, creating a potentially volatile situation. The latter objected, arguing that treaty Indians had no right to hunt in that part of the country.⁷ Consequently, H.A. Conroy was appointed a commissioner by Order-in-Council on 18 December 1909, to negotiate an adhesion by the Fort Nelson Indians.⁸

While many of the Fort St. John Beaver Indians were reluctant to adhere to treaty, the Slave and Sekani natives at Fort Nelson seemed eager. There was, however, one obstacle as reported by Conroy on his arrival at Fort Nelson:

I arrived at Fort Nelson on Saturday August 13th, two days ahead of time. The greater part of the next two days was spent talking with the Indians, and explaining the articles of Treaty. Their chief objections were that their country

was too big to sell for a few dollars, and that they could make a good living in the bush without the aid of the Government.

I pointed out to them that Treaty would be paid every year in perpetuity, and not only they, but their descendants forever would reap the benefit. They, too, were poor and ill-clad; the old and destitute were uncared-for; the children were in rags.⁹

Satisfied with Conroy's description of the treaty, the Indians elected a chief and headman and, on 15 August 1910, signed an adhesion to Treaty 8 for themselves and a band of 124 Indians. They were "mostly Slaves with a few Sicanees."¹⁰ The chief received an annuity of \$32, the headman \$22, and each Indian \$12, for a total of \$1,542.¹¹ All except 80 natives signed the adhesion in 1910 and those holdouts adhered to treaty the following year when treaty payments were accepted by 131 Slaves and 98 Sekani.¹² Treaty payments, as indicated by Conroy, would aid the Fort Nelson Indians enormously:

I have never seen so poor a band of purely nomadic Indians. They are sickly, infected with scrofula and own no shacks or even teepees, using only bark and brush. They have no horses, and travel from place to place with women and children, and dogs laden with packs. They make a few pine bark canoes, but they are at best a poor affair, never lasting more than one season.

The Hudson's Bay Company is the only trading company at Nelson, consequently goods are priced very high and fur correspondingly low. As a result the Indians can afford few supplies, and must spend most of their time following the meat animals. This makes them poor fur-hunters, and exposes them to much hardship. Treaty will be of great benefit to them. The annuity will purchase clothing, and the fur will be traded for supplies, which will considerably ameliorate their condition.¹³

During the negotiations for the Fort Nelson adhesion, Departmental officials suggested that at some future date the Sekanis in the Fort Grahame-Finlay River area should be brought into treaty.¹⁴ Indian Commissioner David Laird announced this decision on 11 January 1910:

The Beaver Indians of Fort St. John have given their adhesion; the Sicannies and other Indians of Nelson River are proposed to be asked by Inspector Conroy to give their adhesion to the Treaty next summer. It will also probably be necessary before long to get the adhesion of the Indians in the vicinity of Fort Graham, as I understood that the Dominion Government by the aid of R.N.W.M. Police have recently opened a trail from Fort St. John on the Peace River to Fort Graham on the Finlay River, a tributary of the Peace.¹⁵

The question of bringing into treaty the Sekanis and other Indians within the limits of Treaty 8 was not addressed again by Departmental officials until 1913, when Treaty 8 Inspector H.A. Conroy estimated that there were about 300 Indians trading at Fort Grahame and another 100 along the northwestern limits of Treaty 8 territory who had not taken treaty.¹⁶ He also suggested that treaty should be made with a band of 100 Indians resident at Moberly Lake, as settlers were moving into that area.¹⁷ Also, Harold Laird, assistant Indian agent for the Lesser Slave Lake Agency, stated more specifically that there were 300-320 Indians who traded at Fort St. John and Hudson's Hope, of whom 150 had never been admitted to treaty. As well, there were 23 Sauteaux Indians situated at the east end of Moberly Lake who had never been taken into treaty.

Finally, during the summer of 1914, those Indians located at Moberly Lake, numbering 116, and 34 Sauteaux (Cree) were brought into treaty. While some of the Fort Nelson Slaves and Sekanis signed a formal adhesion to Treaty 8 in 1910, the evidence suggests that the Hudson's Hope and Sauteaux bands were merely admitted to treaty. H.A. Conroy, for example, indicated in the Annual Report for the Department of Indian Affairs for 1914 that these Indians were entitled to take treaty:

I would respectfully suggest, also, that during next year the government authorize me to inspect this territory and arrange for the establishment of Hudson Hope and St. John Indians on the reserve that has already been staked out, but upon which several white settlers have squatted. There are from 100 to 125 Indians who have not taken treaty but who are entitled to do so, and these should be allowed to come in.

