

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

**Prepared by Dorothy I.D. Kennedy  
B.C. Indian Language Project**

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Dorothy I.D. Kennedy  
British Columbia Indian Language Project  
Victoria, B.C.**

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**Prepared for:  
Claims Research and Assessment Directorate  
Indian and Northern Affairs  
Ottawa**

**With an Introduction by:  
Dennis Madill**

**March 31st, 1994**

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## 1.0 INTRODUCTION

### 1.1 Overview of B.C. Indian Reserve Establishment

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

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

Douglas's policy was to provide sufficient reserves so as to sustain the traditional way of life of the Indians and allow adjustment to changing conditions. Hampered by a lack of funds, he petitioned the imperial government in 1861 for financial assistance to facilitate the provision of reserves

and the extinguishment of Native land title. The British Colonial Office's refusal to provide funds coincided with the termination of the monies supplied to maintain the Indian department in the Province of Canada.

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

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

Under the Terms of Union, the federal government assumed responsibility for Indian affairs. The attitudes of Trutch continued to prevail in B.C., reflecting the demands of the provincial government and the settlers generally. As the first lieutenant governor of British Columbia, Trutch defended his Indian land policies against those of the



federal government. The province was determined to perpetuate its own Indian policy. Unlike Manitoba, and later Alberta and Saskatchewan, it entered Confederation in control of its public lands, and with its Indian land policy already formulated. The Dominion's desire to establish large reserves, as on the Prairies, resulted in a series of conflicts.

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

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

Title remained in the Crown in right of the province.

After O'Reilly's retirement, the task of continuing with reserve allocation fell to Commissioner A.W. Vowell, who assumed this role as well as that of the Superintendent of Indian Affairs for British Columbia. Until 1908, Vowell's activities were confined to re-defining present reserves and allotting small areas such as fishing stations, hay meadows, and gardens. Neither province nor dominion, however, were satisfied with the progress made. In 1909, the province stated that it would make no further reserve allocations, although it would be prepared to consider purchase or exchange. The following year, the office of reserve commissioner was abolished.

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

Of the 836,226 acres allotted for the establishment of Indian reserves in British Columbia, 6,711 were held by bands that signed agreements in the 1850s, 759,392 were set

apart by executive act, and 71,123 were allocated under the provisions of Treaty 8.

### 1.2 Report Preparation

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

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

Chapter three focuses on the post-confederation period from 1871 to 1910. The disagreements between the federal government and the Province of British Columbia concerning reserve allocation and the formation of Indian reserve allotment commissions that were responsible for the

assignment and readjustment of reserves are the main issues discussed in this chapter.

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

It is anticipated that a subsequent report will focus upon Indian Reserve allotment policy after this period, and will add to the chapters presented herein. However, due to the enthusiastic response that the present two chapters have received, the Claims Research and Assessment Directorate has decided to make them generally available.

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March 1994

## **2.0 THE PRE-CONFEDERATION ERA**

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

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

### **2.1 The Douglas Years**

#### **2.1.1 The Vancouver Island Treaties**

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

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<sup>1</sup> Early discussions of Indian land policy during the Douglas years can be found in George E. Shankel, *The Development of Indian Policy in British Columbia*, PhD dissertation, University of Washington, 1945, and Robert E.

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

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

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*Cail, Land, Man and the Law: The Disposal of Crown Land in British Columbia, 1871-1913*, Vancouver: University of British Columbia Press, 1974. Both of these historical works continue to provide a basis for discussion. Historian Robin Fisher's *Contact and Conflict: Indian-European Relations in British Columbia 1774-1890*. Vancouver: University of British Columbia Press, 1977, has made a significant contribution to discussions of Native history. A view opposing Fisher on central issues has been prepared by political scientist Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989*, Vancouver: University of British Columbia Press, 1990.

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

With respect to the rights of the natives, you will have to confer with the Chiefs of the tribes on that subject; and in your negotiations with them you are to consider the natives as the rightful possessors of such lands only as they occupied by cultivation, or had houses built on, at the time when the island came under the undivided sovereignty of Great Britain in 1846. All other land is to be regarded as waste, and applicable to the purposes of colonization. Where any annual tribute has been paid by the natives to the chiefs, a fair compensation for such payment is to be allowed.<sup>3</sup>

Chief Factor Douglas was further instructed to be guided by principles established in New Zealand where the native residents were granted rights to those lands under cultivation, in addition to their right to hunt and fish in the customary manner.<sup>4</sup> "Measures of liberality and justice," was how Lord Carnarvon later characterized this approach used in compensating the Native people for their lands.<sup>5</sup>

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

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

<sup>4</sup> *Ibid.*

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

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

The practical interpretation of Barclay's December 1849 memorandum was left to Douglas. Shortly after receiving this memo, Douglas assembled the chiefs and influential men of the Songhees and negotiated the first of 14 Vancouver Island land cession treaties.<sup>7</sup> Compensation, at the request of the Native people, was a lump sum payment, paid in goods, mostly blankets.

Much attention has been paid to the actual text of the treaty used by Douglas.<sup>8</sup> Research has revealed that it was supplied by Archibald Barclay from one used previously in New Zealand; Douglas simply copied the text, or faithfully reflected its content, filling in the blanks with the appropriate names, dates and amount of payment.<sup>9</sup> It has been

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Bay Record Society, 1979) p.43.

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

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

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



suggested by Wilson Duff that each individual's name and corresponding "x" appear in the handwriting of Douglas, himself, but that it is plausible that Douglas directed each signatory to indicate approval by touching the end of his pen.<sup>10</sup>

John McKay, another Company man having extensive experience among the Native people and a facility for their languages was present during Douglas's meetings with the aboriginal groups. Recalling the event many years later, McKay stated that Douglas provided him with the document the night before the conference and requested that McKay commit it to memory, thereby preparing himself to confirm the accuracy of the interpreter's translation. He characterized the intent of the treaties as providing "security of cultivated land, village sites, and preservation of sufficient land to cultivate."<sup>11</sup>

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

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<sup>10</sup> Duff, *Fort Victoria Treaties*, pp.17-18.

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

23rd, 1854, for which only a series of names exist.<sup>12</sup>

Paul Tennant<sup>13</sup> argues that Douglas's recognition of the Indian people as the aboriginal owners of all land, including that which Barclay termed "waste," deviated from Barclay's instructions. In Tennant's view, the wording of the treaties and a map appearing in Duff's "Fort Victoria Treaties" advance the notion that Douglas purchased "the whole of their lands," the extent of which met the outward bounds of land owned by neighbouring groups.<sup>14</sup> Yet as Duff noted, overlapping claims involving shared resource and village sites had no place in Douglas's conception; divisions among groups were made, often reflecting "ethnographic absurdities," and ultimately confirming for the Indians' possession only a portion of the lands upon which they depended.<sup>15</sup> Robin Fisher<sup>16</sup> points out that Douglas found the treaties difficult to negotiate: differing concepts of land tenure resulted in uncertain identification of owners; discussion of Indian rights produced agitation;

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

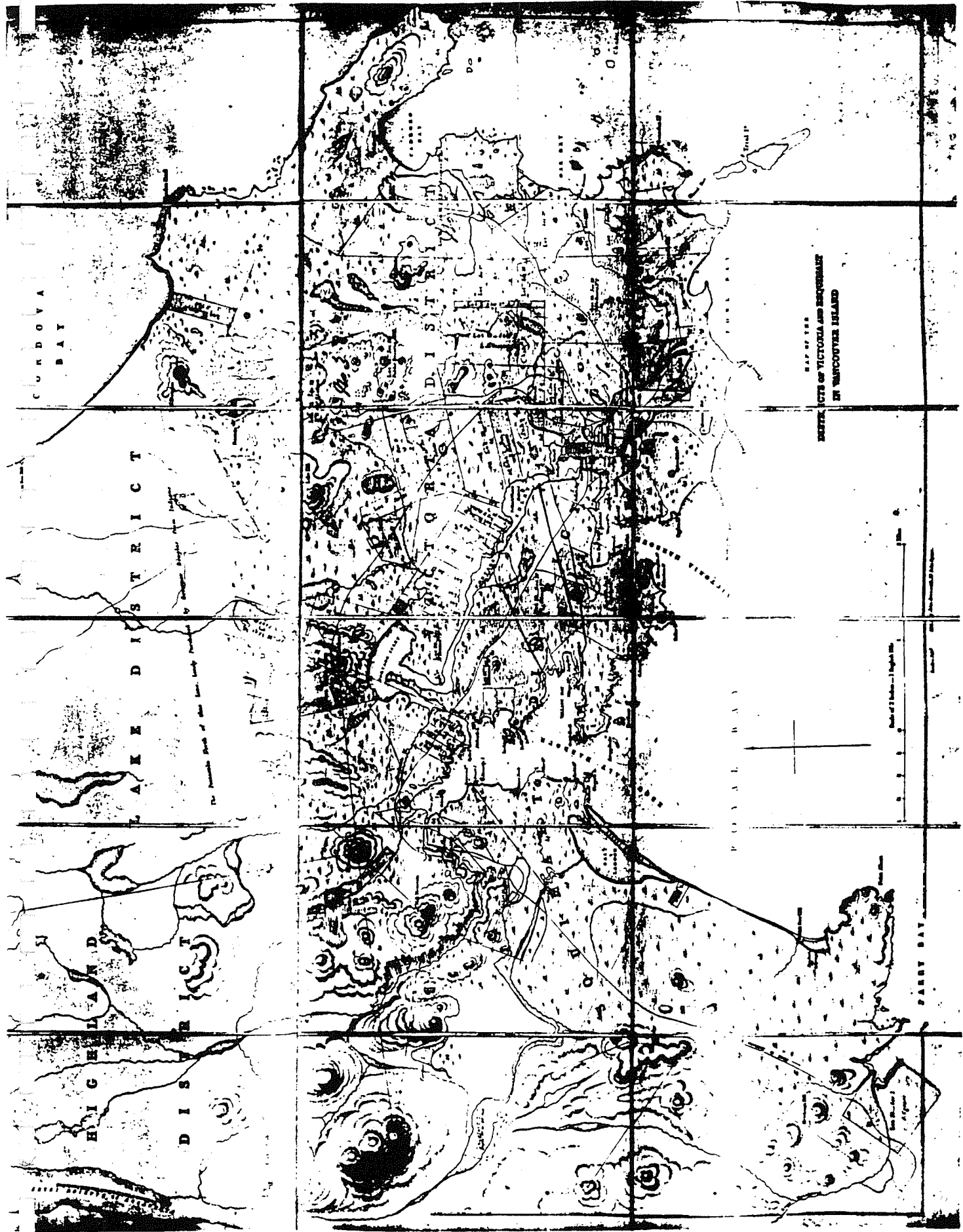
<sup>13</sup> Tennant, *Aboriginal People*, p.20.

<sup>14</sup> An 1854 Arrowsmith map of *Districts of Victoria and Esquimalt in Vancouver Island* shows a line demarcating the southern extent of the territory purchased from the "North Saanich" people (see figure 1).

<sup>15</sup> Duff, "Fort Victoria Treaties," pp. 51ff.

<sup>16</sup> Fisher, *Contact and Conflict*, pp.67-68.





CURDOVA BAY

LAKE DISTRICT

HIGH DISTRICT

VICTORIA

CITY OF VICTORIA AND NEIGHBORING DISTRICTS IN BRITISH COLUMBIA

BARRY BAY

Scale of 1 inch = 1 English mile

Figure 1: "District of Victoria and Esquimalt, Vancouver Island." Map shows line across the south end of Saanich Peninsula, with the words "The peninsula North of this Line Lately Purchased by Governor Douglas from Indians."  
HBCA, G.3/96.

and in Fisher's opinion it was unlikely the Natives were fully aware of the finality of the phrase "entirely and forever."<sup>17</sup>

Douglas wrote to Barclay concerning this purchase and said that "it includes all the land," and that he had reserved for the Natives' use "only the village sites and potatoe patches...".<sup>18</sup> Little attention was paid to the Indians' own concept of land tenure or land use, beyond recognition of those winter village sites as inhabited circa 1846. Reserving these occupied sites was in accord with Douglas's conviction that the "wandering denizen of the forest"<sup>19</sup> would attain law and order, religion and education, and security from the "aggressions of the immigrants"<sup>20</sup> once the Native people had been settled in permanent communities.

The Vancouver Island treaties differed from treaties

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

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

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

<sup>20</sup> Ibid.

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

Douglas's policy while negotiating the treaties was to lay out reserves in those areas where settlement was anticipated. Thus, the area in the environs of Fort Victoria was of immediate concern due to the agricultural and industrial endeavors. Coal discoveries in the Fort Rupert area provided the impetus for that treaty, although the mines soon failed. Negotiations with the Nanaimo Indians were more complex, especially since the Native people realized that Douglas was trying to terminate their control over the profitable production of coal.<sup>22</sup> Douglas was certainly aware that the Natives throughout Vancouver Island clung tenaciously to their property rights and their rights to resources.

Reserved for the Native people's own use, pursuant to the Douglas treaties, were their village sites and

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

<sup>22</sup> Dennis Madill, *B.C. Indian Treaties*, 21-22.

cultivated fields, in addition to burial grounds. But apparently no formula was employed in determining the extent of acreage, as had been done in northern Ontario during Canada's treaty negotiations with Native tribes.<sup>23</sup>

An examination of the location of sites reserved by the Vancouver Island treaties indicates that they were locations of cedar plank smokehouses. Sites resorted to during the summer months where less permanent shelters were erected were not considered. Although the treaties provided for the protection of village sites, not all ethnographically-documented sites said to have been occupied circa 1850 were eventually confirmed to the Indians.<sup>24</sup> Nor were resource camps on Vancouver Island and summer villages on the offshore islands reserved for Native use. One particular reserve inside Victoria Harbour within the Hudson's Bay Company lands (see figure 2) was offered for sale by the Skosappson Indians to Douglas, himself,<sup>25</sup> although Douglas

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<sup>23</sup> Tennant, *Aboriginal Peoples*, p.20.

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

<sup>25</sup> The nature of the disposition of this land is vague. Douglas informed Barclay, August 26th, 1854, that he would "have no objection to purchase it in part, if the Company will take the remainder of the lot..." It is not clear whether the purchase proceeded or not, but as discussed by Fisher, *Contact and Conflict*, p. 68, by the end of the decade the land had been re-allotted as the site of the legislative buildings. The use of this land for erecting government offices was discussed by the Assembly on March 25th, 1859 (*Journals of the Colonial Legislatures of the Colonies of Vancouver Island and British*







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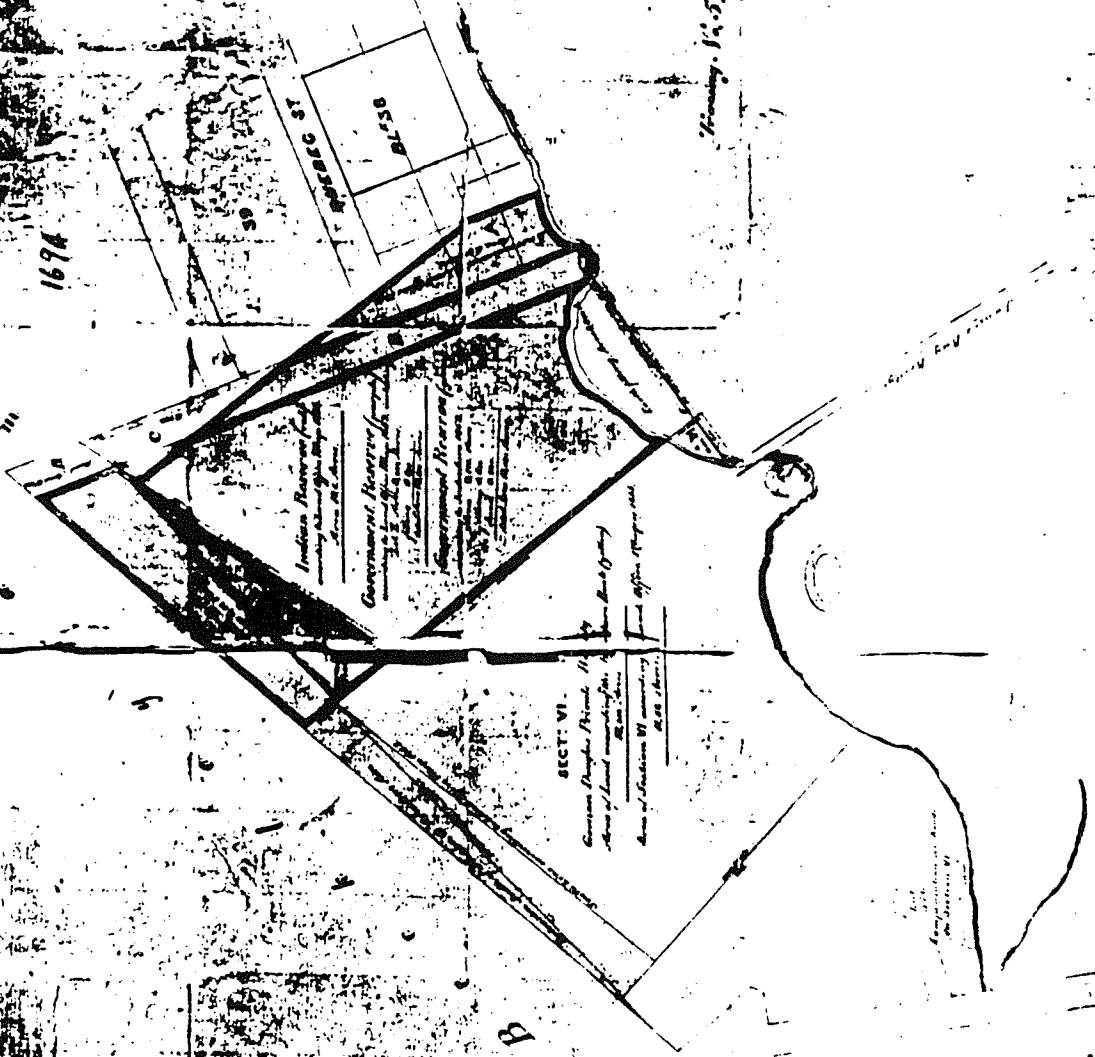
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59

SPRING ST

BL 58

Highway, N.S.



Indian Reserve  
Government Reserve  
Government Reserve

SECT. VI.

Government Reserve  
Indian Reserve  
Government Reserve  
Indian Reserve  
Government Reserve  
Indian Reserve

Public Park

SPRING STREET

Figure 2: "Large scale tracing showing changes in Government Reserve and Governor Douglas's property between 1855 and 1862." Map also shows location of 10.6 acre Indian Reserve in Victoria's inner harbour. HBCA, A.11/80 Fo.169a.

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*Columbia, 1851-1871*, edited by James Hendrickson, Victoria: Provincial Archives of B.C., 1980). The land in question is indicated on a sketch (see figure 3). HBCA, A.11/80 Fo.169a.

subsequently forbid other settlers from purchasing reserved lands.

The December 1854 Nanaimo treaty provided for the surrender of approximately 200 square miles, while reserving for the aboriginal people their villages sites and enclosed fields, and their customary hunting and fishing practices. The surrendered area was comprised of all the lands (and offshore) islands along the coast in a 20-mile by 10-mile strip stretching between Dodd Narrows in the south and the Lantzville area in the north.<sup>26</sup> Several months later, the land between Departure Bay and the Nanaimo River, encompassing 6,193 acres, was purchased by the Hudson's Bay Company.<sup>27</sup> Within this area, pursuant to the treaty, three reserves totalling 250 acres were allotted. The locations and acreages of these reserves were noted on a plan of the area submitted to James Douglas by surveyor J.D. Pemberton in March 1860.<sup>28</sup> Only two of the three indicated Indian Reserves marked on the plan were later confirmed to the Nanaimo tribe by the Indian Reserve Commission. The third area marked in 1860 as an Indian Reserve, a 79-acre parcel

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

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

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

of land, was never set aside as an Indian Reserve.

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

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

On the Saanich Peninsula, surveys of country land were undertaken by John Trutch in 1858. Although the Trutch surveys identified locations of Indian villages, including the Saanich village of Tsawout, Trutch did not explicitly identify them as "Indian Reserves." It is not clear if his system defined reserved areas with boundaries conforming to the block system he used to lay out lots on the peninsula. Boundaries were either not all defined, were ill-defined, or were encroached upon by settlers, for in November 1859,

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

Indian people from the village at Union Bay [Patricia Bay] on the Saanich Peninsula told George Heaton, the Sheriff of Vancouver Island, that they intended "to come to Victoria for the purpose of ascertaining the limits of their own 'Reservation'"<sup>30</sup>. By 1862, however, J.D. Pemberton was referring to the Tsartlip village belonging to the Saanich as an Indian Reserve containing 314 acres.<sup>31</sup> Surveys of lots in the vicinity of the Tsartlip village that were undertaken by F.W. Green in 1862 also show the location of the "Indian Reserve."<sup>32</sup>

Two early purchases of Indian lands were recorded among tribes on the west coast of Vancouver Island. By one of these agreements, Government Agent W.E. Banfield on July 6th, 1859 procured an island called "Osmetticey" from its owners, the first and second chiefs of the Ohiaht tribe. The

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<sup>30</sup> Letter from George Heaton, Sheriff of Vancouver Island, to Governor James Douglas, November 28th, 1859. BCARS, GR 1372, File 748/18.

<sup>31</sup> Letter from J.D. Pemberton to the Colonial Secretary, January 13th, 1862. BCARS, GR 1372, F.905/5.

<sup>32</sup> Letter of October 24th, 1865 from Henry Fry to the Colonial Secretary containing notation by B.W. Pearse dated October 27th, 1865, as well as attached survey sketch plan by F.W. Green dated 1862. BCARS, GR 1372, F.613/2. Pearse's notation on Fry's 1865 letter states that the "Indian Reserve" in question was located at "R.11.w.7.8.9.s," the co-ordinates of the reserve subsequently confirmed by the Indian Reserve Commission in 1877.

price paid was "two Blankets and two Shirts."<sup>33</sup> It has not been possible to determine where in Barkley Sound this island is located.

By the terms of an agreement dated February 4th, 1860, Banfield paid to the Opetchesaht Indians a "small patch...of ground" on the east side of Somass River. The cost was "five blankets and other small articles." The owners of this land were identified as the "joint Chiefs" of the Opetchesaht tribe, "Kal-lou-ish" and "Quile-chee-namt," "No-peh-tse-kopis."<sup>34</sup>

#### 2.1.2 Non-treaty Reserves Established by James Douglas

The mainland Colony of British Columbia was established by law on August 2nd, 1858. James Douglas assumed Governorship of both colonies and his position with the Hudson's Bay Company ended. On November 19th, 1858, the colony was proclaimed and the law of England was introduced to the mainland of British Columbia. As historian Barry Gough explained, the Colony Office had been forced to create

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

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

a new colony to check the threat of an "American invasion"-- as they viewed the thousands of foreigners flooding north-- and had no alternative but to rely on Douglas to maintain law and order.<sup>35</sup>

Since 1858, the settlement of British Columbia had begun in earnest; gold miners flocked to the interior, trespassed on Indian villages and competed for the same resources. European population increased dramatically, while the Native population declined, leaving the Native people in a position of submission. Fisher<sup>36</sup> presents a picture of chaos in the new colony. A situation had developed that was antithetical to Douglas's goal of harmonious race relations in an environment where the aboriginal people would "be placed under proper moral and religious training, and left, under the protection of the laws, to provide for their own maintenance and support."<sup>37</sup>

Prior to the founding of the new colony, compensation to the aboriginal groups for their land pursuant to the Douglas treaties had come from the Hudson's Bay Company. But in 1859, with the termination of the Company's Charter, new

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

<sup>36</sup> Fisher, *Contact and Conflict*, pp.95-118.

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



sources of revenue had to be found if additional treaties were to be negotiated. This was the topic of an exchange between the Right Honourable E.B. Lytton and Douglas in July 1858 at which time it was submitted that Imperial policy required "that it should be an invariable condition in all bargains or treaties with the Natives for the cession of Lands possessed by them, that subsistence should be supplied to them in some other shape...".<sup>38</sup> In response to Lytton's instructions, Douglas advised that he would "treat the Indians with humane consideration" while protecting their "civil and agrarian rights."<sup>39</sup> Douglas favoured assimilation; his policy was to treat Native people as British subjects possessing equal rights with all other subjects.

At first glance, the House of Assembly for the Colony of Vancouver Island in 1860 supported without hesitation the necessity of extinguishing, by purchase, the Native title to land, providing the costs were to be sustained by Britain.<sup>40</sup>

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

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

<sup>40</sup> In March of 1861, Douglas forwarded to the Duke of Newcastle a petition from the Vancouver Island House of Assembly referring to the extinction of Indian title. C.O. 305/17, folio 132.

