

This is Exhibit "U" referred to in the
affidavit of BARBARA LANE
sworn before me at VICTORIA, BC
this 2 day of DECEMBER 2009

*Memorandum on
Gowichan Reserve*

A Commissioner for taking Affidavits
Within British Columbia
20th Jan. 1977

In the event of the Government
being called upon, at any time, to enforce
the law upon the Indians at Gowichan, in
connections with land matters, it may be
well for you to have a few rough notes
on the general history of the dealings of the
Colonial Government with these Indians,
who are important from their number
alone, over eight hundred souls.

To find the actual facts
is now extremely difficult, owing to the
confusion of the Island records in early
days, but it is at least necessary that
you should know what complaints the
people generally made to the Commissioner
when they visited Gowichan.

(No. 1) They complained that Governor
Douglas had paid Indians both North
and South of them, for their lands, namely

Mr. Hon. The Attorney General

the Grake, Metchasin, Esquimalt, Victoria, Saanich, Nanaimo, Fort Rupert Indians, but that the Cowichan Indians had not been paid.

see page 10

(No 2) They complained that the land which they were told was theirs did not include all the land previously pointed out to them on the spot by Governor Douglas.

see page 22

(No 3) They complained that from these lands, declared as theirs, sections had been cut off, and that they had not been paid for these sections.

see page 23

(No 4) They complained that ^{several} Governors ^{made promises} ~~had promised~~ to assist them in ^{to} ~~enforcing their recovery~~ and that for years these promises were not fulfilled, and then only by ^a small donations sent through Mr. Moaley.

see page 25

(No 5) They complained that they had heard that white men had bought the fishing stations on the lower Fraser River, where they had always been accustomed to get their winter food.

As regards 'Complaint No 1',
January

I may remark that the history of the Indian title question in the island, is different from its history on the mainland. It was admitted on the island and denied on the mainland. What the Cowichan Indians say appears to be true. The Indians, North and South of them were paid for their lands, and formal documents executed, but the Cowichan and Chemainus Indians for some reason were passed over, at least I cannot find any record of their having been paid.

I imagine that soon after Mr Douglas as head of the Hudson's Bay Co. came in 1849 from Oregon to reside at Victoria, the island being then leased for a time to the Company, with the condition that they should introduce settlers, he, judging that settlers could not safely be introduced without some arrangement being made with the Indians about the land, made the purchases mentioned in the Yellow Book on Indian affairs. These purchases comprised the land in the neighbourhood of Fort Victoria,
as

as settlers would naturally at that time take up land near the Fort. Subsequently Mr Douglas purchased lands from the Indians of Nanaimo and Fort Rupert where coal had been discovered. The purchase of the lands from the Cowichan, Squamish, and other Indians was probably hastened as the public funds were small, and nobody was then going to settle at these places. But it is clear that the authorities of Vancouver Island distinctly recognised the necessity of purging the Indians generally for these titles, and that the Secretary of State also did so, though he considered that the Colony should find the money.

The House of Assembly of Vancouver's Island see part 19 of the Yellow Book on Indian land questions, adopted a petition in 1860-61 praying for the aid of the Home Government in extinguishing the Indian title to the public lands (including a course Cowichan), and Governor Douglas suggested to the Home Government that

5

that this should be given by an ^{advance} ~~advance~~ from the Home Government to be eventually repaid out of the Colonial Land Fund.

This was two years after the Cowichan reserve had been placed on the official map.

Gouverneur Douglas (Yellow Book page 19) writes as follows to the Secretary of State.

'All the settled districts of the
'Galang, with the exception of Cowichan,
'Chermaines, and Barclay Sound have been
'already bought from the Indians, at a cost
'in no case exceeding £2.10 Stg 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 these districts at 1000 families the sum of
'£3000 would meet the whole charge.

The Secretary of State, page 20 Yellow Book replied

'I am fully sensible of the
great

' great importance of purchasing without
' loss of time, the native title to the soil of
' Vancouver Island, but the acquisition of the
' title is a purely colonial interest.

Nothing further was done in
this matter but there is some evidence in Sand
Office records that Governor Douglas, not long
before he left office in 1864, was still of
opinion that the Indian title at Cowichan
especially, should be extinguished, and it appears
further from the Sand Office correspondence
that the Indians at L'Anse-au-Loup & Cowichan
have constantly had the subject in their
minds, in fact the omission to pay them
for their lands, has always been, and now is
at the bottom of their complaints.