Another small band of the Stony Indians of a nomadic character who have been constantly travelling the western country until within the last four years in order to avoid treaty, have now settled at Moberley Lake, a few miles south of St. Johns on the Dominion Lands reservation. They have built themselves good houses, and now express a desire to come under treaty.

In their case, also, white settlers are endeavouring to oust them, and I would suggest that the necessary arrangements be put through so that they may be definitely established on their own reserve and come under the usual treaty regulations.¹⁸

Also, Assistant Indian Agent Harold Laird was instructed in letters dated 21 March and 30 March 1814 to admit these bands into treaty:

With reference to paragraph on page 7 of your report, dated the 3rd November last, on the annuity payments 1913 in the Lesser Slave Lake Agency, relating to the admission to Treaty of some 150 Beaver Indians living in the Fort St. Johns and Hudson's Hope districts, I beg to state that you are authorized to admit these Indians at the next annuity payments. You may also pay them in addition to their annuity money the sum of \$7.00 per capita in extinguishment of all claims to arrears...

You should therefore notify the different groups of non-treaty Indians referred to in your report that they will be admitted to Treaty next summer.¹⁹

The first pay list, moreover, includes headmen of both the Hudson's Hope and Saulteaux bands. Annuities and arrears were paid to these bands at the following locations: Hudson's Hope, 8 June, \$1432; Moberly Lake, 11 June, \$418; Fort St. John, 19 June, \$908.²⁰

Notes

1. DIAND, *Treaty No. 8*, p. 20.
2. *Ibid.*, p. 5.
3. *Ibid.*, p. 20.
4. DIAND, *Annual Report*, 1903, p. 235, H.A. Conroy to Superintendent General of Indian Affairs, 5 October 1903.
5. DIAND, *Annual Report*, 1907, p. 183, Conroy to Frank Pedley, 5 February 1907.
6. PA, RG10, Black Series, File 1/11-11-5-1, Vol. 1, "Certified Extract from the Minutes of a Meeting of the Treasury Board," 18 December 1909.
7. *Ibid.*, Conroy to Superintendent General of Indian Affairs, 20 October 1910.
8. *Ibid.*, Privy Council, O.C. 8/2534, 18 December 1909.
9. *Ibid.*, Conroy to Superintendent General Indian Affairs, 29 October 1910.
10. PA, RG10, Black Series, Vol. 1852, Copy of Fort Nelson Adhesion, 15 August 1901; DIAND, *Annual Report* 1911, p. 191, Conroy to Pedley, 14 November 1910.
11. PA, RG10, Black Series File 1/1-11-5-1, Vol. 1, "Statement of Gratuity Money Paid to the Fort Nelson Indians, 1910", n.d.
12. PA, RG10, Black Series, File 1/1-11-5-1, Vol. 1, Conroy to Superintendent General of Indian Affairs, 29 October 1910; Duff, *Indian History*, p. 71. The 98 Sekani Indians who were admitted to treaty on 4 August 1911 belonged to two bands, one under Chief Prophet (located on Sicannie River) and the other under Chief Big Foot (located on Fort Nelson River).
13. DIAND, *Annual Report*, 1911, p. 191, Conroy to Pedley, 14 November 1910.
14. PA, RG10, Black Series, File 355,726, Vol 1, "Fort Nelson Adhesion to Treaty 8," n.d.
15. *Ibid.*, File 1/1-11-5-1, Vol. 1. David Laird, "Memorandum for the Deputy Minister," 11 January 1910.
16. *Ibid.*, Conroy to Duncan Scott, 29 December 1913.
17. DIAND, *Annual Report*, 1915, p. 84, "Report of Henry A. Conroy, Inspector for Treaty No. 8."