But this was not to be the case<sup>41</sup>; Douglas was informed that funds would have to be raised locally.<sup>42</sup> A policy of treaty making could not continue, however, without the Colonial Office providing Douglas with the necessary funds. As Paul Tennant has explained, the Assembly itself could not raise the funds, as it had no authority over the monies derived from land sales, this being under the control of the Colonial Office in London.<sup>43</sup> A few weeks after becoming Governor of British Columbia, however, Douglas issued a Proclamation providing that colonial land grants could be issued by him alone<sup>44</sup>. Attempts by settlers to purchase Indian reserves were thwarted when Douglas placed a notice

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<sup>41</sup> An estimate of £2,000 to purchase Indian title in the Chemainus District was dropped from the budget at a July 3rd, 1860 meeting of the Vancouver Island House as the majority of members considered that responsibility for this matter remained with the Imperial government. See Fisher, *Contact and Conflict*, 152. On October 4th, 1861, Douglas is informed that the Lords Commissioner of the Treasury, to whom the matter had been submitted "are not prepared to purchase up the Native title at the expense of this country." \*\* C.O. 307/17, folio 132.

<sup>42</sup> See letter of F.W. Murdock to F. Rogers, dated June 12th, 1861. C.O. 305/18, folio 169-172. In a letter of October 19th, 1861, Douglas is informed by the Duke of Newcastle that extinguishing Indian title on Vancouver Island is a colonial interest that should not be a burden of the British taxpayer. C.O. 305/18, folios 213-214.

<sup>43</sup> Tennant, *Aboriginal Peoples*, pp.22-23.

<sup>44</sup> Proclamation No.11 Enabling the Governor to Convey Crown Lands, December 2nd, 1858; and Proclamation No. 13, Capital of British Columbia, February 14th, 1859, *Revised Statutes of British Columbia*, 1870. Appendices.

in the *Victoria Gazette*<sup>45</sup> advising that all land was the property of the Crown and that the Natives could not convey title to it to anyone except the Crown.

Tennant,<sup>46</sup> in opposition to Shankel, Cail, Duff and Fisher, suggests that this edict demonstrates a profound change in Douglas's Indian policy: while negotiating the Vancouver Island treaties, Douglas acknowledged Indian ownership of land beyond their village sites that was extinguished by purchase; now, Douglas's policy contained no recognition of aboriginal title. As support for this view, Tennant<sup>47</sup> relies on Douglas's statement to the Assembly in March 1862 that allocation of reserves would satisfy Indian "claims on the land." Fisher,<sup>48</sup> however, takes the view that it was the chronic shortage of funds that prevented Douglas from continuing his earlier policy, and that despite his financial limitations, he advocated protection of aboriginal rights.

In an effort to safeguard the Indians' interest, while avoiding racial conflict, Douglas did two things: he instructed his surveyors to lay out Indian Reserves; and, he permitted Native people to pre-empt land. In both of these

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<sup>45</sup> Douglas to Lytton, February 9th, 1859. C.O. 305/10.

<sup>46</sup> See Tennant, *Aboriginal Peoples*, pp.30, 245n.

<sup>47</sup> *Ibid.*, p.30.

<sup>48</sup> Fisher, *Contact and Conflict*, p.153.

endeavours he was assisted frequently by missionaries, with whom he shared a vision of orderly, self-sustaining Native hamlets fashioned on an European model.

Louis D'Herbomez was one of the Oblate priests concerned about the Natives loosing out on lands in the New Westminster area. An inquiry by D'Herbomez as to whether the Land Act applied to Native people brought a reply from Judge Matthew Begbie that "Indians have perfectly the right of pre-emption, like all other British subjects."<sup>49</sup> The 1861 Land Ordinance provided detailed regulations for pre-empting land in the colonies.<sup>50</sup>

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

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<sup>49</sup> L.J. D'Herbomez to Leon Fouquet, June 24th, 1861. Archives Deschatelets, Ottawa. HPK/5282/.H53L/28.

<sup>50</sup> B.C. Revised Statutes, pp.25-28, 24 Vict. no.4. A summary of these regulations can be found in Cail, *Land, Man and the Law*, p.15.

City Council. The priest's protest to the Council inferred that Snat's land was included within the Oblate religious community.<sup>51</sup>

Pre-emption applications of "an extended-order" were being submitted when in 1862 the Chief Commissioner of Lands and Works, Colonel Richard Moody, wrote to the Colonial Secretary seeking guidance on this issue.<sup>52</sup> Moody feared that the practice of pre-emption by Indian people was likely to increase rapidly, for it was not prohibited by the 1860 Land Ordinance.<sup>53</sup> Douglas advised that anticipated

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<sup>51</sup> The events surrounding the registering and subsequent loss of this pre-emption can be found in: Richard Moody to Colonial Secretary, May 27th, 1862, BCARS, GR 1372, F 931/10; Leon Fouquet to James Douglas, June 23rd, 1862, BCARS, GR 1372, F584/1a; H. Luard to the Colonial Secretary, June 24th, 1862, BCARS GR 1372, F931/42; and, L. Fouquet to L.J. D'Herbomez, September 2nd, 1864, Archives Deschatelets, HPK/5282/.H53Z/213.

<sup>52</sup> Colonel Richard Moody's appointment as Chief Commissioner of Lands and Works was ordered to be confirmed under the Public Seal of the Colony of British Columbia. See Lytton to Douglas, September 21st, 1858\*\*. C.O. 381/18, pp.49-51.; Moody's instructions were issued in a letter from E.B. Lytton, October 29th, 1858. BCARS, F.1149a/2.

<sup>53</sup> On January 20th, 1860, Douglas issued a proclamation providing for the sale of town and suburban lots and surveyed agricultural lands. The *Pre-emption Amendment Act*, dated January 19th, 1861, amended the January 1860 proclamation. On January 19th, 1861, the so-called *Country Land Purchase Act* reduced the price of country land on pre-emption. The *Pre-emption Purchase Act* of May 28th, 1861, was intended to limit speculation in pre-empted land by reducing the amount of land a settler could hold to 160 acres. The *August 27th, 1861, Pre-emption Consolidation Act*, 1861, brought into one general Act all of the several proclamations regulating the pre-emption of land, and to simplify the process of land acquisition. On May 27th, 1863, the *Mining District Act, 1863*, was passed. After Frederick Seymour became Governor of British Columbia, the

legislation governing Native pre-emptors would require considerable improvements to be undertaken on the pre-empted land, and that "they shall have no power to convey such land without the consent of the Governor first obtained,"<sup>54</sup> a dictum that did not apply to non-Indian pre-emptors. Several years later, more narrowing legislation restricting Native pre-emptions was enacted with the passing of the 1866 Pre-emption Ordinance. Those earlier pre-emptions that had not already been accumulated by land-speculators were now considered invalid.<sup>55</sup>

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House passed *An Ordinance for Regulating the Acquisition of Land in British Columbia*, dated April 11th, 1865.

<sup>54</sup> Minute by James Douglas on letter from Colonel Richard Moody to Colonial Secretary, June 11th, 1862 states, "It is intended to legislate on the subject hereafter permitting Indians to hold land under pre-emption on the following conditions: that they build thereon a fence of square logs with shingle roof not less than 30 x 20 feet and 10 foot walls...clear, enclose and cultivate...1st year 2 acres of wood land, 5 acres of prairie land, 2nd year 3 acres of wood land and 6 acres of prairie land, and at the same rate per annum afterwards till the end of the fifth year." BCARS GR 1372, F931/27

<sup>55</sup> H.M. Ball to the C.C.L.&W., November 19, 1869 notes that this change in policy occurred in 1866. BCARS GR 1372, F101a/16c,16e. Attorney General H.P.P. Crease on March 8th, 1866, opined that the proposed new legislation clarified the situation of Native people being permitted to pre-empt land. It was his view that the Native people were already in possession of "more land than they can possibly use for themselves..." and that it would not be politic to "shut out any more land from proper cultivation." Further comments by Crease can be found in a letter to the Officer Adminisistering the Government, April 26th, 1866. BCARS, GR 752. In 1869, Crease prepared a second document entitled "Can Indians Pre-empt Land?" in which he reviewed the history of native pre-emptions. Concerning a specific case involving an 1862 Native

A detailed review of the extent, location and disposition of Indian pre-emptions in the Colonial period has yet to be undertaken. A cursory examination of Colonial records indicates that Native pre-emption applicants were especially prevalent in the New Westminster area, although reference is also made to a Native pre-emption at Kamloops, another area subjected to an influx of settlers in the early 1860s.<sup>56</sup>

The manner in which Indian Reserves were established during the Douglas years varied considerably.<sup>57</sup> Some, like the Yale reserve,<sup>58</sup> set aside in 1858, were established by the Governor, himself, during visits to the area responding

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pre-emption, it was Crease's opinion that the Crown should refuse to recognize such pre-emptions as Indian Reserves had been established. BCARS, G-86-101. *An Ordinance Further to Define the Law Regulating the Acquisition of Land in British Columbia*, dated March 31st, 1866, provided that the right to pre-empt land would not extend to "Companies...or, without the permission aforesaid, to or on any of the Aborigines of the Colony..." Tennant, *Aboriginal Peoples*, p.42, states that the wording of the amendment to the pre-emption Act was ambiguous, but that it was possible that officials interpreted it as retroactively cancelling the Indian pre-emptions.

<sup>56</sup> E.H. Sanders to Acting Colonial Secretary, 26th July 1866. BCARS, GR 1372, F1562

<sup>57</sup> Years later, in a letter to the Deputy Superintendent General of Indian Affairs dated 11th August 1880, Indian Reserve Commissioner G.M. Sproat stated that he was unable to find records as to the "why and wherefore" of Colonial reserves. NAC, RG10, V.3711, f.19,581.

<sup>58</sup> Douglas to Lytton, October 12th, 1858. C.O. 60/1, p.213-215,221-222. The "Address of His Excellency the Governor to the inhabitants of Fort Yale, September 12th, 1858, can be found in BCARS, GR 1372, F484a/3.

to disputes involving non-Indians. The boundaries of the reserved land were marked on the spot, with Douglas present.

Although Douglas also visited Fort Hope where he met with the Indians and advised them of his policy of equitable treatment under British law, it is not clear that he set aside any Indian Reserves. Peter O'Reilly, Magistrate at Fort Hope between September 1859 and May 1862, informed the Colonial Secretary that reserves "at either end of town" were "marked off in accordance with His Excellency's instructions contained in His letter dated 1st Oct'r 1859." O'Reilly had been notified that reserves of several hundred acres were to be laid out around each village.<sup>59</sup> A recommendation from O'Reilly that the Indians should be removed from the townsite provoked a firm response from Douglas that "the Indians must not be disturbed."<sup>60</sup> Although the plan of Hope area prepared by W. McColl of the Royal Engineers in the early 1860s shows the location of several Indian villages, they were not marked as "Indian Reserves," contrary to O'Reilly's information. The earliest confirmed reserve in the Hope area appears to have been set aside at

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<sup>59</sup> Douglas to Thomas Elwyn, October 1st, 1859. A note at the bottom of this letter states that a similar letter was sent to four other individuals, including Peter O'Reilly. BCARS, C/AB/30.1J, Vol. 2.

<sup>60</sup> Peter O'Reilly to W.A.G. Young, Acting Colonial Secretary, December 24th, 1859, with Minute by James Douglas. The "enclosed sketch," presumably showing the location of the Indian Reserves, is missing. BCARS, GR 1372, File 1277.



the mouth of the Coquihalla River on 11th November 1863 by Magistrate E.H. Sanders. An acknowledgement by the Colonial Secretary notes that the reservation of this land was approved by the Governor and that the records had been forwarded to the Commissioner of Lands and Works accordingly.<sup>61</sup> This reserve was listed in the land records of the Yale District as claim "No. 105, Coquahalla Ranch Indian Reserve," containing 55 acres, more or less.<sup>62</sup> A settler who attempted to pre-empt the land in 1870 was informed that it was unavailable as it was an Indian Reserve.<sup>63</sup> Apparently, the reserve was finally surveyed in 1870,<sup>64</sup> but was omitted from the 1873 "Return of all Indian Reserves (surveyed) in the Province of British Columbia."

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<sup>61</sup> E.H. Sanders to Colonial Secretary, November 2nd, 1863. BCARS, GR 1372, F.1556.

<sup>62</sup> B.C. Government Agent, Yale. Land Records, Pre-emption Claims, 1859-66. BCARS, GR252, Vol. 30.

<sup>63</sup> Correspondence between M. Michaud and the Chief Commissioner of Lands and Works, February 15th, 21st, 1870. *B.C. Papers*, p.80.

<sup>64</sup> In a letter from Philip Hankin, Colonial Secretary, to Joseph Trutch, Chief Commissioner of Lands and Works, April 29th, 1870, he advises that "With reference to the subject of the survey of the Indian Reserves on the Fraser" the Governor "approves of the boundaries of all lands which are to be reserved for the use of the Indians, from Harrison River to Yale, and along the Waggon Road from Yale to Cache Creek, being determined by the local Magistrates, and surveyed under instructions from your Department; the Magistrates personally inspecting such survey..." *B.C. Papers*, p.81. In June of 1870, B.W. Pearse forwarded to Peter O'Reilly "three tracings of the Indian Reserves at Hope and Yale, and that at the mouth of the Harrison River, beyond which no reserves have been laid out." *Ibid.*, p.83.

The land was subsequently confirmed as Aywawwis I.R. No. 15 (Union Bar).<sup>65</sup> It was not until the 1880s that the townsite reserve, the land that was likely allotted initially by O'Reilly in 1859, became an official Indian Reserve.

Advocating the protection of Indian rights in a frontier of miners, land speculators, and settlers was an arduous task for James Douglas, but his correspondence reveals a man intent upon maintaining peace. Wherever competition for land threatened to displace Native villages, Douglas directed the Magistrates, Gold Commissioners and Lands and Works personnel to reserve those lands "defined as they may be severally pointed out by the Natives themselves."<sup>66</sup> This directive, although forwarded to one of the Gold Commissioners by the Chief Commissioner of Lands and Works, was tempered by Richard Moody's own advice:

... be particular in scrutinizing the claims of the Indians, as I have every reason to believe that others (white persons) have, in some instances, influenced the natives in asserting claims which they would not otherwise have made, the object of such persons being prospective personal advantages previously covertly arranged with the Indians...<sup>67</sup>

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<sup>65</sup> Exhibit A, Reserves Allotted Before Union. Enclosed with McKenna to McBride, July 12th, 1912. BCARS, GR 441, Vol. 149, File 1.

<sup>66</sup> Fisher, *Contact and Conflict*, p. 154, opines that this statement appears so frequently that "there is no room for doubt that this was Douglas's policy." A similar conclusion was reached by Cail, *Land, Man and the Law*, pp. 179-180. More recently, a less generous interpretation is argued by Tennant, *Aboriginal Peoples*, pp.32-33.

<sup>67</sup> Moody to Cox, March 6th, 1861. B.C. Papers, 21.

Douglas occasionally enlisted the aid of missionaries in defining reserves, providing them with stakes to mark reserve boundaries. Apparently this practise was halted temporarily in 1862. At that time, Father Fouquet wrote to Moody agreeing not to provide any more letters recommending that the Indians obtain reserve stakes.<sup>68</sup> Yet by 1863, William Duncan, missionary among the Tsimshian people on the north coast, was instructed to place boundary posts to indicate the reserve at Metlakatla and to advise the Indians elsewhere within his sphere of influence to mark off their desired lands.<sup>69</sup> In 1865, Fouquet wrote again to the government, this time on behalf of the Tsawwassen people at the Fraser River mouth who were eager to have their reserve staked.<sup>70</sup>

During trips to the interior of the colony, Douglas met with the chiefs and assured them that the magistrates had been directed to "stake out, and reserve for their use and benefit, all their occupied village sites and cultivated fields and as much land in the vicinity of each as they

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<sup>68</sup> Leon Fouquet to Colonel Richard Moody, December 27th, 1862. BCARS, F584/1c.

<sup>69</sup> [? not legible], Victoria, to William Duncan, Metlakatla, July 24, 1863. NAC, MG 29, H15, Duncan Papers, Roll 1.

<sup>70</sup> Fouquet to A.E. Howse, August 15, 1865. BCARS, GR 1372, F584/2c.

could till, or was required for their support."<sup>71</sup> In some cases the reserves were surveyed, while others were only "roughly traced out upon the ground by the Gold Commissioners of the day."<sup>72</sup> The size of the reserves varied considerably. When Moody inquired about the size of reserve allotments, Colonial Secretary W.A.G. Young, responding for Douglas, wrote on January 10th, 1860, that 10 acres was appropriate for Indian villages near town sites and 1000 acres "of country land in places where they may make selection."<sup>73</sup> Despite the recommendation, no formula was adopted.

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

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

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<sup>71</sup> Douglas to Lord Stanley, June 15th, 1858. C.O. 60/1, pp.54-57.

<sup>72</sup> Douglas to Lt. Col. I. Powell, October 14th, 1874. NAC, RG 10, V.1285.

<sup>73</sup> William Young to the Chief Commissioner of Lands and Works, January 10th, 1860. Colonial Secretary, Correspondence Outwards. BCARS, C/AB.30.1J1.

1861.<sup>74</sup> Survey notes compiled by Turnbull of the individual reserves were drafted throughout the summer of 1861.<sup>75</sup> A survey of the Lytton Reserves, however, had been undertaken by the Royal Engineers in 1860, in conjunction with the survey of the town.<sup>76</sup>

Setting aside Indian Reserves was only one of the duties of the Royal Engineers in the colony and Douglas soon became frustrated with the slowness and great expense involved in this task. Moreover, with settlers encroaching upon Indians lands, the peace of the colony was threatened, causing the Governor great concern that an Indian war was a potential result. Intent that the Royal Engineers proceed more quickly, Douglas issued Moody with instructions to mark out town sites and Indian Reserves throughout the colony and to publish in three places in each district, and in the local newspaper, a notice of the extent and location of these lands, and to provide the Governor with a map of each

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<sup>74</sup> A series of maps surveyed and drawn by J. Turnbull in 1861 (when he was with the Royal Engineers) illustrates the location of Indian Reserves, gardens and burial grounds in the environs of the wagon road. Maps and Plans Vault, Surveyor General Branch, Ministry of Environment, Lands and Parks, Victoria. 11T2, 12T2, 13T2, 14T1 Roads and Trails.

<sup>75</sup> "Indian Reserves: Yale District, 38." Royal Engineers' Surveys, May, June and July 1861. Maps and Plans Vault, Surveyor General Branch, Ministry of Environment, Lands, and Parks, Victoria.

<sup>76</sup> "Survey of the Town of Lytton & Suburbs," Royal Engineers' Surveys, 1860. Maps and Plans Vault, Surveyor General Branch, Ministry of Environment, Lands and Parks, Victoria.

district exhibiting the alienated lands.<sup>77</sup> Despite a reminder sent on August 2nd, 1861, that the Governor requested the map along with a lists of reserves "and the dates on which such notices were published in each district,"<sup>78</sup> it is not clear that Douglas received all the desired information.

Pursuant to these instructions, the surveyors were most active in the Fraser Valley. Their correspondence provides some insight into the manner in which lands were reserved. In the spring of 1861, Captain Robert Parsons of the Royal Engineers received instructions to "mark out successively & as early as possible by Posts and in any other clear and permanent ways, Boundaries of Lands claims by Indians" from the Harrison River to the Sea.<sup>79</sup> Before proceeding, Parsons asked for clarification of a number of points that he outlined in a return letter to Moody. Moody's pencilled notation on the original letter indicates his response. When asked how much land was to be allotted per village or per

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<sup>77</sup> W.G. Young to Colonel Moody, April 5th, 1861. *B.C. Papers*, p.22.

<sup>78</sup> Charles Good to Colonel Moody, August 2nd, 1861, *B.C. Papers*, p.23.

<sup>79</sup> Instructions to lay out reserves were given in a memo from Colonel Richard Moody, C.C.L.&W. to Captain Robert Parsons, R.E., 13th April 1861. Parsons' response to Colonel Richard Moody, C.C.L.&W., April 15th, 1861, Parsons and Turner, April 31, 1861, can be found in this same letterbook. Royal Engineers, Correspondence Outward, Letterbook 1859-1863. BCARS, C/AB/30.6J/5.

male head of family, Moody replied that the land to be set aside as reserves was "What the Tyhee [chief] of the village points out--(within reason). If anything extreme is asked for postpone decision until further communication with me." Recognizing the dispersed nature of burial grounds, Moody instructed that "the immediate precinct" of each burial ground be reserved. Those cultivated areas claimed by the Indians were likewise set aside. Parsons also inquired of Moody:

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

Moody replied, yes.<sup>80</sup>

Apprised of these instructions, Captain Parsons notified Corporal Turner to "mark on the ground with strong stakes and blazed trees" villages on the Harrison, Chilliwack, Sumas and Matsqui Rivers. A postscript to the letter states that "Colonel Moody desires that the Indians shall put down the stakes themselves and that you look at them and report to him the position and quantity of land claimed."<sup>81</sup>

The documentary record allocating these reserves is incomplete, but the manner in which the Indian lands were surveyed can be gleaned partly from the surveyors' reports

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<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

on other Fraser Valley Indian villages visited by the Royal Engineers at this time. On May 13th, 1861, Sergeant W. McColl reported on his survey of the Katzie Reserve. A map accompanying the report illustrates the position of the village, burial ground and potato patches, as well as the location of stakes and blazed trees marking the reserve's boundaries. McColl wrote that the chief accompanied him and "pointed out the boundary of the land claim." A settler had already encroached upon the back of the village, and inasmuch as the settler was absent, Surveyor McColl had to await his return before marking this boundary. Another village belonging to the Katzie and situated across the river was entirely within the claim of a settler. McColl deferred marking this reserve until receiving instructions from Captain Parsons to proceed. The land was eventually reserved for the Katzie.<sup>82</sup>

Public notices of some allotted reserves were signed by the Chief Commissioner of Lands and Works, but it appears that few allotments complied with the official procedure of posting and publishing the allotments. One such notice<sup>83</sup>

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<sup>82</sup> W. McColl to R.M. Parsons. May 13, 1861. Parsons to Moody (?), May 28, 1861. Royal Engineer's Letterbook. BCARS, C/AB/30.6J/5

<sup>83</sup> Public Notice, New Westminster, June 13th, 1861, issued by R.C. Moody. British Columbia, Royal Engineers Correspondence Outward, Memorandum Book, 17 November 1859 - 20 July 1861. BCARS, C/AB/30.6J



concerning an Indian Reserve on the Coquitlam River appears in the Royal Engineers' letterbook. This notice delineates the land along with a statement that the plans of the reserve can be seen at the Lands and Works Department office in New Westminster. An additional note states that a copy of the notice is to be deposited in the Indian village. Apparently no notices of Indian Reserves were published in the *Victoria British Colonist* in 1861 or in the *British Columbia Gazette* before 1866.<sup>84</sup> It is not known how many public notices were printed for colonial reserves.

To assist in his venture to establish law and order throughout the two colonies, and to impose equal British justice for the Indians as well as the white man, Governor Douglas appointed Gold Commissioners who functioned as policemen, magistrates and Indian Agents. After February 1861, Gold Commissioners carried the additional title of "Assistant Commissioner of Lands."<sup>85</sup> Their duties in this

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<sup>84</sup> A compilation of gazette notices held by the reference library of Specific Claims West, Vancouver, includes a statement that no gazette notices were published in the *British Columbia Gazette* for the period 6 June 1863 to 5 October 1866, but that there is a possibility that notices appeared in other colonial newspapers published in the Colony of British Columbia.

<sup>85</sup> In a letter from the Lands and Work to Colonial Secretary, dated May 19, 1864, the writer asks if the connection between the Land and Works department and the Magistrates, as Assistant Commissioners of Lands and Works, has been discontinued. It appears that Moody, himself, prior to his departure, wrote to the Colonial Secretary stating that "there is no such office as Asst Comm. of L & W". BCARS, C/AB/30.7J/8.

latter area were to be defined by the Chief Commissioner of Lands and Works, Colonel Richard Moody. A circular dated October 1st 1859 was sent by Governor Douglas to all Magistrates and Gold Commissioners, instructing them to permit British subjects, or those registering an intent to become subjects, to pre-empt up to 160 acres of unoccupied Crown land provided that it was not a town site, mine, or Native settlement. In this same circular, Douglas advised his officials to "cause to be reserved the sites of all Indian villages, and the Land they have been accustomed to cultivate, to the extent of several hundred acres round each village for their especial use and benefit."<sup>86</sup>

In the interior, Gold Commissioner William G. Cox received the above instructions from Governor Douglas and Chief Commissioner of Lands, Richard Moody, and allocated Indian Reserves of a considerable size in 1861 at Penticton and at Head of the Lake in the Okanagan<sup>87</sup>, and at the mouth of the Kootenay River<sup>88</sup>, and in 1862 in various areas of the

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<sup>86</sup> Enclosure in Douglas to the Chief Commissioner of Lands and Works, Richard Moody, October 7th, 1859. BCARS, GR 1372, F485/8f.