X
Mr Pearce Acting Surgeon

General of Vancouver Island wrote as late
as 1866 (20 Nov) as follows to the Colonial
Secretary

Sir

I have the honour to acknowledge
your letter of yesterday, instructing me
to report on the contents of the letter of the
Reverend

X The parties gathered in early days and even now, in dealing directly with the
ships about land, tried to procure the idea of ownership of the land in the minds
of the Indians

Reverend L. Fortens, relative to the Indian
 Reserves at Gorvickham. There is a great
 deal of truth in the views urged by Mr
 Fortens. The Indians have suffered much
 inconvenience and after loss by the trespass
 of the cattle and pigs of the settlers, and
 the disputes which so often occur in consequence,
 produce a strong feeling of irritation in the
 minds of the natives, and more particularly
 because they have received no compensation
 whatever for the loss of their lands, whilst
 all of the Indians from Soake to Soamick
 have been paid for theirs, and have regularly
 conveyed all their right and title in them to the
 Government. I believe there are about 200
 Indian families still in the Gorvickham valley,
 and there are about 3000 acres reserved, for
 their use, or about fifteen acres for each
 family. There is no doubt that many white
 men with capital would gladly purchase these
 lands and park cattle on and improve them,
 but I do not see how the Indians can be
 deprived of them without their consent and
 payment being made to them. The Americans
 have

' have had much trouble and bloodshed from
 ' their unjust way of dealing with the Indian
 ' lands. I believe the feeling of the Cowichan
 ' tribes is greatly depicted by Mr Gostens. The
 ' survey of the Reserve would cost about
 ' \$250. The cost of fencing in 100 acres
 ' for each village would be about \$500, and
 ' there are six villages. I proposed this course
 ' for the consideration of Governor Kennedy on
 ' the 15 March 1845, and am still of opinion
 ' that such a course, though unusual, would
 ' tend more to prevent disputes and bitter
 ' feeling than any other measure. This
 ' estimate is for white labour, but possibly
 ' the Indians would work themselves for
 ' smaller wages, and thus materially diminish
 ' the cost. The Indians unassisted would
 ' never fence in their Reserve, or any large
 ' portions of it, as they have no means, oven &c.'

Supposing there were at
 Cowichan 200 families as Mr Pearce says,
 the Cowichan title according to Governor
 Douglas, estimated page 19 Yellow Book
 might have been extinguished in 1841 for
 £5

£3 a family £600, which sum agrees with the above suggestion of Mr Pears in 1846, that, \$500 for each of six villages would be a fair amount.

In 1849 (19 April) Mr Deutch Chief Commissioner of Land & Works, in a memorandum on this subject wrote as follows

' Mr Pears has told me on various occasions that the Cornisham Indians had never received any compensation for the lands taken from them, but that they expected some consideration from Government on this account. This will be found expressed in a letter from Mr Pears to the Colonial Secretary, dated 20 November 1846' (This is the letter copied above)

I have not been able to find that the Cornisham Indians were ever told distinctly that they would be paid for their lands. Governor Douglas (see comments under head of complaint Nov) is said to have made certain promises to them. Probably they expected to be treated in respect to their lands
like

like the other neighbouring Indians mentioned, with whom they were in constant communication, and who of course would tell them what had been done in their case. I need not say that among our Indians much jealousy exists if one tribe is treated by the authorities, differently from other tribes living near them, or a few what may be called the same 'nation'.

The only additional remark I may make under the head of complaint No 1, is, that the effect of the 'little question' of the actions of the Indian Police Commissioners at that place, has now become part of the case.

As regards complaint No 2, it is very difficult to judge of it owing to the absence, or partial character of records, and the inability of the Indians to fix dates. The Indians cling passionately to what they call the 'Douglas lines'. They say, with a probably unconscious imitation of his attitude and gestures upon the occasion, that Governor Douglas stood on an eminence and pointed out what land was to be theirs. Governor Douglas

Douglas visited Comichan before 1858. He went up there about 1853 with a ship of war, and caused a murderer to be hanged. Whether it was on this occasion or some other occasion, before 1858, that he spoke to the Indians about their lands, I cannot ascertain. There was small probability in these early times of settlers going there, and therefore, so far as we can judge, retrospectively, no great apparent urgency that he should have spoken to them about their lands, unless indeed the Indians had been alarmed by the small white settlements made around Fort Victoria, and been led to expect the purchase, from the fact of Governor Douglas having bought the Nanaimo lands about that time. It is possible that the Indians, in what they said to the Commissioners, may have referred to what Governor Douglas said to them when he accompanied the body of settlers who in 1842 went up to form the main 'Comichan Settlement'. Just Humphreys and a few others were the only settlers before that time. The object of Governor Douglas in going to Comichan in 1842 was to prevent the Indians

Indians from objecting to the formation of the white settlement, and that he did speak to the Indians, and make promises to them of some kind or other is known to many persons, and appears by the evidence of the *Reverend Mr Garrett* (see remarks under head of complaint No. 23)

It is not to be supposed that Governor Douglas personally took the Indians over the valley, which then was unsurveyed, to show them where their lands would run.