18. *Ibid.*

19. PA, RG10, Black Series, Vol. 5507, Assistant Deputy and Secretary to Harold Laird, 21 March 1914; *Ibid.*, File 1/1-11-5, Vol. 1, A.F. Mackenzie to H.A.W. Brown, 23 April 1936, *Ibid.*, Vol. 6920, File 777/28-3, Vol. 1, Laird to McLean, 3 November 1913.

20. *Ibid.*, File 1/1-11-5, Vol. 1, A.F. Mackenzie to H.A.W. Brown, 23 April 1936; *Ibid.*, vol. 6920, File 777/28-3, Vol. 1 "Annuities Paid in 1914."

TREATY PROVISIONS

The provisions of Treaty 8 reflect, in part, a recognition that the Indians in the Treaty 8 area might wish to continue traditional economic activities, such as hunting, fishing and trapping, and to resist being restricted to reserve land.¹ The latter provision was particularly true for those bands located in the north whose social organization differed from that of the Plains Indians. Consequently, the treaty commissioners were given discretionary powers regarding reserve lands.²

Generally, the four B.C. bands who adhered to Treaty 8 between 1900 and 1914 surrendered a designated tract of land in exchange for an allotment of one square mile for each family of five.³ Also, they were allowed “to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described ... and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.”⁴ In addition, the chief received a present of \$32, the headman \$22, and each Indian \$12, at the time of treaty. Thereafter, annuities amounted to \$25 to each chief, \$15 to a headman, and \$5 to each Indian. The Dominion government, moreover, was committed to pay the salaries of such teachers of Indian children “as the government may deem advisable.” The “Report of Commissioners For Treaty No. 8” also indicated that certain verbal assurances concerning education rights were required:

As to education, the Indians were assured that there was no need of any special stipulation, as it was the policy of the Government to provide in every part of the country, as far as circumstances would permit, for the education of Indian children, and that the law, which was as strong as a treaty, provided for non-interference with the religion of the Indians in schools maintained or assisted by the Government.⁵

Other provisions of Treaty 8 included farm stock and implements, ammunition and twine, and a suit of clothing for headmen every third year (triennial clothing). Regarding

the provisions for stock and implements and ammunition and twine (one-for-all-expenditures), each band that selected a reserve and cultivated the soil would receive the following:

(T)wo hoes, one spade, one scythe and two hay forks for every family so settled, and for every three families one plough and one harrow, and to the Chief, for the use of his Band, two horses or a yoke of oxen, and for each Band potatoes, barley, oats and wheat (if such seed be suited to the locality of the reserve), to plant the land actually broken up, and provisions for one month in the spring for several years while planting such seeds; and to every family one cow, and every Chief one bull, and one mowing-machine and one reaper for the use of his Band when it is ready for them; for such families as prefer to raise stock instead of cultivating the soil, every family of five persons, two cows, and every Chief two bulls and two mowing-machines when ready for their use, and a like proportion for smaller or larger families. The aforesaid articles, machines and cattle to be given one for all for the encouragement of agriculture and stock raising; and for such Bands as prefer to continue hunting and fishing, as much ammunition and twine for making nets annually as will amount in value to one dollar per head of the families so engaged in hunting and fishing.⁶

Notes

1. Richard Daniel, "The Spirit and Terms of Treaty Eight," in *The Spirit of the Alberta Indian Treaties*, ed., Richard Price (Montreal, 1979), p. 80.

2. Canada, Privy Council, O.C. No. 1703, 27 June 1898.

3. DIAND, *Treaty No. 8*, pp. 10-11.

4. *Ibid.*, p. 10.

5. *Ibid.*, p.4.

6. *Ibid.*, pp. 11-12.

TREATY 8 AND THE B.C. INDIAN RESERVE QUESTION

Land surveyors and settlers entered the Peace River region of B.C. in 1912. Previously, the area from the Rockies east to the Alberta boundary was part of a provincial government “reserve” which prohibited homesteading. The purpose of this reserve was to permit the federal government to select 3,500,000 acres of unalienated arable land (Peace River block) in return for aid given earlier for railway construction elsewhere in the province. The choice of the block was made in 1907, and homesteading was permitted in 1912. With settlement in the region, Departmental officials agreed that reserves should be allotted to those treaty Indians located in the Fort St. John’s District.