<sup>87</sup> Correspondence concerning the establishment of the reserves in the Okanagan can be found in BCARS, GR 1372, F.375. The map illustrating the lands reserved is contained in the Royal Engineers letterbook and dated July 1861. BCARS, C/AB/30.6J/5.

<sup>88</sup> William Cox to J.J. Young, October 19th, 1861. BCARS, GR 1372, F376/24.

Shuswap district.<sup>89</sup>

Upon receiving his new commission, Cox wrote to Colonel Moody on February 12th, 1861 requesting information on "laws for controlling Indian Reservations," and recommending that land at the head of Okanagan Lake be reserved for use by the Native residents. Cox's request was urgent as he sensed the impingement of miners and farmers upon lands used by the local Indians.<sup>90</sup> Days later, Cox reported to the Colonial Secretary that there was, in his district, growing unrest relating to land. He said that the Okanagan Chief "Zelahetza" [Chilliheetsa] had been to see him, requesting that Cox convey to Governor Douglas his desire for a reserve.<sup>91</sup> Instructions to mark out the Indian Reserves were then sent from the Colonial Secretary's Acting Private Secretary, Charles Good, on March 5th, 1861 to Colonel

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<sup>89</sup> Cox to W.A.G. Young, July 4th, 1861. BCARS, GR 1372, F.376/1.

<sup>90</sup> Cox to Moody, February 12th, 1861. BCARS, GR 1372, F375/3a.

<sup>91</sup> Cox to Young, February 16th, 1861. BCARS, GR 1372, F375/5. The wording of Cox's letter is ambiguous due to the handwriting: "Zelahitza the Okanagan Lake Chief had a lengthy interview with me relative to his reservation [on the?] [\*\*\*] of the newly discovered diggings [alluded?] to & requested of me to convey his wishes to His Excellency, he asks for permission to dispose of the ground His Excellency may feel disposed to Grant him for his people. I have written to the Chief Commissioner of Lands on the subject of Indian Reservations. It will be re[\*\*\*] for me to proceed to that portion of the Country [\*\*\*] these land claims may be satisfactorily [\*\*\*]."

Moody, and from Moody to Cox on the following day.<sup>92</sup> Both men reported that their instructions emanated from the Governor. Both sets of instructions stated clearly that the reserved lands were to be "defined as they may be severally pointed out by the Natives themselves," although Moody cautioned Cox to be wary of White men influencing the Indians' choice of lands.

On March 29th, 1861, Cox again wrote to the Colonial Secretary stating that he would inform the Okanagan Chief of the "laws and regulations" respecting his reservation. Cox was, however, waiting for receipt of the "proper instructions" from the Chief Commissioner of Lands.<sup>93</sup> Possibly Cox anticipated receiving from Moody the so-called "laws for controlling Indian Reserves" that initiated his first letter to the Chief Commissioner of Lands and Works on February 12th, 1861. It is not known if any additional instructions were received from Colonel Moody. An unidentified Circular "to the different magistrates in their capacity as Asst Comr of Lands" was sent out in 1861 by Moody,<sup>94</sup> though it is not known if this was of any assistance to Cox's assignment. A followup letter to the Chief Commissioner of Lands informed him that Cox would soon

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<sup>92</sup> Good to Moody, March 5th, 1861. BCARS, GR 1372, F650/4c4; Moody to Cox, March 6th, 1861. BCARS, \*\*

<sup>93</sup> Cox to Good, March 29, 1861. BCARS, GR 1372, F375/15.

<sup>94</sup> Moody, 1861 Circular \*\*

proceed "to the Great Lake [Okanagan Lake] and there mark out the Indian reservations as you have instructed me."<sup>95</sup>

Cox spent four days at the beginning of June laying out a large Indian Reserve at the head end of Okanagan Lake and recording it in his notebook entitled "Record of Land Claims."<sup>96</sup> The reserve had been chosen by the Native people themselves, who were, in Cox's words, "well satisfied with the arrangement." Although the original copy of Cox's sketch map has not been found, a second copy dated June 30th, 1861, and signed by Cox was appended to his letter to William A. G. Young on July 4th, 1861.<sup>97</sup> The sketch shows the location of Indian camps, gardens, and fisheries. A more final version of this same map, but not showing the location of these features, and excluding the tip of the peninsula west of the mouth of Vernon Creek, was forwarded to New Westminster in July 1861.<sup>98</sup> A discrepancy in the boundary separating the Indian Reserve from the Government Reserve in

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<sup>95</sup> Cox to Moody, April 24, 1861. BCARS, GR 1372, F375/23b.

<sup>96</sup> "Record of Land Claims, Government Reservations etc by William George Cox Esq, Magistrate, Rock Creek, B.C." BCARS, GR 857. Several years later, the Indian Reserve was reported to be "ten square miles" in extent. Haynes to Colonial Secretary, April 7, 1865. BCARS, GR1372, F741/13.

<sup>97</sup> Cox to Young, July 4th, 1861. BCARS, GR 1372, F376/1.

<sup>98</sup> Map entitled "Indian Reserve Okanagan Lake...Received New Westminster July 1861," This map was subsequently bound into a Royal Engineers' letterbook. BCARS, C/AB/30.6J/5.

the vicinity of Vernon Creek was reported in 1864 by a settler who unwittingly settled on the Government Reserve.<sup>99</sup> On July 30th, 1861, Charles Good acknowledged receipt of Cox's letter and map of the reserve at the head of Okanagan Lake and informed him that these "had been perused by His Excellency with peculiar interest and satisfaction."<sup>100</sup>

Also during the summer of 1861 Cox established an Indian Reserve at the south end of Okanagan Lake measuring "twenty square miles" in extent.<sup>101</sup>

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

...by placing notices on it and also along the banks of the Columbia River in the immediate neighbourhood of same, warning all persons not to trespass or encamp thereon it being an Indian Reserve until instructions to the contrary from the Government.<sup>102</sup>

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<sup>99</sup> C.F. Houghton to the Colonial Secretary, June 3rd, 1864. February 17th, 1864. BCARS, GR 1372, F799/4,5.

<sup>100</sup> Good to Cox, July 30th, 1861. BCARS, Colonial Secretary. Miscellaneous Letters. C/AB/30.1J/3.

<sup>101</sup> Haynes to the Colonial Secretary, April 7th, 1865. BCARS, GR 1372, F741/13. The "Rough Survey of Reserve at Penticton, Situated at South End of Okanagan Lake" is held by the Maps and Plans Vault, Surveyor General Branch, Ministry of Environment, Lands and Parks, Victoria. Map 26 T1.

<sup>102</sup> William Cox to J.J. Young, October 19th, 1861. BCARS, GR 1372, F376/24. Within four years of Cox's visit, Edgar Dewdney laid out a town site in this same location and posted notices to this effect. The land was subsequently pre-empted by non-Indians. The events surrounding the establishment and loss of this reserve are described in Bouchard and Kennedy's

The following year Cox laid out Indian Reserves at Kamloops, along the North and South Thompson Rivers, at Adams and Little Shuswap Lakes, and on the Bonaparte River.<sup>103</sup> A description and enclosed sketch was forwarded to Moody on October 31st, 1862.

Ground-proofing the land to be set aside was not always part of Cox's procedure. For example, Cox initially allotted the Neskainlith Reserve by providing the chief with a notice advising others against removing timber or interfering with the Indians' enjoyment of certain lands. Boundaries were then staked by the chief himself.<sup>104</sup>

In some cases, where Governor Douglas failed to issue precise instructions, expeditionary forces neglected to set aside reserves, as was the case in Bute Inlet and North

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"Lakes Indian Ethnography and History" (1985, report prepared for the Heritage Conservation Branch, B.C. Ministry of Provincial Secretary and Government Services, Victoria. Although the reserve was set aside in 1861 for Kutenai Indians, the original residents, and the subsequent inhabitants were members of the Lakes (Interior Salish) tribe.

<sup>103</sup> Cox to the Chief Commissioner of Lands and Works, October 31st, 1862. *B.C. Papers*, p.26. After a settler had intruded upon cultivated fields belonging to the Indians at the lower end of Kamloops Lake, Cox had been instructed "to mark out the lands claimed by them and to inform the settler that they are reserved for the use of the Indians..." Young to Cox, October 6th, 1862. BCARS, Colonial Secretary. Correspondence Outward. C/AB/30.1J/4.

<sup>104</sup> A series of letters describing the sequence of events establishing and subsequently reducing the Shuswap Reserves can be found in *B.C. Papers*, 29-31. See section 2.3 of this present report for a discussion of the reduction of the Cox reserves.

Bentick Arm, where reconnaissance was undertaken to determine road building feasibility. Colonel Moody, however, advised Douglas that:

Indian Reservations are guarded very fully, I submit, in the Pre-emption Proclamation, though it will be equally necessary to continue our present process whenever practicable, and to stake such out on the ground there or elsewhere.<sup>105</sup>

Whether laid out by Magistrates, Gold Commissioners, surveyors, Douglas, or by the Native people themselves, a number of areas were set aside as Indian Reserves during Douglas's administration in places where settlement was anticipated. Reference to these reserves can be found throughout the Colonial Correspondence.<sup>106</sup>

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

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<sup>105</sup> Moody to Colonial Secretary, March 14th, 1862. BCARS, GR 1372, F930/32; However, Colonel Moody informed Attorney General H.P.P. Crease on June 14th, 1862, that the Bute Inlet survey reserved all lands claimed by Indians. BCARS, GR 1372, F931/33.

<sup>106</sup> This collection of correspondence, identified as GR 1372, is held by the British Columbia Archives and Records Service, Victoria. An index to documents in this series that refer to Indian villages, land use or Indian Reserves appears at the end of this present report.



towns)...".<sup>107</sup> Later, in response to Colonel Moody's report to the Colonial Secretary dated June 2nd, 1862, a frustrated Douglas expressed his displeasure with the slowness of the Royal Engineers' survey work:

The marking out of the Indian Reserves was presumed to have taken place long ere this--as instruction to that effect was issued to CCLW...At Present I cannot sanction the expenditure of the sum...proposed by the CCLW or any expenditure whatever on account of civilian labour.<sup>108</sup>

Despite the few completed surveys, Douglas left office content that he had secured for the Native people their "village sites, cultivated fields, and favourite places of resort." He informed the Legislative Assembly in March 1864 that he had succeeded in protecting the Indian people against encroachment by settlers, and thereby "for ever removing the fertile cause of agrarian disturbance...".<sup>109</sup> Douglas further advised his colleagues that reserved lands did not exceed "the proportion of ten acres for each family

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<sup>107</sup> Memo on the Department of Lands and Works, R.C. Moody. January 31, 1859. BCARS, GR 1372, F915.

<sup>108</sup> Minute of James Douglas on a letter sent from Colonel Moody to Colonial Secretary June 2nd, 1862. BCARS, GR 1372, F931/21.; Cail, *Land, Man and the Law*, p.177, suggested that Douglas had been slow to commit decisions regarding Indian Reserves to paper as he had been advised by Lord Carnarvon to be cautious not to impede future settlement. The above-noted Minute of Douglas, however, indicates that he was displeased at the surveyors' tardiness.

<sup>109</sup> Minutes of the meeting of the Legislative Council, January 21st, 1864. *British Columbia, Journals of the Legislative Council of British Columbia*, New Westminster: R. Wolfenden, 1864, p.2.

concerned," although with respect to many unsurveyed reserves, this was simply not the case.

Surveyor's field notebooks (including those kept by the Royal Engineers) of those lands surveyed during the Douglas years are held by the Surveyor General's Branch of the Ministry of Environment, Lands and Parks, Victoria.

Upon Douglas's retirement, his successors, Frederick Seymour in British Columbia and Arthur Kennedy on Vancouver Island, initiated Indian policies that differed significantly from those of Douglas. Seymour's and Kennedy's policies were arguably more responsive to the whims of settlers than to the needs of Natives. After 1864, Fisher<sup>110</sup> notes, the Colonial Office in England also ceased to be a moderating influence.

## 2.2 Post-Douglas Colonial Reserves

Governor Kennedy's Indian policy for Vancouver Island was outlined in his Address to a Native gathering in Victoria on August 22nd, 1864. He assured them that they were secure in possession of their lands which could be alienated only by mutual agreement. Promises that he would draft "plain and equitable rules and regulations"<sup>111</sup> enacting Indian-White relations do not appear to have

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<sup>110</sup> Fisher, *Contact and Conflict*, 160.

<sup>111</sup> See Appendix B, C.O. 305/23, No.60. Governor Kennedy to Edward Cardwell, August 23rd, 1864.

materialized during Kennedy's regime. Indeed, his personal apprehension regarding the intemperance occurring on the Indian Reserve in Victoria Harbour was expressed in his request to the Executive Council contemplating the propriety of removing the Indians from this reserve.<sup>112</sup> The Governor was informed that the Natives' occupation of their lands could be disturbed and that title could be extinguished by providing "ample and fair compensation."<sup>113</sup> The amount of consultation with the Indian people that was required pursuant to this action remains unclear.

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

On the mainland, prior to the amalgamation of the colonies in November 1866, Governor Seymour struggled to maintain peace among the races with little in the way of policy to guide his actions.<sup>114</sup> As more and more Indian

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<sup>112</sup> See Appendix B, C.O. 305/26, No.6, Kennedy to Executive Council, June 23rd, 1865.

<sup>113</sup> *Ibid.* Reply of the Executive Council to Governor Kennedy.

<sup>114</sup> In an Address to the Legislative Council in November 1864, Governor Seymour stated: "I...have no Bill embodying an Indian Policy to lay before you. The Government has its policy - always, we trust, just and firm, stern or merciful as occasion may require." See C.O. 60/19, No.79.

lands, both reserved and unreserved, became circumscribed by settlers' farms, ranches and townsites, the Native people became more vocal and petitions and protests became more frequent.<sup>115</sup> Skirmishes between Native people and settlers, especially the confrontation between a Bute Inlet road building crew and some Chilcotin Indians, preoccupied Governor Seymour until his death in 1869. During this time, money that had been ear-marked for surveys was now spent averting armed Native insurgency, and few surveys were undertaken that were not completed in associated with laying out townsites and roads. Nevertheless, Acting Governor Birch advised the Legislative Assembly on January 8th, 1866, that:

...arrangements are in progress which will...enable the Chief Commissioner of Lands and Works to undertake this work without further delay. Measures will at the same time be taken to alter the present unsatisfactory system of Indian Reserves.<sup>116</sup>

Moreover, Birch called for relinquishing legislated Indian policy to the discretionary powers of the executive.<sup>117</sup> In many respects, Indian policy during the Seymour years proceeded without legislative authority.

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<sup>115</sup> Seymour arranged gathering of Native people at New Westminster where he listened to their grievances and presented them with gifts. See Clarkson to Seymour, May 16, 1868. BCARS, GR 1372, F297/3.

<sup>116</sup> C.O. 60/24, No.5. Acting Governor Birch to Cardwell, January 24th, 1866. Letter transmits his Address of January 8th, 1866, to the Legislative Assembly.

<sup>117</sup> *Ibid.*

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

The Indians have really no right to the lands they claim, nor are they of any actual value or utility to them; and I cannot see why they should either retain these lands to the prejudice of the general interests of the Colony, or be allowed to make a market of them either to Government or to individuals.<sup>118</sup>

When Trutch assumed control of Lands and Works, a position he held until 1871, the future of the colony was believed to be vested in its agricultural potential. Large tracts of property in Indian hands, therefore, were viewed as prejudicial to such development, and Trutch set about to reduce acreage of previously-allotted lands. Tennant concurs with Fisher's argument that it was Trutch's disparaging opinion of aboriginal people that influenced subsequent Indian policy.<sup>119</sup> It appears, however, that pressures from land-hungry settlers bolstered his sentiments into action.

Reduction of previously-allotted Indian Reserves has

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<sup>118</sup> Joseph Trutch, August 28th, 1867, *B.C. Papers*, p. 42.

<sup>119</sup> Tennant, *Aboriginal People*, 39; Fisher, *Contact and Conflict*, 161-162.

become the Indian policy associated with the post-Douglas pre-confederation years that was implemented by Joseph Trutch. The re-allocation of Indian Reserves assigned previously by William Cox in the Okanagan and Shuswap areas (see Section 2.4 below) set a precedent for the reduction of other reserves. Cail<sup>120</sup> has summarized Trutch's zealous and successful attempt to reduce the Fraser Valley reserves established by McColl. McColl, in Trutch's view, acted with "indefinite authority" in assigning reserves far exceeding the "ten acre per family" rule.<sup>121</sup> Thus, new surveys were required or, the lands would have to be purchased back from the Natives, an idea Trutch personally found repugnant. According to Tennant,<sup>122</sup> Trutch was of the view that the Indians did not possess title to the land, and that previous governments had, in fact, distinctly denied the existence of title. Fisher<sup>123</sup> argues that Trutch intentionally

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<sup>120</sup> Cail, *Land, Man and the Law*, p.180-184.

<sup>121</sup> Brew to McColl, April 6th, 1864. BCARS, GR 1372, File 1030.

<sup>122</sup> Tennant, *Aboriginal Peoples*, pp.41-43. Tennant, however, takes a more kindly view of Trutch's motives than that suggested by Fisher, "Joseph Trutch," p.20. Tennant believes that Trutch was "simply following the well-established practice he inherited..." and "was able to be credible in his doctrine of explicitly denying title in part because for more than a decade Douglas had been denying it implicitly." According to Tennant, Trutch simply adhered to Douglas' ten-acre rule.

<sup>123</sup> Fisher, "Joseph Trutch and Indian Land Policy," *B.C. Studies*, No.12 (Winter 1971-72).

misconstrued the Douglas policy.

The Native people expressed dissatisfaction with the loss of their lands. In 1867, seventy Indian chiefs signed a petition of grievances and submitted it to Governor Seymour. These chiefs asked that their "reserves not be interfered with...".<sup>124</sup> Seymour assured them that his "heart was as good to the Indians as to the White man,"<sup>125</sup> but at the same time he advised Carnarvon that some of the larger reserves may need reduction, which would only be done after his personal inspection."<sup>126</sup>

Indian grievances increased along with settlement. On March 15th, 1869, "An Ordinance respecting Indian Reserves"<sup>127</sup> was given assent by Governor Seymour, providing the Stipendary Magistrate of each district with powers to judge and resolve land disputes between Indians and settlers. The rationale behind the legislation was to provide a quick and inexpensive manner of reconciling controversial issues. The potential abuse of the Ordinance was recognized by the Earl of Granville who cautioned that "it was to be carefully watched as large powers were given

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<sup>124</sup> Seymour to Carnarvon, February 19, 1867. C.O. 60/27, No. 33.

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

<sup>127</sup> "An Ordinance respecting Indian Reserves," No.24, *Revised Statutes of British Columbia* (1871).

by it."<sup>128</sup>

### 2.3 Case Study: The Reduction of the Cox Reserves

Implementation of the Trutch policy can be illustrated by examining his reduction of reserves established previously by Cox in the Okanagan Valley<sup>129</sup> in 1861 and along the South Thompson River in 1862.

Following William Cox's assignment to the Cariboo, John Carmichael Haynes was commissioned in June 1864 as Justice of the Peace for the Okanagan. Soon after, Haynes became a Member of the Legislative Council. Having been a pre-emptor in the Okanagan for the previous three years, Haynes was familiar with the developing area and new settlers' complaints that the best lands belonged to the Indians. On April 7th, 1865 Haynes wrote to Colonial Secretary A.N. Birch transmitting his views on the "excessive" land in the hands of the Indians and recommending compensating them for its reduction.<sup>130</sup> Birch, however, was emphatic that the 1861 Indian Reserves be reduced without restitution. Moreover,

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<sup>128</sup> Seymour to the Earl of Granville, April 20, 1869, with comments by H.P.P. Crease concerning Indian Reserve ordinance and response of Granville. C.O. 60/35, folio 571ff.

<sup>129</sup> The reduction of the Okanagan Reserves has been described by Duane Thomson, "Opportunity Lost: A History of Okanagan Indian Reserves in the Colonial Period," *Forty-second Annual Report of the Okanagan Historical Society*, (1978) pp.43-51.

<sup>130</sup> Haynes to Colonial Secretary, April 7th, 1865. BCARS, GR 1372, F741/13.



the Colonial Secretary expressed his view that Cox had acted solely on verbal instructions and had laid out reserves of an unreasonable amount. Haynes' letter was given to the new Governor, Frederick Seymour for comment and soon Haynes was asked for a report.<sup>131</sup>

In May of 1865 Haynes travelled to the head of Okanagan Lake, inspected the Cox reserve and produced a rough sketch confirming the boundaries as laid out in 1861.<sup>132</sup> Haynes received Governor Seymour's guarded authorization to diminish the reserves, providing that it could be done "without giving much dissatisfaction to the Indians."<sup>133</sup> After submitting a report outlining his proposed manner of proceeding with the reduction, for which Haynes suggested receiving instructions from Governor Seymour and then taking with him to the Okanagan a surveyor and an interpreter, Haynes obtained the authority to proceed.<sup>134</sup>

In November 1865, Surveyor Turnbull accompanied Haynes to Okanagan Lake to adjust the Indian Reserve boundaries

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<sup>131</sup> Birch to Haynes, April 10th, 1865. BCARS, Colonial Secretary, Correspondence Outward. C/AB/30.1J/7.

<sup>132</sup> Haynes to the Colonial Secretary, May 27th, 1865. BCARS, GR 504, F.1.

<sup>133</sup> Birch to Haynes, June 12th, 1865. BCARS, GR 504, F.1.; Colonial Secretary, Correspondence Outward. C/AB/30.1J/7.

<sup>134</sup> Haynes to the Colonial Secretary, July 22, 1865. BCARS, GR 1372, F741/26.

there.<sup>135</sup> His report filed in January 1866 contains descriptions of the three Okanagan Indian Reserves assigned by Haynes.<sup>136</sup> There is no indication that Haynes conducted a census of the Indian residents at the head of the lake on which to adjust the size of the reserves using a per capita formula. Nor is it clear how he arrived at the boundaries that he did.<sup>137</sup>

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<sup>135</sup> The most complete account of Haynes and Turnbull's work at Okanagan Lake is contained in Turnbull's own journal entries for the period November 25th-28th, 1865. On November 25th, Turnbull accompanied Haynes and a local settler, Captain Houghton, to the area now called Okanagan Landing where Haynes examined about 1,500 acres he intended to reserve. But after speaking with some Indians, he "found them very discontented with the locality." Negotiations continued until late the following day when it was decided that the Indians preferred "the land at the head of lake and also a portion shewn on 10 mile map about 6 miles below [south from the head of] the lake." British Columbia, *Columbia River Exploration, 1865-6*. Victoria: Government Printing Office (1866) pp. 33-34. See also Haynes to the Chief Commissioner of Lands and Works, November 28th, 1865, BCARS, GR 1372, F741/30., and Haynes to the Acting Colonial Secretary, November 28th, 1865, BCARS, GR 504, F.1.

<sup>136</sup> Mr. Turnbull's Report, January 17, 1866. *B.C. Papers*, pp. 35-36. A sketch of these reserves said by Turnbull to be enclosed with his report was in fact not published along with his report. Thomson, "Opportunity Lost," p.48, reconstructed the probable boundaries of the 1865 Haynes Reserves at the head of Okanagan Lake and its west side. There is, however, a sketch by Turnbull of these reserves that appears as map "26T1 Land Reserves" in the Maps and Plans Vault of the Surveyor General Branch, Victoria. The Haynes reserves were also indicated on a larger scale map Turnbull published as part of the report of the Columbia River Exploration (1866).

<sup>137</sup> It appears that a present was made to Chief upon settlement of the Indian Reservation. E.H. Sanders submitted in his "Requisition for Expenses, 1866" a note that a present had been made from G.A. Vernon to the Indian Chief at Lake Okanagan on settlement of the Indian Reservation at a cost of £7 4sh 4 pence. BCARS, GR1372, F1560.

Haynes advised the Chief Commissioner of Lands that a notice should be inserted in the *Government Gazette* announcing that the former reserve lands were now open for settlement. But Chief Commissioner Joseph Trutch decided otherwise. In a letter to the Acting Colonial Secretary dated February 5th, 1866 Trutch stated that publication should be postponed inasmuch as the status of the other Cox reserves, in the Shuswap area, remained undecided.<sup>138</sup>

The Shuswap reserves laid out by Cox came to the attention of the government when Philip Nind, Gold Commissioner for Lytton, complained of the extent of the Indians' allotments and their impediment to settlement in these parts.<sup>139</sup> The Governor deferred to Trutch for comment. Trutch, though, had little information available to him on these reserves and requested that he be informed of:

what lands had been authoritatively reserved and assured to the various tribes, and to what extent such Reserves can be modified with the concurrence of the Indians interested in them--either with or without money or other equivalent.<sup>140</sup>

He did, however, air his conviction that the Native people's non-use of their claimed lands was obstructing more appropriate growth in the colony and should be reduced if it

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<sup>138</sup> Trutch to the Acting Colonial Secretary, February 5th, 1866. BCARS, C/AB/30.7J/8A.