I believe his general practice was to instruct the Land Department, when they surveyed a district, to make the boundaries of the reserves as they might be pointed out by the Indians themselves, and he therefore probably contented himself at Cornishan, with showing the Indians generally, where their lands would be, and assuring them that their interests would be protected when the lands were surveyed. This, however, is merely supposition on my part. If 1852 was the date of his visit, he probably ^{showed} the lands with more distinctness. The report of Mr Wells Surveyor (who in 1857 began the survey of Cornishan district

district) enclosed in letter Mr J H Pemberton, Surveyor General, to Governor Douglas 22nd July 1859, cannot be found, nor can I find the instructions to him or undertaking the survey. He may have had some instructions as to the limits of the Indian Reserve, and his report and sketches might show what was done. He evidently in his report did refer to Indian matters, for Mr Pemberton in his above letter, says he dissents from Mr Wells' views as to the Indians. But what he wrote about the Indians, and whether he laid off the reserve on his sketches on the ground, or whether the district was only sectionised by him and the reserve afterwards, as an original act, delineated on the 1859 map by the Land Office authorities, I cannot definitely find by any records. I am told that the latter was the course adopted. Mr Wells was afraid of the Indians and was much of his time in his tent, trusting largely to subordinates for information, and his survey proved to be very incorrect.

The earliest delineation of the reserve that I have seen is upon the 1859
General

It is papers and Government refers to above letter from the
 It seems, it may be supposed that it was laid off and approved by competent
 authority

General Survey map of Cowichan district,
 but this map is not at all clear. It is
 possible there was some laxity in connection with
 the reserve generally, and that the exigencies
 of the Government in view of money already
 received for lands, to be afterwards allotted
 in Cowichan, which lands had to be found,
 may explain some of these earlier proceedings
 in connection with the reserve, but even this
 I should not like to say officially in the
 absence of more definite information. The
 following fact and some other evidence go
 perhaps to show that the reserve outlined on
 the Official Map 1859 was not the actual
 reserve, or at least that it was not accepted
 and understood to be so by the Indians. The
 Surveyor General in 1842, authorized the
 local land speculator to build a house on Section
 16 Range 2, and afterwards to pre-empt it,
 but he added, "provided your occupation of it
 shall not occasion a disturbance or difficulty
 with the Indians". From this it may be
 inferred that even in 1842, the Land Office
 did not know, what really was Indian
 land

land in the valley. +

It is generally believed to be a fact, (Mr. Mahon who has special acquaintances with the Cornishan reserve thinks it is) that though a reserve appears on the official map of 1859, the actual boundaries of the Cornishan Indian Reserve, were not shown completely to the Indians on the ground until 1867, at which time the reserve delineated on the map, was cut down.

Among mentions, in reference to the neighbouring Chemainus Indians, that it appears from a letter of Mr. Morley in 1867 to the Surveyor General, about some disputes between whites and Indians at Chemainus, that, up to so late a date as 1867 no arrangements had at that date been made with the Indians about their land. Reserves were laid off and gazetted in that year (13 July)

A perusal of the Survey Office records correspondence shows that from 1859 onwards, there was great confusion about the survey at Cornishan. What with the 1859 survey of Mr. Wells which

x Mr. Harris' pencil note, written 12 June 1861 to the Surveyor General
 "The Indians are very anxious to have their reserve marked out."
 "They are quite so far but their inquiries are almost daily about it."

as above said was found afterwards from time to time to be extremely imperfect, and what with private surveys, and hit by hit surveys, made by Messrs Dait and Otter, Resident and Recorder then, the Land Office authorities were in frequent difficulties. The Indians saw surveyor after surveyor pattering and altering lines, year after year and this probably helped to confuse their minds. As above said they were very anxious in 1861.

At 1867 when the alleged lease was cut down, the Indians were shown most of the lines by Mr Pearce, with whom was Mr Mahon, but conversations with them were carried on in Chinook, which is a very unfortunate medium for doing important business with the Indians.