Reserves in the Peace River block were surveyed for the Fort St. John Hudson’s Hope and Saulteaux Bands, in 1914 and 1915, based on the Treaty 8 formula of 128 acres per capita. Since all lands for these bands were located within the Peace River block, which was under federal jurisdiction until 1930, the province of British Columbia was not involved in the land entitlement question. Treaty 8 Commissioner David Laird indicated the rationale for the above formula being used in British Columbia and not the “reserves in severalty” formula (applied in the North):

The last clause about land in severalty (160 acres to each Indian) is the greatest difficulty, but in inserting it in the Treaty the Commissioners were following their instructions. If practicable, it would be advisable not to carry this clause out in British Columbia. With respect to reserves the phrase, ‘*not to exceed in all one square mile,*’ may lessen the difficulty in dealing with the Indians of that Province within the limits of the Treaty.”¹

The “reserve in severalty” formula, where an Indian family could have its own small reserve, apart from those of other families or bands, was rejected in British Columbia in favour of the “old system,” as applied in Treaties 1 to 7.²

There have been a number of reserve land transactions regarding the Fort St. John Band which have raised questions concerning its land entitlement under the terms of Treaty 8. In 1914, D.L.S. surveyor D.F. Robertson “surveyed a reserve 28 square miles (17,920 acres), for the Fort St. John Band of Beaver Indians.”³ By O/C P.C. 819 dated 11 April 1916 “a parcel of land in the Peace River Block, known as St. John Indian Reserve No. 172,” totalling 18,168 acres, was set apart for the Fort St. John Band.⁴ On 16 October 1945, O/C P.C. 6506 authorized the surrender of Indian Reserve No. 172 “to be sold or leased for their benefit.”⁵ The reserve was subsequently sold to the Director, Veterans Land Act and the proceeds from the sale, totalling \$70,000, were credited to the Fort St. John Band. As indicated by Indian Superintendent E.J. Calibois, this reserve was replaced by Beaton River I.R. No. 204, Blueberry River I.R. No. 205, and Doig River I.R. No. 206, comprising 6,194 acres.⁶ These three reserves were confirmed by O/C P.C. 4092 dated 25 August 1950.⁷ Finally, it should be noted here that the surrender of Fort St. John I.R. No. 172 has raised the question of reserve land entitlement for the Fort St. John Band under the provisions of Treaty 8. Issues dealing with the legality of the surrender and the reserve land entitlement question are presently before the provincial courts.

While the question of outstanding land entitlement still remains for the Fort St. John Band, the federal government seems to have fulfilled its treaty obligations regarding land entitlement for the Hudson’s Hope and Sauleaux Bands. D.F. Robertson reported in 1914 on survey work completed for the Hudson’s Hope Band: (U)nder the conditions of Treaty No. 8 (I) surveyed one block of the reserve for the Hudson Hope Band of Beaver Indians at the west end of Moberly (Lake) laying out an area of 5,025 acres at this point.⁸

At Halfway River a reserve of 9,893 acres was laid out, being the remainder of the land to which the Hudson’s Hope band was entitled.⁹ West Moberly Lake I.R. 168A was set aside by O/C P.C. 808 dated 7 April 1916 while Halfway I.R. 168 was confirmed by O/C P.C. 322 dated 3 March 1925 as 9,890 acres.¹⁰ Halfway River I.R. 168 was not confirmed as a reserve, however, “due to an oversight, until 1952.”¹¹

To determine land entitlement for the Hudson's Hope Band, Robertson ascertained the band's population at the time of survey (in this case, 116) and allocated a reserve on the basis of 128 acres per person.¹² There was, however, the unforeseen problem of deciding which population to take — at the time of treaty? Survey? Reserve establishment by Order-in-Council? Or when a band requested a reserve?¹³ There would never have been a problem if a proper band census, as promised by treaty, had been taken immediately.