<sup>139</sup> Philip Nind to Colonial Secretary, July 17th, 1865. *B.C. Papers*, p.29.

<sup>140</sup> Trutch to Colonial Secretary, September 20th, 1865. BCARS, GR 1372, File 942/17.

could be done "without much dissatisfaction to the Indians."<sup>141</sup> Trutch's concerns regarding the Shuswap reserves focused also on his opinion that they were disproportionate to the number of Native residents.<sup>142</sup>

Cox, himself, wrote to Nind respecting Indian Reserves in the Kamloops area, sending him a sketch of the Shuswap Reserves he assigned there in 1862 and informing him that "there could be no mistake."<sup>143</sup> Upon visiting the area and discussing the issue with the Native people, Walter Moberly found discrepancies between Cox's sketch and the boundaries as claimed by the Indians. The prudent thing to do, he determined, was nothing.<sup>144</sup>

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

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<sup>141</sup> Good, Colonial Secretary's Office, to Trutch, September 26th, 1865. *B.C. Papers*, pp.30-1.

<sup>142</sup> Trutch to Walter Moberly, October 10th, 1865. *B.C. Papers*, p.31.

<sup>143</sup> Cox to Nind, July 16th, 1865. *B.C. Papers*, p.31.

<sup>144</sup> Moberly to Trutch, December 22, 1865. *B.C. Papers*, pp. 33-34. Earlier that same year, Moberly had passed through the area while undertaking explorations for the government; in a sketch map contained in his field journal for July 1865, Moberly drew the line of an Indian Reserve situated across the South Thompson from the mouth of Monte Creek. Moberly, *Field Notebook No.1, July-August 1865*. Maps and Plans Vault, Survey General Branch, Ministry of Environment, Lands and Parks, Victoria. Tray 1, Vol. 2.

suspicion in this last regard. It was Trutch's opinion that once the dimensions of the original reserves were determined, then "there will remain only to be determined whether it is advisable to purchase back from them such portions of these lands as are valuable for settlement."<sup>145</sup>

Colonial Secretary H.M. Ball wrote to Trutch on May 29th, 1866, instructing him to proceed to Kamloops, assemble the Shuswap chiefs and their people, and arrange in an amicable fashion the reduction of their lands, paying only those who might be reluctant to relinquish the old reserve. A sum of \$500.00 was the maximum amount that the Governor authorized Trutch to spend without further consultation.<sup>146</sup> Trutch reported on October 22, 1866 that he *did* visit Kamloops.<sup>147</sup> The only account on any meeting with the Indians is provided by Edgar Dewdey who later reported to the Chief Commissioner of Lands and Works that while accompanied by the chiefs and several others, he reduced the Shuswap reserves in accordance with instructions received "on the ground from His Honor the Officer Administering the Government and yourself." Dewdney informed Trutch that he supplied the Shuswap and Adams Lakes chiefs with a plan of

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<sup>145</sup> Trutch to the Acting Colonial Secretary, January 17, 1866. BCARS, C/AB/30.7J/8A.

<sup>146</sup> H.M. Ball, Colonial Secretary to Trutch, May 29th, 1866. B.C. Papers, p.36-37.

<sup>147</sup> Trutch to Colonial Secretary, October 22nd, 1866. BCARS, GR 1372, F947.

their new reserves; the plan for the Kamloops chief was to follow.<sup>148</sup> The reserves were reduced, but it is not known if compensation was given to the Shuswap Indians in lieu of the lost lands.

A public notice announcing the adjustment of the Kamloops and Shuswap Reserves appeared in the *Government Gazette*, October 5, 1866. But it does not appear that a similar notice disclosed the reduction of the Okanagan Reserves.

The propriety of reducing the Cox reserves continued to be debated for many years.<sup>149</sup> But several pre-emption applications were submitted and approved for lands that had been marked on maps of Cox Reserves as Indian camps and gardens.<sup>150</sup> The issue of the reserve reductions was later examined by the Indian Reserve Commission in 1877, although the Native people on several occasions in the intervening years proclaimed discontent with their lack of

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<sup>148</sup> Edgar Dewdney to the Chief Commissioner of Lands and Works, November 8th, 1866. BCARS, GR 1372, F461/17.

<sup>149</sup> The Indian at Kamloops proclaimed discontent with the size of their reserves during Indian Commissioner Powell's visit here in July 1874. NAC, RG 80, Vol. 494. In 1877, Indian Reserve Commissioner Anderson noted that Chief Chilliheetsa, who had been present when Cox initially laid out the Indian Reserve at the Head of the Lake, stated that Haynes' reduction had been done "without the consent, and only the partial knowledge of the Inds." NAC, RG 10, Vol. 1284.

<sup>150</sup> In the Okanagan, pre-emptions by Vernon in 1866, Girouard in 1867, Tronson in 1868, and Vernon in 1870, all applied for land formerly within the boundaries of the Indian Reserve. All of the records were signed by J. Haynes.

lands.

## 2.4 SOURCES RELATING TO THE PRE-CONFEDERATION ERA

### 2.4.1 Some Primary Sources Relating to the Pre-Confederation Era Land Policy

#### British Columbia

- 1858-1871 Colonial Correspondence. (Correspondence Inward to the Colonial Government). British Columbia Archives and Records Service, GR 1372. (See section 2.4.1.1)
- 1860-1870 Colonial Secretary. Correspondence Outwards. British Columbia Archives and Records Service, C/AB/30.1J/1-8A. (See section 2.4.1.3)
- 1861-1864 Royal Engineers. Correspondence Outwards. Memorandum Book, July 1861-October 1864. British Columbia Archives and Records Service, C/AB/30.6J. (See section 2.4.1.2)
- 1864-1868 Legislative Council. Minute Book, January 24, 1864 to May 1868.
- 1866 *Columbia River Exploration, 1865-6: Instructions, Reports and Journals Relating to the Government Exploration.* Victoria: Government Printing Office.
- 1864-1865 Supreme Court. Notes of Proceedings. May 2, 1864 to May 5, 1865. Judge M.B. Begbie.
- 1870 Provincial Secretary, Correspondence, petitions, accounts, statement of population and reports relating to Indian Lands in British Columbia. British Columbia Archives and Records Service, GR 504
- File includes the Trutch memorandum of 13 January, 1870 and letters from the Surveyor-General to the Colonial Secretary complaining that reserves were "too extensive and extravagantly so".
- 1875 *Papers Connected with the Indian Land Question, 1850-1875.* Victoria: Government Printer. (Reprinted 1987 by the Queens Printer, Province of British Columbia.)



- Douglas, James  
1850/1852 [Treaties]. British Columbia Archives and Records Service, Victoria. Add. Mss. 772, File 1.
- 1858-1861  
Private Papers (First Series). British Columbia Archives and Records Service, B/20/1858-1861.
- 1874  
Letter to I.W. Powell, Indian Commissioner, 14th October 1874. NAC, RG10, Vol. 1285.
- Fort Victoria  
1849-1859 Correspondence Inward from the Hudson's Bay Company, London, to James Douglas. British Columbia Archives and Records Service, A/C/20/Vi7.
- 1850-1858 Correspondence Outward. Letters signed by James Douglas. British Columbia Archives and Records Service, A/C/20/Vi5.
- 1856-1858 Correspondence Outward, 21 December 1856 - 25 January 1858. Letters signed by James Douglas (Country Letterbook). British Columbia Archives and Records Service, A/C/20/Vi4.
- 1850-1859 Correspondence to the Hudson's Bay Company on the Affairs of the Vancouver Island Colony, 16 May 1850 - 6 November 1855, 11 December 1855 - 3 March 1859. Letters signed by James Douglas. British Columbia Archives and Records Service A/C/20/Vi2-Vi3.
- Great Britian. Colonial Office.  
Admiralty Correspondence, 6 Vols. 1848-1860 and 1866-1898. British Columbia Archives and Records Service, GR 1309 (Microfilms B2645-B2646).
- B. C. Despatches, 1858-1871. C.O. 60/1-44.
- Secretary of State Despatches to British Columbia, 1859-1871. C.O. 398.
- Secretary of State Despatches to Vancouver Island, 1849-1867. C.O. 410.
- Vancouver Island Despatches, 1846-1867. C.O. 305/1-30.

**2.4.1.1 An Index to Selected Colonial Correspondence  
Files Relating to Indian Lands, Indian  
Reserves and Surveys (British Columbia  
Archives and Records Service, GR 1372)**

- F10/4 Ovid Allard to James Douglas. February 22, 1861.  
Re: brick factory on "government" or Indian  
Reserve; Indian employment with whites
- F13/4 E. Graham Alston to Acting Colonial Secretary.  
June 1, 1864.  
Re: Songhees Reserve, Victoria. Commission for its  
administration. Includes report on "Social  
Conditions of Songhees," by Rev. A.C. Garrett,  
with a plan for their improvement.
- F13/10 E. Graham Alston to Acting Colonial Secretary.  
August 18, 1865.  
Re: Indian Reserve Commission for Songhees; Alston  
resigns.
- F46/1, 5, 6g, 6h  
May 1861 - November 1864  
S.H. Atkins letters re: Coquitlam Indians
- F61/6 Attorney General of B.C.  
Re: Lands at North Bentick Arm and those claimed  
by Mr. G.H. Cary (960 acres) including an "Indian  
settlement".
- F64/7 Attorney General of B.C.  
Re: Chilcotin War
- F68/10 Attorney General, United Colony  
Letter with regard to Indian Grave Ordinance of 13  
February 1867.
- F71 Attorney General H.P.P. Crease to Governor A.  
Musgrave. May 11, 1870  
Contains Crease's comments on 1870 Land Ordinance.
- F95/17 H.M. Ball to Colonial Secretary. July 4, 1860  
Note: Remarks on Lytton Indians. He says they are  
quiet and that they appreciate having Whites  
around. "...in many parts cultivating the ground  
for gardens."
- F96/1 H.M. Ball to Colonial Secretary. January 31, 1861.  
Note: Report of Lytton revenues, includes  
statement on Indians: "Indians have not suffered

so much as might have been expected from the scarcity of their usual winter stock of food, as most of them have been able to obtain employment and to support themselves."

F96/31 H.M. Ball to Colonial Secretary. July 6, 1862.  
Note: In accordance with James Douglas's letter of May 20, 1862, Ball engaged the resident "Medical Practitioner" and vaccinated all Indians. All "rancheries" were visited from Boston Bar to Fosters Bar (Fraser) and up to Nicola River. 1790 in total were vaccinated.

"As yet the disease has not yet spread into the Interior of British Columbia..." 40 pounds was spent on the project.

F96/35 H.M. Ball to Colonial Secretary. September 8, 1862.  
"I am sorry to report that small-pox has broken out amongst the Indians, at the mouth of the Nicola River, but I am using every precaution to prevent those tribes having any communications with others, so that I hope it will shortly disappear."

F97/24 H.M. Ball to Colonial Secretary. February 18, 1864.  
Note: Ball requests road toll exemption for Indians with "household goods."

"...The Indians in the Thompson River District have no settled habitations and are constantly moving from camp to camp in search of food, on which occasions the present exaction of the Road Toll seriously oppresses the poorer classes of the Indians..."

J. Douglas Endorsement. n.d.: "Indians packing their 'household goods' to be exempted from the payment of tolls--but in all other cases when packing food or other goods bought for their own use or carried for other persons--to be charged the regular rates of toll."

See James Douglas's reply 19th.

F98/2 H.M. Ball to Colonial Secretary. January 14, 1865  
Re: H.B.C. lands, but notes location of Kamloops I.R.. With endorsements.

- F100/10 H.M. Ball to Colonial Secretary. June 19, 1868.  
Ball recommends the appointment of a constable at Burrard Inlet due to the increase in population. About 270 men working at saw mills and logging camps. Indian population also increasing due to employment at mills. They are Squamish.
- F100/23a Ball to Chief Commissioner of Lands and Works October 30, 1868  
Refers to Lytton IR (also in *BC Papers*)  
With endorsement from Trutch.
- F101a/16c H.M. Ball to Chief Commissioner of Lands and Works November 19, 1869.  
Note: Father Durieu claims a 160 acre pre-emption on land farmed by Joseph Swetalem, who had the land "recorded" in his favour by a Magistrate in 1862 (by C. Brew). Swetalem had built a house upon the land.
- It had been decided "lately" that Indians "have no right to pre-empt land." This was done by the *Pre-emption Ordinance - 1866*. See endorsements for government's pre-emption policy.
- F101a/16e H.M. Ball to Chief Commissioner of Lands and Works November 19, 1869.  
Note: Government pre-emption policy changed in 1866.
- F188/12 Chartres Brew to W.A.G. Young, Colonial Secretary. May 19, 1859.  
  
Note: Brew's report on H.B.C. claim--mentions Indian clearing.
- F189/38 C. Brew to W.A.G. Young, Colonial Secretary. December 6, 1860.  
Note: Dispute between 2 whites in which Musqueam evidence was taken--one of the whites was "squatting on an Indian clearing..."
- F190/ Chartres Brew to R.C. Moody. April 1, 1861.  
Re: location of R.C. Church; Brew's attitude towards Indians.
- F190/ Chartres Brew to R.C. Moody, Chief Commissioner of Lands and Works May 15, 1861.  
Note: Land dispute over Indian Reserve belonging to Coquitlam and Mr. Atkins.

- F190/32 Chartres Brew to W.A.G. Young, Colonial Secretary. September 25, 1861.  
Note: fight between Indians and whites at Coquitlam.
- F192/ Chartres Brew to Col. R. Moody, Chief Commissioner of Lands and Works June 12, 1863.  
Note: CB informs Moody that he is sending Tompkins Brew, High Constable, to "Katesy" on June 16 "to try and settle about the Indian Reserve."
- B.C. Papers, p.43*  
Chartres Brew to William McColl. April 6, 1864.  
Instructions to McColl re: the marking out of Indian Reserves around the different Indian Villages on the Fraser River, between New Westminster and Harrison River.
- F193/12 Chartres Brew to Colonial Secretary. May 11, 1864.  
Re: Settler Atkins requests grant to move his house after settling near Indians. A number of endorsements revealing, some of Douglas' actions during a visit to Coquitlam.
- F193/29 Chartres Brew to Colonial Secretary. November 2, 1864.  
Re: Pre-emption claim adjacent to Indian Reserve near the Sumas (Harris Slough).
- F194/16 Chartres Brew to Colonial Secretary. May 20, 1865.  
Indians protest over pre-emption claim of S. Collins at Capilano. F. Seymour endorses it by saying that application for pre-emption must be refused if Brew, as Magistrate, is satisfied that Collins has interfered with "Indian rights."
- F194/20 Chartres Brew to Colonial Secretary. June 6, 1865.  
Re: Pre-emption application of William Shannon location. Endorsement by J.W. Trutch, June 9, 1865, where he says Magistrates are responsible for Pre-emption of land, that L & W's never had any connection with the pre-emption of land, and that owing to vagueness of the plots it was impossible to tell if pre-emption applications interfered with government or Indian reserves.
- 194/34 Chartres Brew to Colonial Secretary. November 30, 1865.  
Refers to Turner's report and sketch on Chilliwack land disputes. See also Trutch's Minute, December 1, 1865, that is attached.

This is the report that says pre-emptions were made before I.R.'s were laid out at Chilliwack and that "certainly" a mistake was made in the laying out of the I.R.'s.

"The land where pre-emptors encroach on the land staked out as reserves is mostly timbered and is absolutely worthless to the Indians..."

"Convinces" Pallalts to settle--"Squagh" were difficult and only after a long palaver did they agree to a survey.

Long endorsement by Pearse--important for it refers to enclosed tracing (missing) showing pre-emption claims and McColl's reserves.

- F195/27 Chartres Brew to Colonial Secretary. October 15, 1866.  
Re: Pre-emption claim of R.C. priests, including P. Durieu, on Harbledown Island (Knights Inlet) for mission purposes.
- F196/15 Chartres Brew to Colonial Secretary. August 28, 1867.  
Re: Land requested for Indian church (Church of England) in Lytton.
- F200 Tomkins Brew to A.T. Bushby. August 15, 1870.  
Re: Claim of Chief Big George to land at Seymour Creek on Burrard Inlet and its conflict with land application by Philip Jackman. Consensus is this land should be allotted to Big George.
- F244/4 A. T. Bushby to Colonial Secretary. May 12, 1870.  
Refers to H.M. Ball's letter of 3 November 1869.  
"I also concur with him in his objection to the Indians on their Reserves being included under the Fence Ordinance..."
- F299/13 F.G. Claudet to Colonial Secretary. May 5, 1871.  
"...at a public meeting held here yesterday for the purpose of considering the most appropriate way of celebrating the Queen's birthday, I was requested to make an application to you for a Government grant of money to assist in carrying out the customary Indian sports, games, and potlashes [sic]. I may mention that a sum has been given for the purpose every year and that last year \$400 was appropriate for the use of the Committee..."

- F299/180 F.G. Claudet to Chief Commissioner of Lands and Works and Surveyor General. August 28, 1871.  
Re: Coquitlam Reserves.
- F299/180 F.G. Claudet to Colonial Secretary. September 28, 1871.  
Re: Land for school at Aitchelty reserve.
- F317/2 Colonial Secretary to Chief Commissioner of Lands and Works, January 10, 1860.  
Reply to Moody's letter of December 14. Governor suggests a belt of 5 chains be "reserved" at edge of suburban lots of townsites.
- "Ten acres of town land, His Excellency deems sufficient for the sites of Indian villages and 1000 acres of country land where they may make selection."
- Claims H.B.C. lands are not [to] be disturbed as they were under consideration in London.
- F326/8c-2 Colonial Secretary to Cox. July 30, 1861  
Acknowledges receipt of Cox's report of July 4 re: Indian reserve at Okanagan Lake and the map...
- F326/8c-4 Young [Colonial Secretary's Office] to Col. R. Moody. September 3, 1861.  
Acknowledges Moody's letter No. 324 of August 24 with plan "of a few reserves..." Young does not specify what kind of reserves, but asks for copies of all of them.
- F327/3-2 Young [Colonial Secretary's Office] to Chief Commissioner of Lands and Works. February 18, 1862.  
Reply to Moody's letter of February 15; says government (public) reserve and a reserve for the Natives should be made at Bella Coola, according to H.E.'s instructions, dated March 5, 1861 [check date].
- F327/3-3 Young [Colonial Secretary's Office] to Chief Commissioner of Lands and Works March 4, 1862.  
Further instructions re town site, government reserve, and Indian reserve surveys.
- F327/3-4 Young [Colonial Secretary's Office] to Col. R. Moody. March 10, 1862.  
Includes the enclosure: H.P.P. Crease to Chief Commissioner of Lands and Works. March 10, 1862--

Draft Location Ticket, under Proclamation, March 18, 1861. Re: Crease's remarks on the Venables land case and rights of Location Tickets. Rights of Location Ticket is subject to "continuous occupation and improvements and such reserves as Government of B.C. may make for Indian, Public, Municipal, Mining, or Government purposes..."

F328/7 Young [Colonial Secretary's Office] to Chief Commissioner of Lands and Works May 14, 1862. Re: Helmcken-Waddington "pre-emptive right" of purchase at Bute Inlet, subject to Indian interests.

See also F328/10

F328/7-5 Young [Colonial Secretary's Office] to Chief Commissioner of Lands and Works June 18, 1862. Reply to Moody's letter of May 27 re application of Indian to purchase of a Suburban Lot by an Indian "on the same terms as it could be purchased by a white man..."

James Douglas--"there can be no objection to your selling lands to Natives on the same terms..." as any other person.

F328/7-6 Young [Colonial Secretary's Office] to Chief Commissioner of Lands and Works June 26, 1862. Re: Langley Indian reserves.

F329-1 Young [Colonial Secretary's Office] to Chief Commissioner of Lands and Works July 2, 1862. Reply to Moody's letter of June 11 No. 87 re conditions under which Indians may pre-empt land.

F329-2 Young [Colonial Secretary's Office] to Chief Commissioner of Lands and Works August 7, 1862. Excellent report on Maps, which War Dept. had requested. Lists Royal Engineer's maps to mid 1862.

F329-3 Young [Colonial Secretary's Office] to Chief Commissioner of Lands and Works October 23, 1862. Douglas stops at Skwah village and has plans of settlement on Chilliwack prairie.

F331-2 Colonial Secretary to Chief Commissioner of Lands and Works March 4, 1863. Archdeacon Wright requests removal of trees on Reserve at Sapperton between R.E. camp and Capt.



Grant's house. Clearing to be done by order of James Douglas.

- F333 Charles Good [Colonial Secretary's Office] to Chief Commissioner of Lands and Works September 29, 1864.  
Instructions to extend Reserve at Metlakatla [most likely an I.R. but letter does not specify it] to 5 miles on either side of Mission Point and 5 miles back from coast line--except for 2 acres on Mission Point to be held in trust for the Church Missionary Society--Publish in the Gazette and record on Official Maps.
- F334-2 Colonial Secretary to Chief Commissioner of Lands and Works September 26, 1865.  
With Trutch's enclosed Report on I.R.s. See also B.C. Papers.
- F335-5 A.N. Birch [Colonial Secretary's Office] to Chief Commissioner of Lands and Works November 12, 1866.  
Acknowledges letter of November 5 re application of H.B.C. to E.H. Sanders to build a powder magazine on the "Reserve" [type not specified].  
Chief Commissioner of Lands and Works had recommended a 7-year lease on land--was approved by the government.
- F335-7 W. Young [Colonial Secretary's Office] to Chief Commissioner of Lands and Works November 6, 1867.  
Re: Lower Fraser Indian Reserves.
- F335-8 W. Young [Colonial Secretary's Office] to Chief Commissioner of Lands and Works December 4, 1867.  
Re: Lower Fraser Indian Reserves.
- F335/16 Letter to Colonial Secretary. December 4, 1867  
Re: Indians-reserves-Fraser River
- F336-1 Report, Lands and Works Office [Trutch's handwriting]. June 22, 1869.  
Draft report of trip of Sparrowhawk to N.W. coast; many references to Indians, especially value of gunboats. Mention of bombardments, burning of Indian villages and loss of life in order to enforce government authority on former occasions [Nass, Tsimshian, etc.]
- F336-2 Charles Good [Colonial Secretary's Office] to Chief Commissioner of Lands and Works. July 26, 1869.

- Re: Songhees Indian Reserve. See also December 3, 1869 (F336) for a long report by Trutch.
- F336-4 Philip Hankin [Colonial Secretary's Office] to Chief Commissioner of Lands and Works. April 29, 1870.  
Re: Fraser River Indian Reserves surveys.
- F336-5 Hankin Report on V.I. land questions and validity of Crown Grants [Colonial Secretary's Office]. Indian Title not mentioned.
- F336-6 Hankin [Colonial Secretary's Office] to Surveyor-General. February 21, 1871.  
Due to proposed reversionary right to B.C., speculative attempts may be made on Squamish River mouth, so make a Reservation here at once.
- F336-7 Good [Colonial Secretary's Office] to Chief Commissioner of Lands and Works. September 5, 1871.  
Request from Ottawa re Indian Reserves.
- F340/4 Bishop of Columbia, George Hills, to James Douglas. November 26, 1869  
Note: asks for a grant of land for church site (15 acres) on Tsimshian reserve. States that most of reserve is waste land. James Douglas responds that it is not in his power to do so.
- F340/29 Bishop of Columbia, George Hills, to Colonial Secretary. February 16, 1869  
Re: Songhees Indian Reserve.
- F340/30-31 Bishop of Columbia, George Hills.  
Minutes in connection with statement of the Archdeacon of Vancouver pertaining to general Indian policy and criticisms of Sebright-Green's views.
- F375/1a Pre-emptions listed by W.G. Cox. April 14, 1861.  
Three pre-emptions, all dated April 13, 1861, and all in the vicinity of the Mission, Okanagan Lake-  
-in the names of W.G. Cox, Gideon Peon, and J.C. Haynes.
- F375/3a W.G. Cox to R.C. Moody. February 12, 1861.  
Note: Requesting information as to Indian Reserves, aliens, etc. as Acting Commissioner of Lands.