In fact, in 1869, the Governor (see page 41 Yellow Book on Indian Affairs) considered that there must have been, in one case at least, a misunderstanding between Mr Pearce and the Indians, as to the exact limits of the Reserve, and further reason, a portion (Rogers River) of the land cut off in 1867 was given

given back to the Indians.

The above exigencies of the Government as to land allotments in Cornishan seem to have arisen in the following way.

The place was favourably regarded as a rural district, and many persons in the Colony, and in San Francisco, and even in England, sent applications to the Government for land there, accompanied by deposits of money, which in the then state of the treasury was welcome, and once in hand, was not likely to be returned. It was found that the available land at Cornishan, outside of the requirements for Government and Indian Reserves, was insufficient for the acreage applied for, and the Government, therefore, was compelled to disappoint applicants and to request them to take their choice of certain portions, to the extent their deposits would pay for. The necessity of finding these portions somewhere in Cornishan, possibly may explain the irregular shape of the Indian reserve, which though delineated on the official map of 1859 (but not very intelligibly) had not as above

above said, been shown to the Indians on the ground, and was not shown to them, as is alleged, until 1847, and then it appears, not very clearly.

Among the gentlemen who applied for land taken allotted in Cornish and who in 1855, paid deposits, and who afterwards took land in consideration of the deposits, I may only mention Mr Munro and Mr Syall, as the sections which they chose, had I must think very considerably been laid off on the map surrounded on three sides by the Indian Reserve, and as these sections have been the subject of dispute (see rough sketch herewith).

Munro
Selected 13 Aug
1862

No blame attaches to these gentlemen for having acquired land that was offered to them by the Government. They fulfilled all requirements and obtained legal titles.

One unfortunate part of the case is that both these gentlemen, were, and have continued to be, absentee owners (Mr Pearson now owns Syall's piece) and the land has

has for nearly twenty years been lying in a state of nature, under the eyes of the Indians and almost entirely within their reserve.

Perhaps in considering this fact, and the alleged fact above mentioned, that the boundaries of the reserve were not shown to the Indians on the ground until 1867, Mr

Jenkins in his memorandum on this subject of the 19 April 1869 may not have been wrong in saying that it was quite possible that the Indians may not have understood that the sections almost surrounded by the Indian Reserve, were not included in the Reserve.

Mr Jenkins of course must have referred to the period before 1867, for in that year as above said, the boundaries were shown to the Indians by Mr Pearson, who was cutting down the reserve. Mr Pearson then distinctly told the Indians that Mr Menras' land, in par-

ticular, was white man's land. Mr McKim remembers this. The lines of Lyall's line, he thought, were not so clearly shown the place being flooded. Among the sections cut off

in 1867 was one contiguous to Mr Menras' land.

It was preempted by Mr Rogers but was restored to the Indians in 1869 (see Yellow
Boat

Book page 160). This was done contrary to the advice of gentlemen on the spot. Mr Massey 27 April 1849 wrote 'I believe it would be advisable not to restore it to the Indians; it will only encourage them to make further demands'. Mr Thomas 30 April 1849 wrote 'Should the Government deem fit to give up this piece of land to him' (i.e. the Guernichan Chief) 'other families will expect to be treated with the same favour especially those occupying Mr Munro's land as they have been squatting on it since last fall'.

The Indian trespass on Mr Munro's land thus began in the fall of 1848. In May 1849 Mr Mahum (Yellow Boots &c) reported that they had fenced it to a very considerable extent'. Both Guernichan and Somenos Indians have worked on the land from time to time, but the boldest trespasser has been Siw-e-mah-to-sa a Somenos Indian with his adherents. He took possession some time after 1849; he was there when Mr Sullivan went up in 1873, and is still there, having made improvements, among which is a large

large house worth several hundred dollars.

Whether it was proper (if it was the fact) to leave these Indians (the largest tribe in the settled portions of the District Province) without any distinct knowledge of the boundaries of their reserves until they were cut down in 1867, and whether it was politic or not to cut down their reserve, (five years ago these Indians had about a dozen cattle; now they have five hundred) I am inclined to think that the act of the Government in restoring the Rogers pre-emption was as a matter of general policy, characterised by more good nature than prudence. It has doubtless emboldened Sir-a-mukto-a to continue encroachments of Mr Munro's land in defiance of the law. I do not think that he or his associates, personally had any old associations with the place.

How far these trespassers, in their rude minds, have been influenced by other feelings, than the mere hope of getting a good price of land, it is difficult to say. I have referred to the action of the
Colonial

Colonial Government in the past, and you can judge of the views likely to be held by the Indians generally in the matter.