Land entitlement for the Saulteaux Band was also determined at the time of survey. In his report for survey work done for the Saulteaux Band, D.F. Robertson wrote:

(A)t the east end of Moberly Lake an area of 7,656 (sic) acres was chosen and surveyed for the Saulteaux Indians and a number of the Beaver Indians of the Fort St. John band who wished to have their land there.¹⁴

On 19 September 1918, O/C P.C. 2302 set aside 7,646 acres for East Moberly Lake I.R. 169.¹⁵

By 1915, the only signatory band for whom land had not been provided under Treaty 8 was the Fort Nelson Band. This band was situated outside the Peace River Block and the problem of providing its land allotment therefore came within the terms of reference of the 1913-1916 Royal Commission on Indian Affairs (the McKenna-McBride Commission).¹⁶

Also, there were some bands located within the Treaty 8 boundary which had not adhered to treaty and had not been provided with reserves. Duncan C. Scott, Deputy Superintendent General of Indian Affairs, commented on the non-signatory bands:

We estimate, that there are about 300 Indians west of Fort St. John, on the Findlay river, who trade at Fort Graham; these Indians have not been taken into Treaty. It is probable that another hundred Indians roam along the northwest

limits of Treaty No. 8. There have been no reserves set apart...for these Indians, and it might be well to make provisions for them under Treaty 8 stipulations.¹⁷

It should be noted that the above referred to the Sekani Indians who roamed the northern limits of Treaty 8 in British Columbia and whose territory stretched from Lake Athabasca west to the Rocky Mountains. Included in this territory were the Laird River Band, McLeod Lake Band, the Fort Grahame Band (or Ingenika as it is now called — later split into Fort Ware and Fort Grahame Bands, which amalgamated in 1959), and the Findlay River Band. There is inconclusive evidence to support the assumption that the Tahltan and Kaska Bands at sometime roamed the most north-westerly points of the Treaty 8 area, as they too were nomadic; these bands are not generally considered as residing within the limits of Treaty 8 in B.C. It should also be noted that no extensive research has been conducted to indicate that the “few Sicanies” who were involved in the signing of the Fort Nelson adhesion were a nomadic off-shoot of other Sekani bands.¹⁸

The selection and allotment of reserves for the Fort Nelson and non-treaty bands were dealt with by the McKenna-McBride Commission. After the Royal Commission visited the Fort Nelson area in 1914, it decided not to deal with the question of reserve allotments for this band for the following reasons:

It was found that the country wherein these Indians were found is so difficult to access, and information as to the location of the Indians as indefinite that visitation of the Territory by the Commission would not, under existing circumstances, have resulted in the obtaining of detailed and specific information that would enable the Commission to make definite findings as to the location, suitability and areas of lands to be set aside as Reserves for such Indians; it was, indeed, found that even the Department of Indian Affairs is not possessed of dependable and particularized information requisite.¹⁹

Instead, the royal commission issued Interim Report No. 91, dated 1 February 1916,

which deferred the selection and allotment of reserves for “Indian residents in that portion of British Columbia covered by Treaty 8 for whom reserves have not already been constituted and allotted” until such time as the Department of Indian Affairs attained accurate knowledge of the number and location of the Indians involved.²⁰

The Slave Indians of the Fort Nelson Band did not claim their reserve entitlement until 1961, at which time 24,448 acres (based on a membership roll of 191) were set aside “in full satisfaction of the Fort Nelson Band of Indians land entitlement under the provisions of Treaty Number 8.”²¹ Five reserves, including Fontas I.R. No.1 (25 acres); Fort Nelson I.R. No. 2 (23,444 acres); Kahntak I.R. No. 3 (25,7 acres) Prophet River I.R. No. 4 (924 acres); and Snake I.R. No. 5 (28,5 acres) were transferred to Canada by provincial Order-in-Council P.C. 2995 of 28 November 1961.²² The five reserves were then set apart for the use and benefit of the Fort Nelson Band by federal Order-In-Council P.C. 1966-1978 dated 20 October 1966.²³

The Fort Nelson Band was delayed in claiming its reserve land entitlement due to lengthy negotiations with the province of British Columbia regarding mineral rights. All of the reserves in the Treaty 8 area in B.C. received mineral rights except the five reserves of the Fort Nelson Band. The province refused consistently to convey mineral rights to the Fort Nelson Band, but attempts to persuade the province to reconsider its stand resulted in a recent agreement whereby the Slave Indians of the Fort Nelson Band would receive royalties collected by the B.C. government from gas wells on the Fort Nelson reserve since 1977. Also the band would receive a share of the natural gas revenue.²⁴