- F375/5 W.G. Cox to W.A.G. Young. February 16, 1861.  
Re: Okanagan Lake Reserve of Chief Zelahetza.  
Reference to mining activities around Mission Creek.  
"Zelahetza...had a lengthy interview with me relative to his reservation in the vicinity of the newly discovered diggings alluded to and requested of me to convey his wishes to His Excellency, he asks for permission to dispose of the ground His Excellency may feel disposed to grant him for his people--I have written to the Chief Commissioner of Lands on the subject of Indian Reservations. It will be requisite for me to proceed to that portion of the Country in order that land claims may be satisfactorily arranged..."
- F375/8 Cox to Colonial Secretary. March 1. 1861.  
Cox reports that "Messrs. Beame & Company" were prospecting nine creeks in the vicinity of the "Mission Country" around Okogagan Lake [in early February, 1861] and they obtained gold from the "River Anse du Sable." Cox says these people [prospecting party] told him that while they were in this area "The Indians treated us most hospitably..."
- F375/15 Cox to Good. March 29, 1861.  
Re: Okanagan Indian Reserve. Cox states that he will "as soon as possible see Selahitsa the Okonagan Chief and explain the laws and regulations respecting his and his people's Reservations. On receipt of the proper instructions from the Chief Commissioner of Lands relative to the above allotments I will proceed to the Mission Country and mark out the Reservations."
- F375/23b Cox to Col. R. Moody. April 24, 1861.  
[Writing from Rock Creek] Cox says "I shall, as soon as the assizes here are concluded, proceed to the Great Lake [Okanagan Lake] and there mark out the Indian reservations as you have instructed me."
- F375/27b Cox to Chief Commissioner of Lands and Works June 17, 1861.  
Cox says that on the 1st and 2nd of June, "I marked out an Indian Reservation situated at the Northern Extremity of Lake Okanagan...The Indians appeared well satisfied with the arrangement having selected the ground themselves and also

named the Extent desired by them...and I herewith enclose...a rough sketch of the boundaries of the above."

- F376 Cox to Young [Colonial Secretary]. July 4th, 1861. Says that he "marked off" the Indian Reserve on June 3rd [see also his letter of June 17th]. "The Indians themselves selecting the location and also pointing out to me where they desired the boundary stakes to be placed." Encloses sketch.
- F376/1 Cox to W.A.G. Young. July 4, 1861. Indian Reserve at Okanagan Lake and sketch.
- F376/24 Cox to Young. October 19, 1861. Re: Indians vs. whites at Pend'Oreille. Trip to Kootenay and reports on Kootenay Indians.
- F377/1a Cox  
Re: Nicola Valley [illegible]
- F377/5 Cox to W.A.G. Young. February 17, 1862  
Re: possible trouble between Indians and miners. See James Douglas's Minute and reply.
- F377/9 Cox to W.A.G. Young. May 20, 1862.  
Re: Indians on Columbia River were well disposed.
- F377/12 Cox to W.A.G. Young. August 9, 1862.  
Exploration trip Okanagan and Columbia River led by 2 Indian men and 2 sons of one of them from Sel d'Epinette. These 2 were the only ones acquainted with this part of the country and they had not been there for 3 years.
- F377/16 Cox to W.A.G. Young. August 24, 1862.  
Cox says there are "five occupied farms of 160 acres each" at Okanagan Lake.
- F377/19 Cox to W.A.G. Young. October 10, 1862.  
Re: Indian Reserves [virtually illegible]
- F377/22 Cox to W.A.G. Young. October 25, 1862.  
Re: Indian Reserves.
- F377/24 Cox to Young. October 25, 1862.  
Protest by Indians of Indians at lower end of Kamloops Lake.
- F377/25b Cox to Col. R. Moody, Chief Commissioner of Lands and Works. October 31, 1862.

- Re: Thompson River Indian Reserves, with sketch.
- F380/6 Cox to Colonial Secretary. October 2, 1864.  
Provides detailed account of Bute Inlet expedition  
and Chilcotin uprising.
- F382/2 Cox to Colonial Secretary. May 14, 1865.  
Acknowledges receipt of petitions of Williams Lake  
Chief Tomeskett to Governor, requesting payment  
for capture of Indian prisoners.
- F397/2 Thomas Crosby to A.T. Bushby. October 17, 1870  
Chilliwack Reserve: Petition from I.R. regarding  
Church Reserve
- F461/17 Edgar Dewdney to Chief Commissioner of Lands and  
Works. November 8, 1866.  
Re: surveys of Trutch's reduced reserves in  
Shuswap, Kamloops, and Adams Lake areas. Sketch is  
missing. States that "chiefs of the different  
tribes as well as several of the Indian  
accompanied me during the progress of the Surveys,  
and made themselves thoroughly acquainted with the  
boundaries and Stakes..."
- F461/38 E. Dewdney to B.W. Pearse, Surveyor-General. May  
20, 1871.  
Map enclosed with report: "Rough sketch showing  
Indian Reserve at the mouth of the Agwilgate River  
and proposed town lots."
- F484a/3 Address of His Excellency the Governor to the  
inhabitants at Fort Yale. September 12, 1858.
- F485/4 James Douglas to Captain DeCourcy, Senior Naval  
Officer, Vancouver Island. March 8, 1859.  
Removal of Indians from Victoria. James Douglas  
requests a warship to escort them to Johnstone  
Strait.
- F485/8f James Douglas to Chief Commissioner of Lands and  
Works. October 7, 1859.  
Enclosing copy of circular re: pre-emption policy  
concerning unsurveyed Crown Lands.  
"...You will also observe from the Circular in  
question that Town Sites, with the adjacent  
Suburban and Rural Land, and also the sites of all  
Indian Villages and the Land which they have been  
accustomed to cultivate, to the extent of several  
hundred acres round each village, have been  
reserved and are not to be subjected to the

operation of the proposed pre-emption Law..."

- F485b James Douglas to Chief Commissioner of Lands and Works. April 12, 1860.  
"The ejection of St. Paul a native of the country from his homestead is a question involving a nice point of law, but my own private opinion is that the estate is vested in him, and that he cannot be ejected; even if the land be confirmed to the Hudson's Bay Company - as any such grant will reserve all Indian rights in the land. See also Moody's letter of 10 April 1860 with enclosures from Ball and McLean.
- F485b James Douglas to Chief Commissioner of Lands and Works. April 16, 1860.  
Draws the Commissioner's attention to the new Proclamation regarding pre-emption policies.
- F498/11 Will Duncan, Missionary, to Arthur Birch, Colonial Secretary. January 18, 1865.  
Re: the Indian Mission of Metlakahtla.  
"...Your favor of the 27 Sep. informs me that His Excellency the Governor has extended the Government Reserve at Metlakahtla to a distance of 5 miles on each side of Mission Point, and 5 miles back from the coast-line: also that he has graciously directed the two acres of land known as Mission Point to be held in trust by the Government for the benefit of the Church Missionary Society.
- "I have in compliance with your letter of the 7th Oct. written a report to the Governor on the propriety or otherwise of his granting a lease of a tract of land at the mouth of the Nass River to a fishing company...
- [arranging a time for the Governor's visit]  
"...The general routine for the year runs thus-- from 15 March to 15 May away at the Nass fishery about 70 miles from here, from 15 May to end of June at home gardening and making canoes etc., after this they scatter themselves about to the various salmon fisheries to the end of September and during the rest of the year to spring again, they are in general home--but parties are away hunting, trapping etc...
- "...I have this year for the first time made a decided attack upon the Indian system of

government...And now I have a Council formed of 10 of the best & wisest men in the settlement (irrespective of former rank or caste)..."

Colonial Secretary to Duncan. March 6th, 1865.  
"...His Excellency desires me to acquaint you that it is his intention to pay the Metlakahtla Nation a visit during the spring..."

- F498/21a William Duncan, Missionary, to Frederick Seymour, Governor of British Columbia. September 10, 1868.  
"Your Excellency will observe from his report that Mr. Blenkinsop speaks of Kincolith and Nass as identically one and the same place, which is as irregular as if he called Metlakahtla. Fort Simpson. The Indians of Kincolith separated from Nass and formed a Christian Mission Station at the mouth of Nass river under the Rev. A. Doolan & Rev. R. Tomlinson in like manner as the Indians with me here at Metlakahtla separated from the Tsimshians at Fort Simpson...the Tsimshians at Fort Simpson are divided into eight tribes each independant of the other..." [Duncan is extremely critical of Blenkinsop and his suggested policies towards the Indians]  
Appended to the letter are "Items from the Speeches of the Indians to His Excellency Governor Seymour at Metlakahtla, 12 June 1867."
- F503/1b Durieu to Trutch. February 13, 1868.  
Trutch to Durieu. February 21, 1868.  
  
Re: request to purchase abandoned petition for land at the Mission [St. Mary's].
- F503/2 Memorial of the...Indians of the Village of Maskwe to Frederick Seymour, Governor of British Columbia.  
  
Memorial of the...Indians of the Honock Indian Village. June 30, 1862. To Chief Commissioner of Lands and Works, R.C. Moody.
- F503/2a P. Durieu to Anthony Musgrave, Governor of B.C. May 20, 1870.  
Re: "Larawe" Indian claim at Sumas--Miller's Landing.
- F503/3 P. Durieu to Chief Commissioner of Lands and Works. January 12, 1871.  
Note: purchase of Lot 18, Group 2, N.West District

for \$60.00. Land was opposite the Catholic Mission.

F525/28 Thomas Elwyn to Colonial Secretary. December 17, 1862.

Note: Written from Caribou area: Quesnelmouth?

"...The small pox has been raging among the Indians throughout the District (with the exception of Williams Lake). At Beaver Lake nearly fifty have fallen victims and one Indian now represents the tribe.

"In a few instances...white men have been attacked, but only in two cases fatally. The only medical man in the District is most unfortunately living on Williams Creek and sufferers can obtain no reliable advice."

F526/7 T. Elwyn to Colonial Secretary. July 5, 1866. Fraser Lake.

Note: reports on construction of Western Union telegraph having reached the Indian village of "Stella" at head of Fraser Lake.

F526/8 T. Elwyn to Colonial Secretary. September 4, 1866. "Applegate" (Junction of Skeena and Wastonguah) Report on Babine and Carrier Indians.

F584/1a Leon Fouquet to James Douglas. June 23, 1862. Re: Indian pre-emptions in New Westminster area.

F584/1c Leon Fouquet to Colonel Moody. December 27, 1862. Re: Fouquet's agreeing not to give any more "letters of introduction" to Indians and sending them to request stakes for Indian Reserves.

F584/2c Leon Fouquet to A.R. Howse. August 14, 1865. Introduces chief of Tsawwassen village and notes he and his people "are very anxious to see their reservation staked out by the government".

F613/2 Henry Fry to W.A.G. Young, Colonial Secretary. October 24, 1865. "Since my last communication to you in the subject of the proposed mill site at South Saanich, I have been enabled to furnish you (for His Excellency the Governor's consideration) with the necessary information and enclose a slight sketch of that



part of the Indian Reserve which will be required for the erection of a Mill. The quantity of Land required as will be perceived by the plan is about three fourths of an acre and the privilege of constructing a Dam across the Creek is also prayed for.

"A Road or Right of Way to the Mill will be given by Mr. Porter who now owns...this property joins the Land now applied for..."

Note: [October 27, 1865] "Referred to Surveyor General for report...W.A.G. Young."

Note: [October 27, 1865] Pearse, Acting Surveyor-General: "The Land asked for is situate in R.11.w.6.s and is the property of Angus McPhale--The Indian Reserve is R.11.w.7.8.9.s--The Government cannot therefore grant a Lease to Land which they have already sold."

Note: [October 28, 1865] The Colonial Secretary: "Inform the applicants accordingly."

F619/19 J. Bole Gaggin to Colonial Secretary. April 24, 1860.  
Re: Indian reservations

F650 Charles Good to A.D. Pringle. September 22, 1859.  
Note: C.G. writes to Pringle at Fort Hope re land set aside there for Church of England. Refers to Pringle's letter of same date--J. Douglas approved of these allotments.

F650/4c3 Charles Good [Acting Private Secretary] to C.C.L. & W. March 5, 1861.  
Note: In *B.C. Papers*. The part on Indian Reserves is like a postscript. First part deals with disposal of Crown lands in the Interior. Good tells the Chief Commissioner that "I am directed by His Excellency the Governor to request you will communicate with Mr. Cox...and give him such instructions as you may deem necessary in reference to the disposal of Crown Lands..." After the end of this letter, Good states "His Excellency requests that you will instruct Mr. Cox to mark out distinctly all the Indian Reserves in his District and to define their extent as they may be severally pointed out by the Indians themselves." [See also *Indian Land Question papers*, page 21]

- F650/4c4 Charles Good to C.C.L. & W. March 5, 1861.  
Note: There were 2 letters sent to Moody on this day re Indian reserves:  
"I am directed by His Excellency the Governor to request that you will take measures so soon as may be practical, for marking out distinctly the sites of proposed Towns and the Indian Reserves throughout the Colony...  
  
"...The extent of the Indian Reserves to be defined as they may be severally pointed out by the Natives themselves."
- F650/10b Charles Good to Chartres Brew. January 30, 1864.  
Says that the Governor wants "without delay...A return of all the land Reserved in the Colony for the benefit of the Native Indians, shewing the areas and position of such Reserves, with a copy of the general map illustrating that position."  
[Chartres Brew was in charge of Lands and Works Department temporarily, until Trutch was appointed.]
- F650/10d Charles Good to Chartres Brew. February 1, 1864.  
Note: Douglas [?] requests information about the removal of reservations [probably government reserves] "...whether those reserves were created in the first place, or subsequently removed by competent authority filed among the Record of the Department."
- F650/10i Charles Good to Chartres Brew. February 4, 1864.  
Note: Governor asks for report on progress of survey of lands granted to H.B.C. on B.C. mainland, and also instructs Col. R.C. Moody to proceed forthwith to finish the job.
- F650/11f Charles Good to Chartres Brew, Lands and Works Department. [n.d.]  
Note: Proceeds from land sales of town Lots in New Westminster 1859-1862.
- F650e Good to Chief Commissioner of Lands and Works. May 16, 1861.  
Re: Dispute between Coquitlam Indians and Mr. Watkins of Coquitlam farm over "the boundaries of their respective claims..."
- F653 J.B. Good correspondence.  
Re: Nanaimo Reserve, Comox Indians, Lytton-Boston Bar, and Nicola reserves.

- F653/9 J.B. Good to A. Musgrave. December 23, 1870.  
Re: Nicola reserves
- F697 Matthew Hall to B.W. Pearse. January 31, 1871.  
Note: Withdrew application for military grant to Group 1, Lot 72 which he thought had been granted since he had made the request through Captain Ball.
- F697 Matthew Hall to Surveyor General. June 5, 1871.
- F697 Matthew Hall to C.C.L. & W. May 20, 1871.  
Note: Show new lands along Sumas River that Hall sought with accompanying sketch. Final disposition is uncertain. Indian Reserve and adjoining Chadsey farm also shown.
- F740/1 John C. Haynes to Young, Colonial Secretary.  
January 9, 1864.  
Report on reconnaissance trip in Okanagan.
- F740/18 Haynes to Colonial Secretary. October 13, 1864.  
Haynes makes exploratory trip with 4 Royal Engineers sappers and 2 Indians. Also gets information regarding roads and trails from 3 Shuswaps taking furs to Wild Horse Creek. Most of "Shuswaps" [?] Band had gone to Thompson River area.
- F740/19 Large pre-emption claims and sketches of Similkameen country.
- F741/13 Haynes to Colonial Secretary. April 7, 1865.  
Re: preemptions and Okanagan Indian Reserves.  
"...complaints have been made to me from time to time by persons intending to pre-empt land in the District of Okanagan, that the Indian Reserves include nearly all the best land in that vicinity...where I am informed the Indians claim a Reserve of twenty square miles in Extent--There is also a Reserve of ten square miles at the head of Okanagan Lake. I would beg for instructions as to how I am to act in this matter.
- "If I am correctly informed as the the quantity of land claimed by the Indians in my district I consider the Reserves much too large, but at the same time I would not deem it advisable to dispossess them without compensation."

[Note by Birch] "This is a matter that should I think be left to Mr. Haynes to report upon after his arrival in the district and after communication with the Indians--I think the matter should be arranged without 'compensation.' The wholesale reserves were made by Mr. Cox upon what I believe...verbal instructions and are out of all proportion? A.N.B. 7-4-65"

[Note by Colonial Secretary] "Yes! Mr. Haynes had better see when...spots which can be..."

Colonial Secretary to Haynes. April 10, 1865.  
"I have received and laid before the Governor your letter of the 7th instant respecting the Indian Reserves in the Okanagan District. I am ;unable to gather from the correspondence in the Department on what ground Mr. Cox made such large Reserves as the ones to which you refer.

"I am therefore directed by His Excellency to request that on your arrival in the District you will furnish me with a Report upon this matter."

F741/15 Haynes to Colonial Secretary. April 15, 1865.  
[near?] Hope despatches are delivered to Haynes by Indians.

F741/17 Haynes to Colonial Secretary. May 8, 1865.  
Map of H.B.C. "grant" [?] along Similkameen River. 2000 acres. No Indian details.

F741/26 Haynes to Colonial Secretary. July 22, 1865.  
"...In reply to that portion of your letter of the 12th ultimo referring to the proposed reduction in the extent of the Indian Reserves in the Okanagan district I would beg to suggest that I receive instructions from His Excellency to proceed to Okanagan in company with a surveyor and Indian Chief Tonasket and lay out, in a permanent manner, Reserves adequate to the wants of the Native tribes in question. I would further beg to state that from the manner in which the majority of the Indians received my communication when last at Okanagan regarding the probable diminution of their Reserves I do not anticipate much dissatisfaction on their part when finally arranging this matter."

[Note by Colonial Secretary] "Request Mr. Haynes to lay out the Indian Reserves in the manner

proposed by him. I hope that no dissatisfaction will be felt by the Indians."

Colonial Secretary to Haynes. August 10, 1865.  
"...With regard to laying off the Indian Reserves at the Okanagan Lake His Excellency sanctions your carrying out your proposed suggestions in reference to the settlement of the Indian Reserves at the Head of the Okanagan Lake and he trusts that the arrangements you will make in this behalf will not cause any dis-satisfaction to the Indians."

F741/29 Kootenay Indians raise trouble over mining activities.

F741/30 Haynes to C.C.L. & W and Surveyor General. November 28, 1865.  
Re: Indian Reserves in Okanagan.  
"I have the honor to inform you that in compliance with instructions...I have laid out Indian Reserves at the head and foot of this Lake, sketches of which will be handed to you by the bearer Mr. Turnbull who has assisted me in this work.

I think it would be well to notify in the *Government Gazette* that the lands in this vicinity hitherto looked upon as Indian Reserves are now open for settlement except the portion marked on the maps which you will receive.

F741/35a Haynes to Good [Assistant to Colonial Secretary]. November 8, 1865.  
"I have arranged with Mr. Turnbull of the Shouswap exploring party to accompany me to Okanagan for the purpose of...and laying out in a permanent manner the Indian Reserves in that district as proposed in my letter of 9th of July last..."

F742 Haynes to Acting Surveyor-General. May 1, 1871  
Re: Ashnola Indian Reserve.

F748/18 George Heaton, Sheriff of Vancouver Island to James Douglas. November 28, 1859.  
Note: Reporting proceedings of expedition under Lieut. Sparshot to North Saanich relative to difficulty with the Indians about Land.

- F748/24a George Heaton, Sheriff of Vancouver Island to W.A.G. Young, Colonial Secretary. June 16, 1860. Encloses Census of Indians at Cowichan and Nanaimo and Report on the land in the vicinity of the Indian villages.
- F778/38 Henry Holbrook to Anthony Musgrave, Governor of B.C. January 7, 1870. Enclosed petition on land claim. Includes names of chiefs.
- F781c David Holmes to Joseph Trutch. September 22, 1868. Re: Petition of Hope/Yale Indians for bridge across Coquihalla to "Bishops Farm."--a farm run by Anglican Church at Hope with individually-held allotments for 40 families (200 altogether): potatoes, beans, wheat, oats, turnips, carrots, corn etc. are raised. [With Trutch and Seymour endorsements].
- F799/4 Houghton to A.N. Birch, Colonial Secretary. February 17, 1864. Houghton notices conflict between Government Reserve and his own pre-emption in vicinity of Indian Reserve at head of Okanagan Lake. Includes sketch of this area and a sketch of Shuswap Lake noting location of trails.
- F799/5 Houghton to A.N. Birch. June 3, 1864. "...a few hundred yards further down another stream about the same size leaves the lake in a northerly direction and shortly afterwards turning west finds its way into Lake Okanagan at the point of the NE spur--This stream forms part of the boundary of the 'Indian Reserve' which interferes with the 'government reserve' to a considerable extent in this point."
- F856 File of W. McNaughton Jones [physician], Coroner, New Westminster District. References to Indians in Howe Sound.
- F905/5 Pemberton to Colonial Secretary. January 13, 1862.
- F915/22 Col. R.C. Moody to James Douglas. March 17, 1859. Note: Moody gets geographical information from Indians re lakes between Pitt River and Burrard Inlet.
- F915/26 Col. R.C. Moody to Douglas. April 1, 1859. Re: application of a Kanaka--Pio-pio--for land at

"old townsite of Kaetsi.

- F918/46 Report of J. Grant to Col. R.C. Moody, C.C.L. & W. December 23, 1859.  
Note: Grant submits a proposal, backed up by R.C. Moody, for 5000 pounds to improve navigation in Harrison River. Report contains some references to geography of area and includes a map with "Indian village" marked on it. No other specific mention of Indians. Map titled: "Rough Sketch of Rapids on the Harrison River."
- F918/49 Lands and Works. Subject, 1859.  
Note: a chronological record of 1859 files and reports.
- F920/7 Col. R.C. Moody to James Douglas. March 5, 1860.  
Moody request that all land matters handled by the Magistrates and Gold Commissioners be channelled through him. A Minute by Douglas states that he agrees.
- F920/37a Col. R.C. Moody to Attorney-General. April 5, 1860.  
Re: New Westminster reserve.  
"I caused certain posts to be put in the ground to mark the boundary of the Indian allotment on the left bank of the Fraser; yesterday afternoon.  
"I notified the boundary to the Indian Chief Tsimlana, and to Mr. Wylde who rents the late customs house which adjoins the Indian lot, sending the latter a tracing of the ground similar to the enclosed [missing].  
"This morning the landmarks were removed and the ground trespassed on by the erection of a fence, this I am informed by Tsimlana was done by a Mr. Herring, a sub-tenant I believe of Mr. Wyldes'..."  
Moody asked for legal measures to be taken to protect Indian allotments.
- Enclosure: Statement of Samuel Weaver Herring to Attorney-General in settlement of above.
- F922/10 Col. R.C. Moody to Colonial Secretary. July 5, 1860.  
References to Government Reserve in Fraser Valley include Indian villages and HBC lands at the mouth of Sumas and Chilliwack. "...are reserved Indian villages and patches of ground which the Indians are in the habit of cultivating."

- F926/17 Col. R.C. Moody to Colonial Secretary. April 6, 1861.  
Re: H.B.C. Lands at Hope.
- F927/13 Col. R.C. Moody to Governor James Douglas. May 28, 1861.  
Re: Hope Indian Reserve. Moody's report, at Douglas's request, on a letter from Rev. W. Pringle.
- F927/24 Col. R.C. Moody to Douglas. June 8, 1861.  
Note: Again Moody "explains himself" to Douglas on charges of Land speculation."
- F927/28 Col. R.C. Moody to Colonial Secretary. June 14, 1861.  
Re: grant of Church lots at Hope.
- F927/29 Col. R.C. Moody to Douglas. June 15, 1861.  
Note: Moody asks direction in cases of disputes between "Purchasers of Unsurveyed Lands" and those who have "possession under preemption." Moody says "a very few cases which may arise..." but Douglas does not follow Moody's suggestions.
- F930/2 Col. R.C. Moody to Colonial Secretary. January 13, 1862.  
Proposal to build a road about 1/2 miles above Pemberton to a point near Indian village at Lillooet.
- F930/32 Col. Richard Moody to Colonial Secretary. March 14, 1862.  
Moody states that government reserves were not laid out on the North Coast as His Excellency had not directed the Land and Works Department to do this.  
"Indian Reservations are guarded very fully, I submit, in the Pre-emption Proclamation, though it will be equally necessary to continue our present process whenever practicable and to stake such out on the ground there or elsewhere."
- F931/14 R.C. Moody to James Douglas. May 27, 1862.  
Snat [a Squamish Indian], resident at New Westminster, requests permission to pre-empt land. Moody requests authorization to proceed with issuing a title and deed. Endorsement by Douglas advises that Indians may pre-empt land under the same conditions as Whites.