As regards Complaint No 8

It is true that certain sections were cut off in 1867, and the Indians say that payment for these was promised, but whether that was the case or not I do not know. Not having been paid as they claimed for their lands generally, perhaps they hoped, at least, to be paid for the sections cut off. I must think that it was impolitic to cut off the fringe of land at the Nam-Kum-a-lit village, in which the blood question is involved. It is close to their village. For this reason the Provincial Commissioners acted, ^{last year} in this ^(Doda) matter as per their report (see Report).

Mr J Douglas (see Yellow book page 17) seems to have contemplated that the Government might lease or sell portions of Indian reserves, but the income or proceeds were in all cases to be applied for the benefit of the Indians.

As regards

As regards complaint No. 11,
it is stated that Governor Douglas in 1862,
and Governor Seymour in 1864, in person
at Cornisham, made certain promises to
the Indians.

The Reverend Alp Garretts
10 March 1865, wrote a long letter on
Cornisham Indian affairs to the Surveyor
General, which should be read (It is printed
at page 209 'Sittes Journals' (S. 11. 20) & I from
April 56 to November 67) This letter
among other statements contains the
following

When the settlement was first
'planted in Cornisham valley in August 1862
'certain definite promises were made to the
'Indians by Governor Douglas in person.
'He told them in the presence of the settlers,
'that in the ensuing Autumn, he would
'return to Cornisham, have a gathering of
'all their tribes, and make them suitable
'presents. This promise was never fulfilled.
'..... promised to make from
'the truth, the correction in their minds is
irreversible

228

'inevitable that there never was any intention to perform it. They therefore labour under a sense of injury and wrong'

Mr Dutts in his memorandum

19 April 1869 writes

'I have also been told by Mr Pennock that a promise was made by the Governor (Seymour) when at Crutchfield in December 1866, that assistance should be given to the Indians in fanning the lands reserved for their use, and a memorandum to this effect written by the Governor at that time and now produced by the Indians has just been ^{shown} ~~sent down~~ to me'.

It appears to me the fact is so far as I can learn, that these promises made to the Indians were not fulfilled, (unless the sum of \$200 advanced for fanning materials, through Mr Morley (see Yellow Book page 61) was considered a fulfilment).

In fact while the Indians were in expectation of the fulfilment of these promises, the next act of the Government was in 1867, to cut down the reserve without making any payments in

in respect either of the premises or of the
lands cut off. This procedure tended to
confuse the minds of the Indians.

As regards complaint No 3,
it is stated to be true that the old fishing station
on the Fraser River, as the 'Gornichan Fishing'
and annually used by them from time immemorial
in getting fish for winter food, has been sold
many years ago. The owner being absent, there
has been no trouble about the land as
yet. About one thousand Indians encamped
there last season. This question will come
up when the Indian reserves generally for
the New Westminster District are considered.
At present I have no personal knowledge of
the facts.

Most of the above facts, except
perhaps Sir J. Douglas' alleged unfulfilled
promise, were known in 1869 to Mr. F. J. Smith,
then Chief Commissioner of Bands & Mounts,
and the Governor, on his recommendation,
authorised an attempt being made to satisfy
the Gornichan Indians, by restoring to them
one of the Sections, the Rogers section above
mentioned

mentioned, which had been cut off in 1867,
and by authorizing Mr Morley to spend
\$200 in tools, nails, and other materials, to
help them in forming their reserve. Two
hundred dollars would be about three 'bits'
for each adult. I imagine this donation
was made mainly to save the credit of the
paper issued three years before by Governor
Leopold. I do not know what Mr Morley
said to the Indians, nor whether he had a
proper interpreter.

These scraps of notes indicating
at least lines of direction for more exhaustive
enquiries, may aid you in forming a general
opinion, how far the long continued dissatis-
faction of the Comichan Indians has arisen
from barbaric ~~unpleasant~~ ^{unpleasant} treatment on their
part, or been caused by unavoidable circumstances
or ^{by} ~~or~~ prejudicial management on the part of the
old Colonial Government.

In conclusion I may state
that I have no information lately as to the
state of feeling among the Comichan Indians,
but I am afraid it must be admitted that
a

a conviction of the "white chiefs unfaithfulness" is general among them. This conviction being engrained and now partly inherited, cannot be removed easily. When the Commissioners were there last year and stated to the Indians their inability to remove white men holding land by legal titles, many of the older Indians, as our interpreter discovered and as was stated by Mr. Humphreys to Mr. Fay and the Rev. Mr. Holmes, proposed to kill the Commissioners, and then attack the settlement, but the younger men were not disposed to adopt this method of adjustment.

Yms
20/1/70