Allotment of reserves for the non-treaty bands occurred in 1916 pursuant to Interim Report No. 91. Reserves totalling about 4,300 acres were set aside for the 300 nomadic Indians resident in the westerly portion of Treaty 8 immediately east of the Arctic Divide.²⁵ Approximately 3,500 acres were allotted to the Laird River Band while another 800 acres were set aside for the McLeod Lake and Fort Grahame Indians (the present day Fort Ware, Ingenika and McLeod Lake Bands).²⁶ In 1920, H.A. Conroy, former

Inspector for Treaty 8, stated that about 300 Indians remained in the Treaty 8 area of British Columbia who had not taken treaty and who had not been provided with reserves. He mentioned that the Royal Commission had set aside nine small reserves comprising 3,600 acres for “some of the straggling Bands roaming west of the Findlay” (a reference to the reserves for the Laird River Band), and added:

The reserves are all in severalty but this is the very plan which has failed in the southern part of Treaty 8 and which an attempt is now being made to rectify. The Indians interested should be given sufficient notice to enable them to select proper reserves and thus obviate the impracticable problem of severalty. I would not recommend the acceptance of the reserves as set aside by the Commission, but would prefer to wait until more information can be secured and the Indians pick out large reserves.²⁷

Contrary to Conroy’s recommendations, the Royal Commission’s allotments for the aforementioned bands were accepted.

The question of an adhesion to Treaty 8 by the non-signatory bands was not addressed again by the Department of Indian Affairs until the 1950's and 1960's, although no formal request was made by the bands to adhere to treaty. The correspondence indicated that these Indians did not adhere to treaty “probably because they were nomadic.”²⁸ W.C. Bethune, Chief, Reserves and Trusts, suggested 14 April 1960 that B.C. officials should consider a surrender of the non-treaty Indians:

From a legal point of view, there is no entitlement to reserve areas calculated on the basis of one square mile for each family of five, as provided for in Treaty No. 8. It would seem that the crux of the question is the importance from a Provincial standpoint of securing a surrender from these Indians who are not under treaty, of their interest in land within Treaty No. 8 area. The matters may not be of great significance to the Province in view of the fact that most of the Province is not under treaty. However, there is no objection to your discussing this informally

with Provincial officials and ascertaining their reaction.²⁹

There is little evidence, however, to indicate that this matter was ever discussed seriously and that B.C. officials ever considered Bethune's suggestion.

In 1972, questions concerning the treaty status of the Laird River Band (formed in 1961 by an amalgamation of the Casca, Nelson River, Laird and Francis Lake, and Watson Lake Bands) and a possible adhesion to Treaty 8, were raised by Mr. I.F. Kirby, Regional Director, Department of Indian Affairs, Yukon. C.I. Fairholm, Senior Policy Adviser for Policy, Planning and Research Branch, indicated that the Laird River Band did not adhere to Treaty 8, although they were provided with reserves in the Treaty 8 area of B.C.³⁰ On the possibility of the Laird River Band adhering to Treaty he stated:

The situation of the Laird River Indians is by no means unique. Various groups of Indians came into treaty in western Canada long after the Treaties were signed, some as recently as the 1950's. The Laird River Band could presumably seek adhesions to Treaty 8 or 11, or both as the case may be. Whether it would be wise for it to do so is debatable. There is growing pressure upon the Government by the non-treaty Indian bands in the Yukon and B.C. for recognition of an Indian interest in the land and, as you know, the claim of the Nishgas is presently before the Supreme Court of Canada. What the outcome of such claims will be cannot be foreseen, nor whether other arrangements more attuned to present-day needs may emerge as a result of the general research going forward and the work of the Commissioner on Indian Claims.³¹

Notes

¹ PA, RG10, Black Series, File 1/1-11-5-1, Vol. 1, Laird to Deputy Minister, 11 January 1910.

² Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories* (Toronto, 1880; reprinted 1971, Coles Publishing Company).

³ DIAND, *Annual Report*, 1915, p. 86, "Survey Report of Donald F. Robertson," PA, RG10, Black Series, Vol. 4065, File 412 786-3, McLean to Robertson, 27 May 1914.