- F931/21 Col. R.C. Moody to Colonial Secretary. June 2, 1862.  
In reply to instructions of May 30, 1862 to lay out Indian reserves..."marking out and surveying the spots occupied by Indian with their villages and isolated 'provision-grounds' so far as we can ascertain...They are often in hidden spots and the Indians (possibly distrusting our statements) are loath to show them."
- F931/27 Col. R.C. Moody to Colonial Secretary. June 11, 1862.  
Re: Indians pre-empting land--Douglas's policy is laid out. Moody states that he needs instructions as Indians are rapidly pre-empting in "extended order." Copy appears in *B.C. Papers*, p. 25, without margin note.
- F931/33 Col. Richard Moody to H.P.P. Crease. June 14, 1862.  
Plans about Bute Inlet surveys. Reserved from sale are government reserves and "all lands claimed by Indians being also reserved..."
- F931/42 H. Luard to Colonial Secretary. June 24, 1862.  
Snat Srouten, an Indian, acquires land in New Westminster through sale of suburban lands. Land is surveyed by contract. Title No. 104.
- F932/19 Col. R.C. Moody to Colonial Secretary. July 21, 1862.  
Note: Dispute between H.B.C. and Bishop Hills over town lots at Yale. Moody had received orders to turn over lots to H.B.C., one of which, Lot 5 Block 17, was site of parsonage and a small church...
- F932/31 H.P. Wright, Archdeacon of Columbia to Moody. August 27, 1862.  
Note: Anglican Church's application for a grant of land in Town of Yale--Lots 15-17 Block 17, and also a portion of former H.B.C. "reserve..."
- Moody to Colonial Secretary. August 27, 1862.  
Note: Moody has no objection to the grant...the Lots applied for had not been set apart for the H.B.C., Government, or public purposes, and they were of no commercial value.
- H.P. Wright to Douglas. April 23, 1864.  
Note: Wright asks for exchange of Lot 12 for Lot

15. They wanted Lots 12 & 13 granted to Church, not Lots 13 & 15.
- F933/1 Col. R.C. Moody to Colonial Secretary. October 2, 1862  
Re: Hope Town Lot Sale Books; "incomplete and unsatisfactory nature of the Books" under O'Reilly's administration.
- F933/19 Col. R.C. Moody to Colonial Secretary. November 18, 1862.  
Enclosure: P.J. Leech to Moody, and map. November 14, 1862.  
Re: Town Site Reserve at Chilliwack. Mentions Indians.
- F935/9 Col. R.C. Moody to Governor. April 28, 1863.  
Re: Indian preemptions and Coquitlam Reserve.
- F935/10 Moody to Douglas. April 28, 1863. Expresses concern with Roman Catholic Church's involvement re: establishment of Indian Reserves.
- F935/11 Col. R.C. Moody to Colonial Secretary. May 4, 1863.
- F936/1 Col. R.C. Moody to Attorney General. July 1, 1863.  
Moody asks for instructions on what to do about preemptions that subsequently were set aside as Town Site or Government reserves.
- Pencil minutes mostly illegible, but Instructions of March 4, 1862, to mark out proposed towns and I.R.'s--"especially every place having a centre of population"...
- F936/ Map of Yale, B.C. September 1861. By Captain Parsons.
- F937 Preemption Records, 1863 [for Chilliwack and Sumas].  
No. 435: Soualselalough. February 23, 1863. 160 acres. No deposit. Above Lone Tree Island. Indian.
- F939/3 Chartres Brew to Colonial Secretary. May 3, 1864.  
Enclosure: Houghton--preempts 160 acres without deposit and another 1500 on deposit of 2 shillings, one pence. Re: Okanagan Indians, esp. Trutch's Minute re Indian rights to the land and A.N.B minutes.

- F942/17 Trutch to Colonial Secretary. September 20, 1865. This letter is in *B.C. Papers* but the Minute, esp. of A.N.B.'s on reduction of Kamloops and Shuswap reserves.
- It was A.N. Birch who ordered these initial reductions in the Cox reserves.
- F943/13 J. Trutch to Colonial Secretary. December 19, 1865. More on surveys of Fraser Reserves in Sumas area.
- F943/13 Chartres Brew to Colonial Secretary. January 26, 1866.
- F943/13 A.R. Howse to W. McColl, Sumas. April 23, 1864. Instructions re: Nicomel Island, Scowlitz reserve.
- F943/13 A.R. Howse. Memorandum. December 18, 1865.
- F944/ W.G. Cox to Colonial Secretary. April 8, 1864. Gives reasons by Cox had previously set aside Reserve near head of Okanagan Lake.
- F944/1 W. Moberly. December 22, 1865. Sketch showing Indian claims on the North and Shuswap Rivers, to accompany report on the same.
- F944/ Trutch to Colonial Secretary. February 5, 1866. Re: Okanagan reserves. See *B.C. Papers*.
- F946/10 Trutch to Acting Colonial Secretary. July 24, 1866. Re: Boston Bar and Reserve law [and enclosures]; conflict. No mention of Indian villages.
- F947/3a Re: Boston Bar Town Site and Indian claims.
- F947/3b Map [of Boston Bar Town Site]
- F947/7 Trutch to Acting Colonial Secretary. October 18, 1866. Re: problem of C.C.L. & W. not being able to get proper receipts from Indians. Original letter from Moberly. Trutch wants authorization for Petty Vouchers.
- Draft reply by A.N.B.: "under the circumstances," it is OK to pay them. October 22, 1866. A.N.B.-- Trutch.

- F947/9 Re: Kamloops Indian's claim to 10 acre plot near H.B.C. post. Claim is permitted.
- F947/18a Trutch to Colonial Secretary. November 12, 1866.  
Re: Indian Reserve at Yale. Good applies for land adjoining Reserve for Church.
- F950/6 J.W. Trutch to Colonial Secretary. February 11, 1867.  
Re: John Carragher application for ferry at Kamloops. Endorsed by F. Seymour who turns down application as it would be in the centre of the I.R. and interfere with "Indian St. Paul's" privilege of ferrying people over the Thompson-- which he has long held. If a charter is granted, do not interfere with Indian canoes. A report was requested from the Magistrate.
- F950/9 Trutch to Colonial Secretary. February 18, 1867.  
Re: Greenwood Island reapplication for lease by Worth. Trutch states Greenwood Island I.R. established 1859. Does not agree with Sanders that Reserve should be withdrawn.
- F950/9 C.Good. [Office of Colonial Secretary] to C.C.L. & W. March 6, 1867.  
Re: Greenwood Island. Disagrees with Trutch that this is an Indian Reserve; claims it is reserved for a government building. No objection to five-year lease to Worth.
- F950/19a A.R. Howse to Trutch. May 29, 1867.  
Re: Katzie Indians and Reserve.
- F951/4 Trutch's Report on Lower Fraser Reserves. August 28, 1867.
- F951/15 Report of Trutch's and Ball's trip to Stalo area. November 19, 1867.
- F952/6 Trutch to Colonial Secretary. February 18, 1868.  
Re: [Squamish] Indian Reserves at Burrard Inlet. Mention of 10 acre allotments.
- F952/10 Opinion of Joseph Trutch. March 20, 1868.  
Re: Semilanch land. Sketch enclosed.
- F952/18a Trutch to Jeremiah Rogers. June 26, 1868.  
Re: Squamish's Burrard Inlet reserves.

- F953/41 Pearse to C.C.L. & W. October 21, 1868.  
Re: Reserves of Lower Fraser. Reprinted in B.C. Papers, but see endorsements.  
...The lands reclaimed from the Indians...[?] shall be offered for settlement...
- F954 Ball to Colonial Secretary. July 14, 1869.  
Enclosure: Ball to Hankin. November 20, 1869.  
Re: Chiefs dispute at Chilliwack.
- F954 Browning to Hankin. July 6, 1869.
- F955/11 Trutch to Colonial Secretary. May 2, 1870.  
Re: Songhees Reserve.
- F969/14 J.B. Launders to Chief Commissioner of Lands and Works and Surveyor-General. December 18, 1868.  
Re: Laying out of Indian Reserves in Fraser Valley.
- F974/1 P.J. Leech to R.C. Moody, C.C.L. & W. November 4, 1862. Report.  
Note: Marking out of "reserve" for a town site on land used by Scowlitz and Squahu tribes. No maps or diagrams included.
- F974/7 P.J. Reece to C.C.L. & W. April 29, 1866.  
Report on survey of preemptions in Chilliwack
- F974/9 P.J. Leech to C.C.L. & W. May 9, 1866.  
Note: References to early Lytton Indian Reserve--laid out pre-1866 by a Royal Engineer.
- F1008/2 Petit Louis to Frederick Seymour. April 8, 1868.  
Petition submitted by Kamloops chief for a plough to "cultivate our land on a more extensive scale."  
Referred to H.M. Ball who agrees with request.
- F1030 Brew to McColl, April 6, 1864  
Re: "ten-acre rule" for allotment of Indian Reserves
- F1030/21 Chartres Brew. Memorandum. April 25, 1864.  
"W. may survey the Nicomen Reserve if he has the time."
- F1104 Thomas J. Marks to Frederick Seymour. February 22, 1865.  
Re: description of Chillewhack prairie, advocating

- alternate route to Similkameen...by going up Chillewhack. Letter is delivered by "Wy-you-se-lock" who is willing to act as guide.
- F1145 W. Moberly to R.C. Moody. August 13, 1859.  
Re: Burrard Inlet Indians.  
"...a state of seige here..." Killing incident between soldiers and Squamish.
- F1145b Moberly to Trutch, C.C.L.& W. December 22, 1865.  
Re: Reserves of Kamloops and Shuswap in Thompson River area.  
"...On my return from Columbia River...I took immediate steps to firm [?] out the position of the Indian Reserves...and other particulars connected with the granting of these lands..."
- F1147a Edward Mohun to C.C.L.& W. December 3, 1868.  
Re: Reserves on south bank of the river at Katzie, at Whannuck, Masquee, and Masquee Prairie.
- F1147a Mohun to C.C.L.& W. October 12, 1870.  
Re: Chehalis Reserve survey.
- F1147a Mohun to C.C.L.& W. June 9, 1871.  
Re: Reserves at Sumas. Sketch referred to, but not included.
- F1147a Mohun to C.C.L.& W. June 9, 1871.  
Re: Surveys of claims in Sumas, Sumas Lake, Matsqui, Mission. Enclosed field books, plans etc. are not included. Now the surveys are "connected."
- F1149a/2 E.B. Lytton to Col. R.C. Moody. October 29, 1858.  
Outline of policy for the new Colony of British Columbia.
- F1150/1 R.C. Moody to James Douglas. February 10, 1859.  
Two streams flowing into Boundary Bay near Point Roberts: Tsultun-num and Noku-met-nil
- F1182 New Westminster City Council. Minutes of Meeting. August 27, 1861.  
Resolution of Council to request a Naval gunboat for the colony as a deterrent to Indian Wars.
- F1183 John Ramage to Governor Douglas. April 8, 1862.  
Inhabitants of New Westminster complain of Indians residing in the neighbourhood. Council requests

that a reserve be established. It was ordered that a 5-acre track be laid out, which was done on May 14, 1862, by Captain Parsons.

- F1186 W. Leigh (Town Clerk, Victoria) to W.A.G. Young, Colonial Secretary. January 16, 1869. Major directs attention of government of "the necessity and importance of removing the Indians from the City..." Suggests that an Act of the Legislature be passed to remove them to the "Indian Reserve". Reply states that the matter will be brought to the attention of the Executive Council.
- F1215 Copy of Lieutenant Hankin's Report to Captain Richards. June 17, 1862. With appended letter from Charles Wood to Captain Richards. June 14, 1862 Re: excursion across Vancouver Island from Kayuket to Nimpkish River.
- F1256/6 Philip Nind to William Cox. July 3, 1865. "I have beento Kamloops and on to the greatShuswap Lake. I find that the south branch tribe of Indians claim as their land the whole of the right bank from the head of Little Shuswap Lake to St. Pauls land a distance of between 40 and 50 miles and embrassing some of the finest land inthe country."
- F1259/27 Philip Nind to A.N. Birch. July 12, 1865. Describes his trip to visit Neskainlith's people on the South Thompson River. Provides an account of the daily economy of these Shuswap people: own a great number of cattle and horses; have plenty of food; dried meat, fish and roots.
- F1259 Joseph Trutch to Walter Moberly. October 10, 1865. Provides instruction to Moberly concerning the reduction of the Kamloops and Shuswap Indian Reserves laid out by Cox. Asks for report whether arrangements can be made to reduce the limits of these reserves. See B.C. Papers, p. 31.
- F1277 P. O'Reilly to W.A.G. Young. December 24, 1859. Re: Hope Town Indian Reserves (plus 180 acre Government Reserve). Indian Reserve on enclosed diagram [missing]. See J. Douglas's letter October 1, 1859.
- O'Reilly laid off first reserve in accordance with James Douglas's instructions, but there are no

- details. There is a sketch of Hope in F1278, April 14, 1860.
- F1278 O'Reilly to Young. January 16, 1860.  
Note: Conflict between O'Reilly's 5-acre lots and H.B.C. claim.
- F1278 O'Reilly to Young. February 15, 1860.  
Re: Survey and lease of Greenwood Island (10 acres). Indian burial ground.
- F1278 O'Reilly to Young. April 12, 1860.  
Note: O'Reilly acknowledges receipt of approval to lease Greenwood Island...Indian burial ground and village not to be interfered with. But by this time Johnston had left for Caribou, but a Mr. Welsh, in possession anyway, agrees to terms, including compensation for improvements and timber preserved.
- F1278 O'Reilly to Young. July 13, 1860.  
Re: H.B.C. lands. O'Reilly acknowledges receipt of instructions that H.B.C. officials will mark off and point out their lands to the Magistrates.
- F1278 O'Reilly to C.C.L. & W. December 26, 1860.  
Note: O'Reilly reports that Lots 5, 6, and 7 (Block 5) are unsold, though they are listed in *Lot Book* as "Wesleyan Mission" and have been fenced and built on by Rev. Robson.
- F1279 O'Reilly to Young. May 6, 1861.  
Note: Report on repairs to Hope-Chilliwack road done by A.S. Vedder. Comments on Indian settlements, esp. Cheam.
- F1288 O'Reilly to C.C.L. & W. December 7, 1867  
Note: Payment for Rural Land Lots at "Chilweyuk" in Yale District.
- F1289 O'Reilly to Chief Commissioner of Lands and Works. June 19, 1868.  
Note: concerns pre-emption applications and Indian claims in Nicola Valley. The sequel to this is the reduction of August 1868. See *B.C. Papers*.
- F1289 O'Reilly to Chief Commissioner of Lands and Works August 29th, 1868.  
Re: reduction of Bonaparte and Nicola Lake Indian Reserves. Includes an endorsement by Trutch.



- F1291 O'Reilly to C.C.L. & W. August 13, 1869.  
Note: Land dispute and claim of a blacksmith, James Robinson, at Yale, whose plot was at eastern end of town.
- F1292a O'Reilly to Colonial Secretary. March 20, 1871.  
Note: O'Reilly suggests that he be given the authority to reserve lands for townsites, Indian Reserves, etc. during his forthcoming trip to the Omineca district. This is agreed upon in the appended reply.
- F1292 O'Reilly to Colonial Secretary. April 23, 1871.  
Report on Nicola, Lytton and Kamloops Reserves. Remarks of Nicola chiefs saying they are satisfied with land.
- F1292a O'Reilly to Pearse. October 21, 1871.  
Re: Indian Reserves and Government Reserves laid out by Pearse in the Babine Lake/Omineca region in October 1871.
- F1302a H.S. Palmer. Report on a portion of British Columbia. November 1859.  
Includes references to and description of the Similkameen Indians.
- F1345 Petition of Land Owners in District of Cowichan. December 9, 1861.  
Re: Indian Reserves and Indian title at Cowichan.
- F1346 Petition from Inhabitants of New Westminster. July 1862.  
Asks for establishment of New Westminster Indian Reserve.
- F1347 Petition from Cowichan Residents. May 10, 1863.  
Complaints that Indians are encroaching by falling trees and clearing patches for potatoes.
- F1348 Petition from Cowichan Residents. July 14, 1864.  
Re: land disputes and racial incidents.
- F1350 Petition from White settlers. November 21, 1865.  
Re: size of Chilliwack reserves. Includes petition, Minutes by H.P.P. Crease, J.W. Trutch, and A.N. Birch.
- F1355 Petition of settlers of Chilliwack. November 30, 1869.  
"We the settlers of this district beg to assure

your Excellency that the Indians Jim and Captain John from whom Captain Ball (at the suggestion of the Catholic priest, took the papers given them by the government they have always been known by as the rightful chiefs of the Tribes on the authority of the other Indians. They are also among the best conducted Natives in this settlement and esteemed generally for their honest energetic qualities. We are apprehensive that unless justice be speedily done serious troubles will arise involving perhaps the whites as well as the Indians and therefore pray...the land titles to be restored to their rightful owners." [contains over 2 dozen signatures]. Minute of H.M. Ball states that the Indians are not the hereditary chiefs of their tribes.

- F1356      Petition of December 9, 1869, from residents and land owners of Sumas, Chilliwack and Harrison Rivers.  
Related to Fence Ordinance and its application to Indian Reserves. Trutch warns it may be injurious to Indians as they then will have no protection against damage done to their cultivated potato patches.
- F1357      Petition of Land owners and occupiers on Burrard Inlet. April 6, 1871.  
Want a fence district on north shore. Sketch shows location of Indian Reserves.
- F1357      Petition. October 13, 1871.  
Re: Boundary problems with pre-emptions, Leech surveys and "Cho-wasen Indian Reserve". Enclosed sketch.
- F1553      E.H. Sanders to R.C. Moody. June 18, 1859.  
Note: Proceeds of sale of town lots at Yale and records of land transactions. Refers to various conflicts, including several associated with the "...Hudsons Bay Co.'s Reserve, which is a rectangular piece of land situated in the very centre of the Town, with five acres River frontage extending back to the foot of the mountains..."
- F1553      Sanders to W.A.G. Young. July 6, 1859.  
Mr. Cox, Assistant Collector, was sent to the Interior to intercept a wagon train from Oregon, but has not been heard of. He was to return with H.B.C. party from Kamloops to Hope, but "...I am sadly afraid that poor Mr. Cox has either been

made away with by Indians or that he has met with some other, but equally fatal accident..."

- F1554 Sanders to Young. February 3, 1860.  
Re: Indians--smallpox. Feifer tries to get a sinecure to help watch on Indians.  
Endorsed: J. Douglas: "...regret the appearance of smallpox and request Mr. Sanders to take every precaution in his power to check if possible the fatal disease..." Endorsed: W.A.G. Young: "...but he regrets that he is not able to appropriate any funds from the general revenue of the Colony for the employment of Dr. Feifer."
- F1555 E.H. Sanders Report. December 27, 1860.  
Notes that the population of Yale is 105 White, 260 Chinese, and about 200 Indians living in 110 dwelling houses.
- F1555 Sanders to C.C.L. & W. June 19, 1863.  
Re: Encroachment on Indian lands near Harrison.
- F1555 Franklin Way. Preemption Claim, District of Yale. May 7, 1861. Signed by Sanders.  
Description of Claim: A Plot of Land on the north bank of Fraser River near the Indian Burial ground, a short distance from the Rocky Bluff--bounded as follows...leaving a space for Indian Burial Ground..."
- F1556 Sanders to Colonial Secretary. January 16, 1863.  
Note: Enclosed petition for reduction of Ferry License so rates can be lowered. High rates might have been reason why Indians can compete and continue to use their own modes of transportation.
- F1556 Sanders to C.C.L. & W. August 24, 1863.  
Re: grant of Land to Church of England in Yale--EHS says that if the H.B.C. claim to the land is void, there is no hindrance on the lands in question. Acknowledges receipt of CCLW letter of August 21, 1863.
- F1556 Sanders to Colonial Secretary. November 2, 1863.  
Note: Notification of 2 Indian reserve allotments: 55 acres at mouth of Coquihalla River and 500 acres (more or less) opposite Cornish Bar.  
[Enclosed sketch copies of the record are missing]

- F1557 Sanders to Colonial Secretary. April 18, 1864.  
Note: dispute between Church of England and H.B.C.  
Enclosure: Archdeacon H.P. Wright to James  
Douglas. April 11, 1864.
- F1557 Sanders to Colonial Secretary. May 13, 1864.  
Note: Church of England lots at Yale.
- F1558 Sanders to Acting C.C.L. & W. September 26, 1864.  
Re: H.B.C. Lands at Hope.  
Sanders to Colonial Secretary. October 10, 1864.  
Re: Removal of old H.B.C. store at Hope. Mentions  
that prior to "the time the white immigration set  
in," the H.B.C.'s "place of business was at the  
opposite end of the Town [from its present  
building] in the vicinity of the Indian village."
- F1559 Sanders to Colonial Secretary. November 16, 1864.  
Re: Application for even more land for J.P.  
Cranford. EHS has no objection as land in question  
is NOT claimed by Natives.
- F1560 Sanders to Colonial Secretary. March 22, 1865.  
Enclosures.  
Note: Concerns application of 120' of water  
frontage at Yale for floating wharf and warehouse.  
A 5-year term was granted if it did not obstruct  
steamboat access. No mention of possible conflict  
with Indian reserve. See also: Sanders to Colonial  
Secretary, April 3 and May 8, 1865 [both with  
enclosures].
- F1560 J.B. Launders to Colonial Secretary. June 3, 1865.  
Re: Squamish tribe's land on site of Stamp's  
sawmill. "...by the appearance of the soil and  
debris this camping ground is one of the oldest in  
the inlet." Endorsement by Chartres Brew states  
that Supple Jack, Squamish Indian, has squatted on  
the land for 3 years. "The ground does not belong  
to his tribe."
- F1560 E.H. Sanders. Requisition for Expenses. 1866.  
Includes note of a present made from G.A. Vernon  
to the Indian Chief at Lake Okanagan on settlement  
of Indian Reservation. £7 4sh 4 pence.
- F1562 Sanders to C.C.L. & W. April 16, 1866.  
Encloses Report of Agassis on his prospecting tour  
between Yale and the Indian village of Oh-hamma, 8  
miles below Hope on the Fraser River.

- F1562 Sanders to C.C.L. & W. April 24, 1866.  
Note: Application for land at Yale "of most inferior quality, utterly useless to any but the applicant..." It was high up the hill at Yale. Why was application made?
- F1562 Sanders to C.C.L. & W. July 26, 1866.  
Sanders asks for instructions in the case of an Indian pre-emption application in vicinity of H.B.C. station. Endorsement by H.M. Ball (July 30, 1866) refers it to Chief Commissioner of Lands and Works for report.  
See also : Ball to Sanders. October 29, 1866.  
Re: Indian Jack's pre-emption application of 10 acres at Kamloops.  
Ball is directed by Attorney General to say that "it is not advisable that Indian should be allowed to pre-empt land, but that in this case, considering the improvements the applicant has made on the land..." No pre-emption from others be accepted and that when its surveyed it would be sold to Jacks at "upset price of \$1.00 per acre."
- F1562 Sanders to C.C.L. & W. May 26, 1866.  
Note: W. Haynes' claim to Lot 12, Block 17 (one of the Lots in Church of England lands). EHS says he can supply no information.
- F1562 Sanders to Acting Colonial Secretary. October 20, 1866.  
Re: application by J.B. Good for school site for Indians
- Sanders to Birch. November 26, 1866.  
Says Good will not consider a lease and has abandoned, for the present, his intention of establishing the school. Trutch has recommended that a portion of the Indian Reserve be set aside for this purpose, but Sanders feels this would cause ill-feeling and innumerable complications-- suggests that "...there is plenty of waste land on the left bank of the Yale Creek admirably adapted for a School site skirted by the road and facing the Village..."
- There are two sketches of the area included in this file. Neither are dated. One appears to be an official survey sketch [Moody's?] which shows a triangular piece of land on the east side of the creek, bounded by a road to the north and the Fraser to south, with the notation "This piece of

land has always been considered an Indian Reserve. The other sketch appears to be by Sanders, and shows the triangular piece in the previous map as divided in half, with an Indian Village indicated directly on the centre line, near the Fraser. The notation on this map says "The triangular shaped piece of waste land marked on this plan in red ink is the site desired by the Church for this Mission School. E.H.S."

J.B. Good to Colonial Secretary. December 29, 1866.

Re: Land at Yale for Indian School. Does not want Indian Reserve land for fear of provoking opposition by the Indians as well as other religions.

- F1562 Sanders to C.C.L & W. December 28, 1866.  
Note: Pay lists and receipts for sums spent on Yale-Clinton Wagon Road. Includes Indians.
- F1564 E.H. Sanders to Chief Commissioner of Lands and Works September 17, 1868.  
Re: Indian lands at Soda Creek, Williams Lake district.
- F1564 E.H. Sanders to Chief Commissioner of Lands and Works October 27, 1868.  
Re: Indian land at Soda Creek. Includes sketches of claims.
- F1566 E.H. Sanders to Assistant Surveyor General. September 12, 1870.  
Contains excellent material on Lytton reserves at Foster's Bar, with sketches of 3, totalling about 70 acres. Lytton Indians requested protection of their lands.
- F1586 Selhitsu, Chief of the Okanagan, Vermillion, to Governor James Douglas. June 26, 1861.  
Note: Written in fine print--Missionary style.
- F1588/49a Minute of Frederick Seymour. december 15, 1866.  
"I promise to have an Indian Reserve surveyed and marked out at Cowichan in the spring of 1867, and to give assistance from the government should the Indians undertake to fence it."

**2.4.1.2 Royal Engineers Letterbooks.**  
**Extracts re: Indian Lands and Indian Reserves**

British Columbia. Royal Engineers. Correspondence Outward.  
Letterbook, April 1858-June 1863:

Col. R.C. Moody. Copy of Instructions for Lt.  
Palmer. May 3, 1859.

Note: Camp at the mouth of Harrison, then proceed  
to Douglas...

After instructions for Bridge-Fountain-Fraser  
River area, Moody instructs "...You will also  
ascertain the truth of the report that the Indians  
are dying in great numbers..."

H.A. Luard to Capt. Grant. July 6, 1859.  
Moody told Grant to take pictures of Hope and  
surrounding features.

R.M. Parsons to Lt. Palmer. September 8, 1859.  
Instructions for Palmer's trip to Similkameen.  
Palmer is told to keep better records and make a  
fuller report, including notes on Indians of  
Similkameen [see Palmer's report in Colonial  
Correspondence].

[Author Unknown] June 30, 1860.  
Re: Charles Emerson's [of Yale] application for a  
lease preemption to a lot of 150 yards square "of  
what has been marked out as a future part of the  
town and which by your orders is retained as an  
Indian Reserve..."

R.C. Moody to W. Lane Booker, H.B.M. Consul, San  
Francisco. June 10, 1863.  
Enquiry for information regarding the kidnapping  
of the 10 year old son of an "Indian of the lower  
Fraser River District, named Sokolowitz, living  
at an Indian place called Syniae [?] opposite  
Skowalict, junction of Harrison River and Fraser  
River.

British Columbia. Royal Engineers. Letterbook, 1859:

J.S. Blake to R.C. Moody, April 25, 1859.  
Note: Reconnaissance to Burrard Inlet with Captain  
Bazalgette and 3 Indians. Explored Burnaby.

Fred Walter Green to R.C. Moody. April 27, 1859.  
Green offers to survey lower Fraser country and

encloses a sketch of same for Moody's information  
[sketch not included].

C.D.F. MacDonald to R.C. Moody. March 23, 1859.  
Interesting remarks on land policy, etc. of  
Colonial government and criticisms of Douglas  
policy.  
Another letter March 21, 1859.

British Columbia. Royal Engineers. Correspondence Outwards.  
Letterbook. February-May, 1859:

Details of landing of "Thames City."

British Columbia. Royal Engineers. Correspondence Outward.  
Memorandum Book, November 17, 1859-July 20 [26?], 1861.

Note: Orders and Directives. Public Notices.  
Tenders. Most Notices also published in B.C.  
Gazette.

R.C. Moody to Capt. Parsons. Memorandum. April 2,  
1860.

Note: Parsons directed to settle boundary dispute  
between Kirke and Tsimnanah, across from New  
Westminster.

H.R. Luard. Memorandum. April 23, 1860.

Note: Luard directs Parsons to make a tracing of  
New Westminster, showing all Town and Suburban  
Lots, Government buildings, and lands "granted to  
Religious denominations..."

R.C. Moody. Public Notice. July 5, 1860.

Note: Notice of lands reserved from settlement in  
Lower Mainland, including government reserves,  
H.B.C. lands, and "Indian villages and patches of  
ground which the Indians are in the habit of  
cultivating..."

H.R. Luard. Memorandum. April 1, 1861.

Note: Dispute over boundaries and encroachments  
across from New Westminster between Indians and  
whites. Parsons requested to have boundary of the  
Indian Reserve staked out and limits "distinctly  
explained" to the Indians.

R.C. Moody to R.E. Parsons. Memorandum. April 13,  
1861.

Note: Moody tells Parsons to "mark out," with  
"posts and any other clear and permanent ways,



boundaries of lands claimed by Indians...from Harrison River, inclusive, to the Sea--Burrard's Inlet District also included."

R.C. Moody. Public Notice, New Westminster. June 13, 1861.

Note: Notice of a "Government reserve held in trust for the Indians...on the Coquitlam River" [gives dimensions] and "two other patches of Land higher up the Coquitlam River on the Eastern Bank."

British Columbia. Royal Engineers. Correspondence Outward. Letterbook, 1859-1863.

R.M. Parsons to R.C. Moody. June 8, 1860.

Note: Parson's inspection of Chilliwack area. Mentions H.B.C. claims in Chilliwack-Harrison River area.

Parsons to Moody. Memorandum. June 13, 1860.

Note: Parson's trip to Chilliwack area.

R.C. Moody to [James Douglas?]. June 17, 1859. A very interesting letter to J.D., complaining about not being informed of Trutch's contract arrangements to do surveys...also criticizing Trutch's idea of bringing the survey up from 49 degrees.

R.M. Parsons to Surveyors proceeding to Burrard Inlet. February 1, 1860.

Re: Instructions issued include that: government Reserves be well marked in "strong and lasting manner" using piles of stones with open triangles on top to distinguish them from ordinary survey markers.

"...The positions of Indian villages are to be sketched on the map..."

R.C. Moody to R.M. Parsons. January 9, 1861.

Note: sent to False Creek and Burrard Inlet to survey lots.

W. . Town of Hope, showing H.B. fort and corral. n.d.

Note: 2 sketches of parts of Hope Town.

R.C. Moody to R.M. Parsons. April 13, 1861.

Note: Instructions to survey reserves from Harrison to Burrard Inlet.

R.M. Parsons to R.C. Moody. April 15, 1861.

Note: Parsons asks questions about his instructions of April 13. Moody endorses with pencilled notations.

R.M. Parsons to Corp. Turner. April 30, 1861.

Note: Parson's instructions to Turner to carry out Moody's order. Sapper McMillan and "you will hire a canoe and Indians to help you." Very important postscript stating that Indians are to set the stakes themselves and Turner is to report back to Moody.

W. . Indian Claims, South side of Fraser River at "Kaitzie..." May 13, 1861.

Map.

W. to R.M. Parsons. May 13, 1861.

Note: 's report on Katzie Reserve.

R.M. Parsons to W. . May 28, 1861.

Note: Preemption dispute near Langley, with sketch.

W.G. Cox. Indian Reserve, Okanagan Lake. July, 1861.

Public Notice. June 13, 1863.

Re: Map of "Reserve at Bridgeheads, Chapman's Bar."

P.J. Leech. October 21, 1863.

A list of supplies and equipment received from Headquarters for surveying Indian Reserve, Victoria, V.I.

"Reserves mentioned by Col. Moody [n.d.]...Indian Camp Left Bank..."

[Entry] regarding a tracing of a New Westminster Reserve, south bank, adjacent to old revenue station.

See F920/37a

British Columbia. Royal Engineers. Correspondence Outward. Memorandum Book, July 1861-October 1864:

R.C. Moody to Lt. Palmer. Memorandum. June 24, 1862.

Note: Instructions to visit "N.B. Arm" [North

Bentinck] and "mark off...an ample Reservation at the Indian Villages, not less than 300 acres at the Villages near the site of town and coast terminus of road." Also to mark rival preemptions. The same duties are to be performed at the head of Dean's Canal.

H.R. Luard to Lt. Palmer. Memorandum. September 3, 1862.

Note: Palmer had sent a Report from Bella Coola.

R.M. Parsons to Sgt. Bridgeman. Memorandum. October 7, 1862.

Re: Indian village and road extension at Pemberton. Bridgeman was to send in a description.

R.C. Moody. Memorandum. October 16, 1862.

Sapper Turnbull told to lay off Reserve in Nicola Valley, survey it in blocks and supply a sketch of the work.

R.C. Moody. Public Notice. December 23, 1862.

Re: Establishment of Naval Reserve along North Arm and around Point Grey. Copy with sketch sent to Chartres Brew.

J. Grant to W. . February 2, 1863.

Re: Instructions on surveys at Pemberton refer to Indian Village.

**2.4.1.3 Colonial Secretary's Correspondence**  
**Extracts re: Indian lands and Indian Reserves**

British Columbia. Colonial Secretary. 1861-65, 1868-70.

Folder 1 Several items on lease of Songhees Reserve at Victoria. Includes a map.

E.H. Sanders to Colonial Secretary. June 20, 1864.

Re: Proposed lease for brick factory at Yale.  
Enclosures: Minute of A.N. Birch, June 4, 1874: "I agree with Mr. Sanders--Brick would be very useful and I think Mr. Emerson might be allowed to make the attempt subject to Mr. Sander's arrangement with the Indians?"

Correspondence re: Tsimlannah's Reserve opposite New Westminster.

Nind's letter on Shuswap Reserves.  
C.S.O. reply.

Thomas Dean to Acting Colonial Secretary. July 3,  
1865.

Lease agreement for 100 acres of Cowichan Reserve  
land--tide prairie next to John Companion's [?]  
preemption. Requests "to occupy the same and fence  
it in; also that in case the reserve was sold I  
should be allowed to purchase the land occupied at  
the upset price."

"The land is not used by the Indians at all" and  
he is to pay \$50.00 per year.

Minute of Kennedy, September 4, 1865: Re: Thomas  
Dean application at Cowichan: "I cannot sanction  
any occupation of Indian Reserve pending the final  
settlement of the...[?] Petition.

Informed 4.2.65.

E.H. Sanders to Colonial Secretary. November 2,  
1863.

Re: Hope Indian Reserves.

A.E. Elliott to A.N. Birch, Colonial Secretary.  
October 3, 1864.

September 1864--Reserves laid out at Fountain,  
Canoe Creek, Dog Creek, Alkali Lake. Still to be  
done--Bridge River/Lillooet Town "immediately  
adjoining the town of Lillooet..."

Minute of F. Seymour, October 8, 1864: Asks if  
A.E. [Elliott] sent plans to Survey Department.

Enclosed reply by C.S.O., October 10, 1864:

"...furnish Lands and Works with all the  
information in your power in regard to such  
Reserves...in order that they may be duly  
recorded, esp. area positions, natural  
boundaries..."

J.C. Haynes to Colonial Secretary. May 27, 1865.  
Okanagan Reductions with sketch map of old  
Reserves.

E. Graham Alston to Colonial Secretary. April 25,  
1864.

Statement of expenditures on Victoria Indians  
(1860-December 31, 1863) with Minute by A.E.  
Kennedy on policy.

J.W. Trutch. Report on Lower Fraser Indian  
Reserves, November 19, 1867.

Presented to Legislative Council by F. Seymour on  
April 17, 1868.

More items on Victoria Indian Reserves and lease  
agreements.

Folder 2 P. O'Reilly to Colonial Secretary. August 9, 1868.  
Re: Laying out of reserves at Bonaparte and Nicola  
Lake.

A.J. Pemberton to Colonial Secretary. May 17,  
1869.  
Re: To-che-malt had prevented a survey by Mohun  
and 2 police at Cowichan.

J.C. Haynes to Colonial Secretary. November 28,  
1865.  
Re: Okanagan reductions.

H. Moffatt to J. Ash, Provincial Secretary.  
September 3, 1874.  
Enclosed: Report of Mohun, September 1, 1874.  
Chemainus first laid out in 1863 by B.W. Pearse  
when Mohun accompanied. "...it is well known and  
recognized by Whites and Indians, and that one of  
the old posts marked "Indian Reserve" is still in  
existence..." Includes Mohun's warning about  
survey policy.

British Columbia. Colonial Secretary.  
Correspondence Outward:

W.A.G. Young to C.C.L. & W. January 10, 1860.  
Suggests 10 acres for Indian villages near Town  
Sites, and "1000 acres of country land in places  
where they may make selection..."

J.C. Haynes to Colonial Secretary.  
Sketch map of Okanagan/Penticton.

C.S.O. to Nind. June 10, 1861.  
Reserve policy with acreage for the Williams Lake  
area.

W.A.G. Young to E.H. Sanders. November 11, 1863.  
Re: Yale and Hope Reserves.

British Columbia. Lands and Works. Correspondence Outward.  
June 1865-July 1871. BCARS, C/AB/30.7J/11.

Joseph Trutch to Peter O'Reilly. July 25, 1866.  
Refers to the operation of a ferry on Adam's River.  
Trutch states: "the Officer Administrating the  
Government will shortly visit the District in  
which the Ferry Site is situated, with the  
intention of settling permanently the question of  
the Indian Reserves there..."

**2.4.2 Secondary Sources Relating to the Pre-  
Confederation Era Indian Reserve and Land  
Policy**

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Your file    Votre référence

Our file    Notre référence

October 5, 1993

Mr. Andrew Beynon  
Senior Counsel  
Legal Services  
Specific Claims West  
P.O. Box 11580  
2800 - 650 West Georgia Street  
Vancouver, B.C.  
V6B 4N8

Dear Mr. Beynon:

**Report on B.C. Indian Reserves**

Please find attached the third chapter of the report on B.C. Indian reserve establishment by Randy Bouchard and Dorothy Kennedy. The chapter deals with the period 1871 to 1910 and, more specifically, the Indian reserve allotment commissions that were responsible for the assignment and readjustment of reserves. Any comments on this chapter and the previous one on the colonial period would be appreciated by the contractors.

Yours truly

Dennis Madill  
Research Officer  
Claims and Historical Research Centre

Attach.



### 3.0 THE POST CONFEDERATION ERA

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

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

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

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

#### 3.1 Terms of Union

Britain provided some direction in negotiations leading up to British Columbia's entry into Confederation, but little of this advice related to the situation of the aboriginal people. Instructions concerning the drafting of

the Terms of Union were forwarded by the Colonial Office to Governor Musgrave on August 14th, 1869. Included in this directive, which contains one of the few references to Native Indians, Musgrave was informed that:

It will not escape you, that in acquainting you with the general views of the Government, I have avoided all matters of detail on which the wishes of the people, and the Legislature will of course be declared in due time. I think it necessary, however, to observe that the constitution of British Columbia will oblige the Governor to enter personally upon many questions, as the condition of Indian Tribes, and the future position of Government servants, with which, in the case of a negotiation between two Responsible Governments he would not be bound to concern himself.<sup>1</sup>

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

...I have purposely omitted any reference to this subject in the terms proposed to the Legislative Council. Any arrangements which may be regarded as proper by her Majesty's Government can I think best be settled by the Secretary of State or by me under his direction with the Government of Canada. But "Indians and Lands reserved for Indians" form

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<sup>1</sup> Lord Granville to Governor Musgrave, 14 August, 1869. Despatch No. 84. C.O. 398/5, p.320.

the twenty fourth of the classes of subjects named in the 91st Section of the Union which are expressly reserved to the Legislative authority of the Parliament of the Dominion.<sup>2</sup>

Indians were not mentioned in the terms initially drafted and debated in the House by the Legislative Council from March 9th to 25th, 1870. An attempt to have them mentioned was introduced by Henry Holbrook, Member from the Lower Fraser Valley, but others were critical, especially Joseph Trutch, and Holbrook's motion that a term be added giving the Indians' "the same protection under Confederation as now," was soundly defeated.<sup>3</sup>

It was only after the B.C. delegation went to Ottawa and met with the Federal negotiators that a clause concerning Indians was added to the terms.<sup>4</sup> The final terms were taken to England by Trutch to be approved. On January 20th, 1871 after a debate described by Helmcken as "a poor affair" with "no amendments allowed," the Legislative

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<sup>2</sup> Despatch of Anthony Musgrave, Governor of B.C., to Sir John Young Bart, 20 February 1871. BCARS, GR 1520, Box 1, File 1.

<sup>3</sup> "British Columbia Legislative Council: Debate on the Subject of Confederation With Canada," Appendix A, In, *Journals of the Colonial Legislatures*. Editor, James Hendrikson. Vol. IV, p.461 and 541.; Trutch's antagonism towards the inclusion of such a term is evident in his letter to H.P.P. Crease, dated March 24, 1870. BCARS, \*\*\*.

<sup>4</sup> Helmcken noted in a diary that he kept during the Ottawa negotiations that a clause concerning Indians was fully discussed and then added to the Terms. "Helmcken's Diary of the Confederation Negotiations, 1870," *British Columbia Historical Quarterly*, Vol. IV(2):111ff.

Council of B.C. approved the final Terms of Union.

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

The charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government, and a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after 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 the case of disagreement between the two Governments respecting the quantity of such tracts of land to be so granted, the matter shall be referred for the decision of the Secretary of State for the Colonies.<sup>5</sup>

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

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<sup>5</sup> Terms of Union (Order of Her Majesty in Council Admitting British Columbia into the Union), 1871, *Revised Statutes of British Columbia, Appendices*. (1979) Volume 7, pp. 83-86.

of controversy over the next few decades.<sup>6</sup>

### 3.2 Post-Confederation Indian Land Commissions

Pursuant to the Terms of Union, the administration of Indian Affairs after Confederation became the responsibility of the Federal Government. Initially, Dr. Israel Wood Powell, who was recommended by the Province and appointed as Indian Superintendent in British Columbia, was the one man entrusted with the job of directing Indian affairs. Dr. Powell was notified of his appointment as Indian Superintendent<sup>7</sup> in October 1872, at which time he was provided with a letter from William Spragge, Deputy Superintendent General of Indian Affairs (D.S.G.I.A.), outlining the expectations of the Department concerning Powell's role. Powell's duties can be summarized as follows:

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<sup>6</sup> A report concerning the "Province of British Columbia's Obligation to Provide Additional Lands for the Indians Under Article 13 of the Terms of Union," has been prepared by Peter Vranjkovic (1984). Copy held by the library of Specific Claims West, Vancouver.

<sup>7</sup> I.W. Powell concurrently held the positions of "Indian Commissioner" and "Visiting Superintendent." The rank of "Indian Commissioner" connoted responsibilities as a member of the Board of Indian Commissioners; the title "Visiting Superintendent" implied more the duties of administration, travel and inspection. The organizational structure is described by Mary Ann Pylypchuk, "Organizational History of Indian Affairs in British Columbia." Paper prepared for Litigation Support Directorate, Indian Affairs and Northern Development, Vancouver (1990).

1. Collect information relative to the various Bands of Indians within the Province of British Columbia, including the position and extent of their reserves, the condition and general character of the Indians occupying the reserves, the progress in agriculture and their prospects in that area and any other potential means of support in the future;
2. Review the area of education identifying the number and conditions of schools established in the various Indian settlements, the manner in which schools are supported, and the authorities who have charge of them. He was to enquire into the salaries and the source of the salaries of the people running the schools. Powell was instructed to "render his opinion as to the advantage to be anticipated and the opportunities of a favorable character for the establishing of additional schools";
3. Examine medical treatment afforded to Indians and Indian Bands;
4. Examine the social and moral condition of the various Bands, and their cultural organization, including the appointment and authority of the Chiefs and other persons holding power among them;
5. Inquire as to whether or not gifts have been bestowed periodically upon any of the Bands or any particular member of the Bands;
6. Furnish an outline of the existing policy of the local Government in the administration of Indian Affairs;
7. Maintain books, carefully preserved and devoted to statistics, on the different Indian Bands that he visits;
8. Recommend how monies which have been set aside by the Dominion Parliament should be spent and to detail the items at each season to which grants of money would be required. With his report he was also to list the grants which it has been the practice of the local government to make for the benefit of the Indians in the Province of British Columbia.<sup>8</sup>

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<sup>8</sup> Letter from William Spragge, D.S.G.I.A., to Israel Powell, 9th October 1872. NAC, RG 10, \*\*



Powell's first report to Ottawa setting out his findings pursuant to the foregoing instructions was submitted on January 11th, 1873.<sup>9</sup>

On February 20th, 1873 Powell acknowledged receipt of a letter from Joseph Howe, Secretary of State for the Provinces, informing Powell of his powers as Indian Commissioner. According to Powell's reply, he was "limited by the laws of British Columbia until legislative enactments, in respect to the Indian Affairs of the province are passed by the Dominion Parliament."<sup>10</sup>

According to Historian Robin Fisher, the appointment of Powell as Indian Superintendent, was opposed by Joseph Trutch, the Lieutenant Governor, who believed that the position should be under his control.<sup>11</sup> Despite the seemingly-autonomous nature of the position of Indian Superintendent, in the ensuing years Joseph Trutch acquired the power he sought. Historical reviews of this period generally classify the Province's tactics during the decade

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<sup>9</sup> "Report of the Superintendent of Indian Affairs," I.W. Powell to the Secretary of State for the Provinces, Ottawa, January 11th, 1873. NAC, RG 10, Vol. 11209, File 8. This report presents Powell's observations on the following Native groups: Cowichan nation; Comox Nationality; Aht Nation; Quackewlth Nation; Bella Coola and Millbank Nations; Tsimpshean Nation; Hydah Nation; Tahelie and Siccanies Nation; Shuswap Nation; and Kootney Nation.

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

<sup>11</sup> Fisher, *Contact and Conflict*, p.182

following Confederation as those of an obstructionist.<sup>12</sup>

Indian-White relations in post-Confederation British Columbia were marked by tension. Increasing numbers of White settlers necessitated immediate action as relatively few reserves had been established and some of these reserves were now considered to be too large. Moreover, Indian affairs in the Province were in a chaotic state as Provincial and Federal policies continued to differ significantly, with the Province clinging tenaciously to settler-dominated policies of White self-interest. Notably, in 1872, the Legislature removed the right to vote in B.C. elections from Indian people.<sup>13</sup>

Central to reviews of Indian land requirements subsequent to the Terms of Union was the interpretation to be placed upon the words: "a policy as liberal as that hitherto pursued by the British Columbia Government." Lieutenant-Governor Trutch, writing to the Secretary of State for the Provinces on September 26th, 1871 in reference to his government's policy, stated: "As to the Indian policy hitherto of the Government of British Columbia, for, although not a written code based on legislation, the policy

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

<sup>13</sup> Fisher, *Contact and Conflict*, p.178.

of the Government in Indian Affairs has been 'definite and tangible'.<sup>14</sup> Yet the Provincial Government was not truly apprised of just how liberal their policy had been, for there were available few reliable census data. This lack of information was referred to by B.W. Pearse, Chief Commissioner of Lands and Works (C.C.L.&W.), in a letter to the Colonial Secretary dated 16th October 1871: "I have no statistics as to the number of Indians in each tribe and have no means of obtaining them."<sup>15</sup> Debate next focused on the number of acres sufficient for each Indian family, with estimates ranging from ten suggested by the Province to eighty recommended by Ottawa; twenty acres was the figure settled on by Powell. Each of these positions was advanced as fulfilling the "as liberal" clause of the Terms of Union. The first step taken by Ottawa to ensure adequate land's being reserved for the Indians was to pass an Order-in-Council dated 21st March 1873 recommending that 80 acres of land be allotted to every Indian family of five persons. This was in accord with Indian policy in eastern Canada, and with the recommendation of Powell, himself.<sup>16</sup> The Province

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<sup>14</sup> B.C. Papers Connected With the Indian Land Question, (1875) pp. 99-101.

<sup>15</sup> B.C. Papers Connected With the Indian Land Question, (1875) pp. 102-3.

<sup>16</sup> The amount of land to be allotted as Indian Reserves was raised by Powell with respect to a situation at Alberni on the west coast of Vancouver Island. Here, Powell recommended  
(continued...)

countered with their own Order-in-Council (BCOC 542) dated 25th July 1873 rejecting the Dominion Government's suggestion and instead recommending twenty acres per family. The Minister of the Interior later explained B.C.'s rejection of this recommendation as follows:

...the Government of that Province peremptorily declined to accede, alleging that the quantity of land which the Order in Council proposed to assign to the Indians was greatly in excess of what was found to be sufficient by previous local Governments, and the Indian Commissioner was notified that the Government of British Columbia had decided that the land reserved for the Indians should not exceed 20 acres for each head of family...<sup>17</sup>

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

In answer to your question as to the interpretation placed by Government upon the allotment of Twenty acres to each Indian family of five persons, I am unable to answer you

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<sup>16</sup>(...continued)

"that each family be assigned a locality of 80 acres of land, of average quality, which shall remain permanently the property of the family for whose benefit it is allotted." The PCOC of March 21st, 1873, was published in the *British Columbia Sessional Papers, 1875*, pp.665ff. On June 2nd, 1873, Powell wrote to Lieutenant Governor Joseph Trutch advising him that he was ready to begin the surveys confirming old reserves, establishing new allotments, and increasing acreage to 80 acres per family. BCARS, GR 526, Box 7, File 614/73.