4. Canada, Privy Council, O.C. No. 819, 11 April 1916.
5. Canada, Privy Council, O.C. No. 6506, 16 October 1945.
6. PA, RG10, Black Series, File 975/30-7-204, E.J. Galibois to G.H. Gooderham, 26 September 1951.
7. Canada, Privy Council, O.C. No. 4092, 25 August 1950.
8. DIAND, *Annual Report*, 1915, p. 86, "Survey Report of Donald F. Robertson."
9. *Ibid.*
10. Canada, Privy Council, O.C. No. 808, 7 April, 1916; *ibid.*, O.C. No. 322, 3 March, 1925
11. *Ibid.*, O.C. No. 3267, 11 June 1952; PA, RG10, Black Series, File 975/30-5-168, N.K. Ogden to Superintendent of Indian Affairs, 5 November 1956.
12. Note: The census for the Hudson Hope Band in 1914 was 116, as indicated in the DIAND Annual Report of 1914, p. 52.
13. Ronald C. Maguire, *An Historical Reference Guide to the Stone Fort Treaty (Treaty One, 1871)* Ottawa, 1980, p. 20.
14. DIAND, *Annual Report*, 1915, p. 86, "Survey Report of Donald F. Robertson."
15. Canada, Privy Council, O.C. No. 2302, 19 September 1918.
16. British Columbia, Report of the Royal Commission on Indian Affairs (Victoria, 1916), Vol. 1. P. 126 (Interim Report No. 91, 1 February 1916).
17. PA, RG10, Black Series, File 1/1-11-5-1, Vol. 1, Scott to J.G.H. Bergeron, 5 January 1914.
18. PA, RG10, Black Series, File 1/1-11-5, Vol. 7, D.F.K. Madill to D. Borthwick, 29 October 1976.
19. British Columbia, *Report of Royal Commission*, p. 126.
20. *Ibid.*
21. Canada, Privy Council, O.C. No. 1966-1978, 20 October, 1966.
22. *Ibid.*, O.C. No. 2995, 28 November 1961.
23. *Ibid.*, O.C. No. 1966-1978, 20 October 1977.
24. *Ibid.*, O.C. No. 1980-1217, 18 February and 8 May 1980.
25. PA, RG10, Black Series, File 1/1-11/5-1, Vol. 1. Secretary to Duncan C. Scott, 6 August 1915; *ibid.*, S. Carmichael and J.P. Shaw to N.W. White, 22 October, 1915.
26. *Ibid.*, See also British Columbia, Report of Royal Commission, Minutes of Decision. Declaration 31 May 1916; decision 28 April 1916; also Stikine Agency Additional Lands Applications, and New Reserves.
27. PA, RG10, Black Series, File 336,877, Conroy to Scott, 1 December 1920.
28. *Ibid.*, File 1/1-11-5, Vol. 1, W.C. Bethune to Indian Commissioner for B.C. 14 April 1960.

29. *Ibid.*

30. *Ibid.*, C.I. Fairholm to I.F. Kirby, 10 May 1972.

31. *Ibid.*

CONCLUSIONS

There are numerous complex and confusing issues regarding the legislative and administrative aspects of Treaty 8 in British Columbia. The treaty, for example, was negotiated largely without consultation with the provincial government. The federal government, however, relied on an 1876 agreement which stipulated that the province would be responsible for negotiating with the Indians for their land and for allotting reserves. The province did set aside some reserves, but the Fort Nelson reserves were not established until 1961.

There was also confusion concerning boundary descriptions. The Treaty 8 commissioners were influenced by an illustrative map which accompanied Order-in-Council P.C. 2749, dated 6 December 1898, wherein the term "Rocky Mountains" was used in a general sense as the mountains that separated the Arctic and Pacific drainage systems. Questions arose, therefore, regarding the western boundary of Treaty 8, and Departmental officials concluded that the more westerly range of mountains was the intended boundary of Treaty 8.

Finally, the method of bringing Indian bands into treaty seems to have been conducted in a rather haphazard manner. The federal government seems to have been ignorant of Indian matters, particularly in the Laird River drainage area, caused partly by difficulty of access and partly by the nomadic lifestyle of the various Indian groups. There is evidence to indicate that the Department of Indian Affairs intended to negotiate treaty with more B.C. Indian tribes, but this was never done.

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