<sup>17</sup> Laird memo, November 2nd, 1874.; The Province's acquiescence to a 20-acre rule can be found in a Minute penned by B.C. Attorney General Walkem on a letter from I.W. Powell to John Ash, Provincial Secretary dated 16th July 1873. BCARS, GR 526, Box 7, letter 589/73.

officially.

I can however inform you that both myself and Mr. Armstrong understand it as meaning, that to every five persons there shall be allotted twenty acres of land or to put it in other words that to each Indian (not half breed) over a defined age there should be allotted four acres of land.<sup>18</sup>

Beaven then wrote to the Lieutenant Governor seeking concurrence on this position.<sup>19</sup> Powell, himself, agreed with the twenty acre rule but asked that it not be contingent upon a specific number of family members.<sup>20</sup>

Discussions concerning the precise amount of land to be set aside continued, with Powell who anticipated the situation among the cattle and horse-owning tribes of the Interior, requesting agreement from the Provincial Secretary that forty acres per family be reserved in the Interior where pasture lands were needed, or that an assurance of sufficient grazing lands be given. Powell was informed that considerable reserves had already been allotted in the Interior, but that the Attorney General would confer with him further on this subject.<sup>21</sup>

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<sup>18</sup> Letter from Robert Beaven to Dr. I.W. Powell, 31st July 1873. BCARS, Mss. No. C/B/30.7J

<sup>19</sup> Beaven to the Lieutenant Governor, 1st August, 1873. BCARS, Mss. C/B/30.7J

<sup>20</sup> Powell to John Ash, Provincial Secretary, 23rd August 1873. BCARS, GR 526, Box 7, letter 684/73

<sup>21</sup> Letter from Powell to Ash, 27th December 1873, with Minute in hand of Provincial Secretary. BCARS, GR 526, Box 8, File 984/73

Immediately prior to Powell's visit to the Interior, he was advised by Attorney General George Walkem that reserves in the Interior were excessive and required reduction, although Indians could be granted an extra twenty acres if absolutely required for grazing purposes.<sup>22</sup> Despite Powell's pressuring the Province to adopt the original eighty-acre standard, a PCOC approved on April 24th, 1874 and based on a report of the 1st of April, rescinded the PCOC of March 21st, 1873 and recommended allotments of twenty acres per family. When Powell set out for B.C.'s Interior, however, he again suggested to the Provincial Government that the Indians would be greatly satisfied if land grants there were based on a forty acre rule.<sup>23</sup> This approach did not receive endorsement from the Province. Powell, when at Lytton, received notification from Walkem that:

Twenty acres to each head of Indian family granted on condition agreed could not send sooner. Forty rejected.<sup>24</sup>

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

Powell experienced further frustration when he applied to the Province to grant an addition to the previously-allotted Musqueam Reserve. He was informed by the C.C.L.&W.

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<sup>22</sup> George Walkem, Attorney General for B.C., to I.W. Powell, 29th December 1873. BCARS, Mss. C/AB/30.7J/4

<sup>23</sup> Powell to Ash, 15th May, 1874. BCARS, GR 526, Box 9, item 28/74

<sup>24</sup> Telegram from George Walkem to I.W. Powell, 12th June 1874. BCARS, GR 526, Box 10, item 557/74

that permission to make extensions was conditional upon the C.C.L.&W.'s being advised that Powell was:

...authorized to reduce as well as increase such Reservations, and that you are prepared on behalf of the Dominion Government to guarantee that the Indians will agree quietly to reduction, if the Provincial Government agree to an increase.<sup>25</sup>

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

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

the lands conveyed would probably be of the best quality available. That such lands are in request for the purpose of actual and useful settlement and that it is contrary to the public welfare for such lands to be left uncultivated in the hands of a nominal and irresponsible proprietary.<sup>26</sup>

Coincident with the debate focusing on the extent of

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<sup>25</sup> Quote contained in Powell to John Ash, 15th August 1874. BCARS, GR 526, Box 10, item 557/74

<sup>26</sup> BCOC 838/74

allotments, a Joint Management Board was set up in 1874 in an attempt to deal with the unresolved issue of Indian lands generally.<sup>27</sup> An Order-in-Council approved by the Privy Council on February 9th, 1874 established a Board of Indian Commissioners for B.C.. The Board consisted of three members: Indian Superintendents I.W. Powell and James Lenihan, as well as the Lieutenant Governor of B.C.. According to that PCOC, the Board's mandate was:

...to suggest the general principles under which the Indians should be dealt with; and to arrange all negotiations and treaties with the Indian tribes, under the direction of the Superintendent General, and to report from time to time, the basis upon which the question of general policy in Indian Affairs should be settled.<sup>28</sup>

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

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<sup>27</sup> Cail. *Land, Man and the Law*, pp. 198-208, discusses post-Confederation disputes between the two governments. This period is also summarized by Fisher, *Contact and Conflict*, pp. 177-183, though in less detail.

<sup>28</sup> PCOC \*\*/74.



new positions based in New Westminster.<sup>29</sup>

The Commission got off to a slow start with Trutch vying for more authority over his fellow Board members who took their instructions directly from Ottawa. Trutch argued that the mandate of the Board was undefined. On June 30th, 1874 he wrote to David Laird, Minister of the Interior, expressing his dissatisfaction with the Board and withdrawing his involvement in the conduct of Indian Affairs in the Province until the Board of Commissioners "shall have been fully empowered to give effect to its conclusions & the status and proper functions of the Lt. Governor as a member of that Board shall have been clearly defined."<sup>30</sup>

Trutch's reaction came as no surprise to E.A. Meredith, Deputy Minister of the Interior, who realized that the appointment of the Lieutenant-Governor to such a Board would have to carry with it special powers.<sup>31</sup> Laird also recognized the problems of the Board, but believed that Trutch's position as Lieutenant-Governor of the Province made him unacceptable to Canada as the individual to direct and

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<sup>29</sup> Letter from David Meredith, Deputy of the Minister of the Interior, to the Lieutenant Governor of B.C., 12 February 1874. BCARS, A/E/Or3/T771.99

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

<sup>31</sup> Letter from David Laird, Deputy Minister of the Interior, to J.W. Trutch, dated 7th July 1874. BCARS, \*\*

control the management of Indian Affairs in B.C.. Nevertheless, Laird appreciated the necessity of proceeding with Powell's planned visit to the Interior in the late spring of 1874, thereby avoiding additional discontent among the Native tribes, and advised Trutch accordingly.<sup>32</sup>

Powell visited the Interior between May and July 1874.<sup>33</sup> At that time, rumours among the settlers of an imminent armed Native uprising were common, as the Indians expressed their grievances and continued their hostility to the intrusions of non-Indians on their lands. Powell had informed Ottawa with respect to the anticipated outbreak: "If there has not been an Indian war, it is not because there has been no injustice to the Indians but because the Indians have not been sufficiently united."<sup>34</sup>

Once in the Interior, Powell assured the Native people that his duty was to protect their lands. On this occasion, Powell promised reserves containing property sufficient for twenty acres per family head, with the understanding that old reserves would be enlarged to fulfil this commitment. In each community Powell visited, Chiefs came forward with

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<sup>32</sup> Letter from David Laird to J.W. Trutch, dated 7th July 1874. BCARS, A/E/Or3/T771.99

<sup>33</sup> During this trip to the Interior, Powell met with representatives of Thompson, Shuswap, Okanagan, Lillooet and Upper Stalo Indian tribes.

<sup>34</sup> Quoted in David Laird's Memorandum of November 2nd, 1874. BCARS, F52/C16.2.

stories of being driven from ancestral villages and having their cultivated fields pre-empted by non-Indians. Their agricultural and stock-raising endeavours were thwarted by settlers fencing the land and hemming in the Indian communities. Eighty acres per family were requested by the Chiefs. Powell, however, advised them that twenty should be adequate, and assured them that if they found it to be insufficient, he had no doubt that the government would permit them to pre-empt additional lands. Yet by the end of Powell's trip, he was convinced that the Indians had valid grievances, many of which resulted from the policies of Trutch and the Provincial Government.<sup>35</sup>

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

...That Province appears to be treating its Indian subjects with great harshness. It does not recognize any obligation to extinguish the Indian title, before dealing with the Crown Lands, and when it creates a reserve instead of allowing eighty acres to each family of five persons - as we do - it will not give more than twenty and this only in new reserves. In the old reserves they

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<sup>35</sup> Notes on Powell's Interior trip can be found in his personal journal kept in May and June 1874 entitled "Notes Documenting Interrogating of Various Tribes." NAC, RG 88, Vol. 494; His report to Ottawa, dated July 27th, 1874, is contained in NAC, RG 10, Vol. 11028, File SRR-1.

have not even half that quantity of land, and yet their Indians appear to be a rather superior race, and within the last few years have acquired a considerable stock of cattle and horses.<sup>36</sup>

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

...secure to each head of an Indian family at least 80 acres of good average quality - free from rocks and swamps, together with continuing to them the right of Preemptions, and that such reservations may be made as far as possible adjacent to and in connection with, the present villages sites, Reservations, and favourite haunts of the Indians.

That in addition to the limit of eighty (80) acres to each family, those having large herds of Cattle and Horses should receive sufficient land over and

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<sup>36</sup> Letter from Lord Dufferin to Lord Carnarvon, dated November 26, 1874. NAC, Lord Dufferin Collection, Microfilm A-406. The Dufferin - Carnarvon Correspondence 1874-1878 has been published as a volume of *The Publications of the Champlain Society*. Toronto: The Champlain Society. Lord Dufferin continued his criticism of Provincial policy for the next several years. A document dated September 20th, 1876, is an excerpt of the 2.25 hour speech given by Dufferin while in B.C. In this speech, Dufferin states that it is the duty of the Governor General to watch over the welfare of the Indians. He goes on to say that there has been an initial error of the Province in not recognizing Indian title, but that he is pleased that B.C. has now agreed to a Joint Commission. NAC, RG 10, Vol. 10031.

above such limit to answer their requirements...<sup>37</sup>

There was little consensus between the Provincial and Dominion Governments late in 1874, and the inability of the Board of Indian Commissioners to resolve the situation was quickly apparent. Ottawa's perspective on the dilemma was discussed by Laird in a lengthy memo dated November 2nd, 1874 which became the basis of a Privy Council Order dated the 4th November 1874.<sup>38</sup> Provided with the report of Powell's visit to the Interior, communications from both the Indian Commissioners, and letters published in the local newspaper by missionaries working among the Indians, the Minister of the Interior was confident in declaring in this memo that the Indian situation was "most unsatisfactory" and required the immediate attention of both governments. Laird exhorted the national benefits to be gained from a more liberal approach to the Indian land question than that advocated by the Terms of Union. An Indian war, he feared, was a very real possibility.

A copy of Laird's report was forwarded by the Governor General, Lord Dufferin to the Earl of Carnarvon on December 4th, 1874. Again, Dufferin criticized Provincial policy,

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<sup>37</sup> Letter from James Lenihan, Indian Commissioner, to John Ash, Provincial Secretary, 15th October 1874. BCARS, GR 526, Box 11, File 715.

<sup>38</sup> Copy of a Report of the Honorable the Privy Council approved by His Excellency the Governor General on the 4th November 1874. BCARS, F/52/ C16.2

with specific references to intergovernmental disputes.

Carnarvon, however, was reluctant to take action.<sup>39</sup>

Among the Provincial actions unpopular with the Dominion Government was to pass a Bill, assented to on March 2nd, 1874, entitled *An Act to Amend and Consolidate the Laws Affecting Crown Lands in British Columbia*.<sup>40</sup> Historian Robert Cail<sup>41</sup> suggests that the passage of this Act illustrates the Province's lack of interest in settling the Indian land question in accordance with Dominion policy. Ottawa disallowed the Act. A letter authored by the Minister and Deputy Minister of Justice pointed out that the Province had unwittingly erred in its definition of "Crown Lands," resulting in acknowledgement of Indian sovereignty to all lands of the Province, a position that would have met the approval of Ottawa. Yet the reason for the disallowance was the lack of provision for Indian Reserves or the allotment of lands for that purpose.<sup>42</sup>

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

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<sup>39</sup> Letter from Lord Dufferin to the Earl of Carnarvon, 4th December 1874, with a reply dated 5th February 1875. NAC, RG 10, Vol. 3611, File 3756-1.

<sup>40</sup> B.C., *Statutes*, 1874, 37 Vict. no. 2, s.86.

<sup>41</sup> Cail, *Land, Man and the Law*, pp. 197-199.

<sup>42</sup> *Ibid.*

60. The Lieutenant Governor in Council shall, at any time, by notice, signed by the Chief Commissioner of Lands and Works, and published in the British Columbia Gazette, reserve any lands not lawfully held by record, pre-emption, purchase, lease, or Crown Grant. for the Dominion Government, in trust, for the use and benefit of the Indians, or for railway purposes, as mentioned in Article 11 of the Terms of Union, or for such other purposes as may be deemed advisable.<sup>43</sup>

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

On August 17th, 1875 the Attorney General of B.C. submitted for the consideration of a committee of the Executive Council a report vociferously defending B.C.'s policy.<sup>44</sup> The memo begins with a review of the 13th Clause of the Terms of Union and the respective responsibilities of Canada and B.C.. The Attorney General's argument was that British Columbia vitally required agricultural lands for settlement and that its consent to twenty acres per head of family instead of ten for new reserves was a generous concession and not an obligation. Walkem stated that it was with "great reluctance" that his government felt compelled to differ with Canada.

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<sup>43</sup> BCOC \*\*, April 22, 1875.

<sup>44</sup> Report accompanying BCOC 1071, dated 18th August 1875.

Cail<sup>45</sup> asses in his review of the Walkem memo that the impasse between the two governments was attributable to Canada's lack of information concerning the situation in B.C., an argument the Attorney General, himself, advanced with support from William Duncan, a member of the Church Missionary Society.

Missionary Duncan had a long history of involvement in Indian affairs in the Province, and was an active critic of Indian policy. In 1873, after his appointment as Indian Superintendent, I.W. Powell had solicited Duncan's views on management of Indian Affairs. Duncan proposed a land scheme described in a lengthy memo which promoted the establishment of ample reserves and an administrative policy with variation determined by reputed level of "civilization." The greatest need for civilized Indians, according to Duncan, was to keep out Whites and lawless Indians. Duncan was prolific in his suggestions, and as the Dominion Government considered him an authority in such matters, Walkem's use of Duncan's argument was an effective weapon.<sup>46</sup>

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<sup>45</sup> Cail, *Land, Man and the Law*, pp. 201-204. Historian Fisher, *Contact and Conflict*, pp. 186-187, takes a less flattering view of Walkem's report and Provincial policy, arguing that it illustrated a continuation of B.C.'s obstructionist tactics.

<sup>46</sup> A copy of William Duncan's letter of February 3rd, 1873, outlining his views on "what system of Government I would recommend for the civilization of our Indians" can be found in NAC, RG 10, Vol. 11209, File 8. As a model of his scheme, Duncan subsequently founded the Metlakatla mission  
(continued...)



Ottawa considered carefully the August 18th, 1875 memo from the Province, as it was the conventional wisdom of the time that the current situation was unsatisfactory. David Laird, Minister of the Interior, prepared a Memorandum dated October 11th, 1875<sup>47</sup> calling attention to the necessity of changing the organization of the administration of Indian Affairs in B.C. He proposed that the Indian Board be replaced by a more economical system of Indian Superintendents and Agents administering two superintendencies. His memo was presented to and approved by the Privy Council.<sup>48</sup>

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

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<sup>46</sup>(...continued)  
where he implemented his model of a self-sufficient theocratic community. Duncan's career has been examined in several books and articles including the highly-readable: *The Devil and Mr. Duncan: A History of the Two Metlakatlas*, by Peter Murray (1985) Sono Nis Press; and the more academic, *William Duncan of Metlakatla, a Victorian Missionary in British Columbia*, by Jean Usher (1974) National Museums of Canada.

<sup>47</sup> Memorandum from David Laird, Minister of the Interior, October 11th, 1875. NAC RG 10, Vol. 3525, File 5506.

<sup>48</sup> Copy of a Report of the Committee of the Honorable the Privy Council, approved by His Excellency the Administrator of the Government in Council, signed by W.A. Himsworth to the Minister of the Interior, December 7th, 1875. NAC, RG 10, Vol. 3625, File 5506.

the 10th of November. Mr Scott's recommendations were as follows:

1. That with a view to the speedy and final adjustment of the Indian Reserve question in British Columbia on a satisfactory basis, the whole matter be referred to three Commissioners, one to be appointed by the Government of the Dominion, one by the Government of British Columbia, and the third to be named by the Dominion and the Local Governments jointly.
2. That the said Commissioners shall, as soon as practicable after their appointment, meet at Victoria, and make arrangements to visit, with all convenient speed, in such order as may be found desirable, each Indian nation (meaning by nation all Indian tribes speaking the same language) in British Columbia, and, after full enquiry on the spot into all matters affecting the question, to fix and determine for each nation, separately, the number, extent, and, locality of the Reserve or Reserves to be allowed to it.
3. That in determining the extent of the Reserves to be granted to the Indians of British Columbia, no basis of acreage be fixed for the Indians of that Province as a whole, but that each nation of Indians of the same language be dealt with separately.
4. The Commissioners shall be guided generally by the spirit of the Terms of the Union between the Dominion and the Local Governments, which contemplates a "liberal policy" being pursued towards the Indians, and, in the case of each particular nation, regard shall be had to the habits, wants and pursuits of such nation, to the amount of territory available in the region occupied by them, and to the claims of the white settlers.
5. That each Reserve shall be held in trust for the use and benefit of the nation of Indians to which it has been allotted, and, in the event of any material increase or decrease hereafter of the numbers of a nation occupying a Reserve, such a reserve shall be enlarged or diminished, as the case may be, so that it shall bear a fair proportion to the members of the nation occupying

it. The extra land required for any Reserve shall be allotted from Crown Lands, and any land taken off a Reserve shall revert to the Province.

6. That so soon as the Reserve or Reserves for any Indian nation shall have been fixed and determined by the Commissioner as aforesaid, the existing Reserves belonging to such nation, so far as they are not in whole or in part included in such new Reserve or Reserves so determined by the Commissioners, shall be surrendered by the Dominion to the Local Government so soon as may be convenient, on the latter paying to the former, for the benefit of the Indians, such compensation for any clearings or improvements made on any Reserve so surrendered by the Dominion and accepted by the Province, as may be thought reasonable by the Commissioners aforesaid.<sup>49</sup>

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

### 3.2.1 The Joint Indian Reserve Commission

The recommendations as stated in PCOC 1088 were reviewed by the Province and accepted with slight modification in B.C. Minute 1138/76. Together these documents established the Joint Indian Reserve Commission.<sup>50</sup> The Province found the recommendations embodied in PCOC 1088 close enough to the terms of their previously rejected

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<sup>49</sup> PCOC 1088, November 10th, 1875

<sup>50</sup> The JIRC was also known as the "Joint Committee on Indian Reserves" and the Board of Indian Reserve Commissioners.

proposal to be acceptable.<sup>51</sup> Thus, a note made at the B.C. Executive Committee's meeting at which the proposal was approved states that:

With respect to the appointment of the Commissioners as suggested instead of Agents, the Committee feels that strictly speaking, the Province should not be responsible for any portion of the expense connected with the charge or management of Indian Affairs which are entrusted by the Terms of Union to the Dominion government, but regarding a final settlement of the land question as most urgent and most important to the peace and prosperity of the Province, they are of the opinion and advise that all the proposals numbered one to seven inclusive, be accepted.<sup>52</sup>

Two days later, Lieutenant Governor Joseph Trutch sent a copy of the Minute of the Executive Council to the Earl of Carnarvon.<sup>53</sup>

Subsequent Orders-in-Council appointed three Commissioners. The Privy Council of the Dominion Government, by PCOC of May 6th, 1876 appointed Mr. Alexander Anderson as its Commissioner. The Province was notified of Mr. Anderson's appointment, and it, in turn appointed (by B.C. Order-in-Council 166/76) Mr. Archibald McKinlay as its representative. By B.C. Order-in-Council 172/76, the Committee of the Executive Council then suggested that Mr. Gilbert Malcolm Sproat be appointed the third Commissioner,

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<sup>51</sup> Memorandum from George Walkem, President Executive Council to Joseph Trutch. BCARS, GR 444, Vol. 32.

<sup>52</sup> BCOC 1138/76

<sup>53</sup> GR 443, Vol. 24, p.173

and on August 2, 1876 the Government of B.C. confirmed that suggestion. The Privy Council approved the recommendation on behalf of the Dominion government on 16th August 1876 (PCOC 779).

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

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

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

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

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

...

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

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

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

Reports of the proceedings of the Commission should be made from time to time to the Government, and I must impress upon you the importance for many reasons, of the labours of the Commission being brought to a close as early as may be practicable and consistent with the satisfactory adjustment of this grace and long pending controversy.<sup>54</sup>

The instructions given to Commissioner Anderson dated August 25th, 1876 do not indicate that the decision of the Commission was final, nor do they indicate otherwise. The instructions do advise him to confer with the Indian Superintendents.

Anderson was notified on the 25th August 1876 that a copy of his Memorandum of Instructions had been passed along to the other two Commissioners.<sup>55</sup> Archibald McKinlay, the Provincial Commissioner, received his instructions from the Province, orally, soon after his appointment.<sup>56</sup> On the 12th of October 1876, the B.C. Provincial Secretary advised both McKinlay and Sproat in writing that they had been appointed

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<sup>54</sup> Memorandum of Instruction to the Dominion Commissioner on the British Columbia Indian Land Question 25th August 1876. NAC, RG 10, Vol. 3633, File 6425-1

<sup>55</sup> Letter from Laird to Alexander C. Anderson, August 26th, 1876. NAC, RG 10, Vol. 3633, File 6425-1.

<sup>56</sup> Commissioners McKinlay and Sproat submitted a report to Attorney General A.C. Elliott dated 9th October 1876 in which they reviewed the establishment of the Joint Indian Reserve Commission. In this report they noted that instructions were given first orally.

under the Great Seal, commanding them to "do all such acts and things as may be necessary for the proper performance by you of your said office and as may be contained in the written instructions as may from time to time be given to you." <sup>57</sup>

The Province was not entirely satisfied with the instructions given to Anderson and Sproat; in a letter dated 26th October 1876 Charles Ford, Deputy Provincial Secretary took exception to the paragraph concerning the surrender of reserves, and the manner in which the Commissioners were to apply this section. The Provincial Government was particularly troubled by the fact that it was now out of the Commissioners' power to deal with the question of surrenders and diminishments of reserves. The Government of British Columbia suggested that the Indian Act would require revision to avoid a "miscarriage" of the Commission.<sup>58</sup>

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

It is, therefore, incumbent to point out to you as the Representative of the Province the necessity

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<sup>57</sup> A copy of the appointment of both Archibald McKinlay and Gilbert M. Sproat under the Great Seal can be found in BCARS, GR 548, Box 1, pp. 155-156.

<sup>58</sup> Letter from Charles Ford, Deputy Provincial Secretary to the Honorable A. Mackenzie, &c. &c. BCARS, F52/B77.3



for extreme care and for the exercise of the mature and unbiased judgment in the carrying out of this arrangement so that while you endeavour in all cases to act with a liberal spirit toward the Indians, you do not imperil the progress of white settlement by conceding unnecessarily large reserves... You will report your proceedings from time to time and communicate any action on the part of the Commission which in your opinion may tend to militate against the interest of the province or may require remedying...<sup>59</sup>

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

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

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

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<sup>59</sup> "Memorandum of Instructions to Archibald McKinlay Esq., the British Columbia Commissioner on the Indian Reserve Question," dated 23rd October 1876. BCARS, GR 494, Box 1, File 1.

from operation of the *Indian Act*.<sup>60</sup>

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

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

...you will in determining the number of reserves to be assigned to any particular Indian nation be guided rather by the special circumstances of that nation, their habits, tastes, pursuits and physical surroundings, than by any fixed theoretical rule.<sup>61</sup>

Within a month of Mr. Sproat's appointment as an Indian Reserve Commissioner, he began what became a voluminous correspondence providing his views relating to aboriginal rights, the policies of both the Dominion and Provincial Governments, and Indian lifeways in general.<sup>62</sup> Among

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<sup>60</sup> Proclamation dated 15th December 1876, published in *The Canada Gazette*, December 30, 1876.

<sup>61</sup> Letter from David Laird, Minister of the Interior, to Alexander Anderson, 25th August 1876. RG 10, Vol. 3633, File 6425-1.

<sup>62</sup> A computer printout of typescripted Sproat letters was prepared in the 1980s by Dr. Robin Fisher, now with the University of the North, Prince George, B.C.

Sproat's first writing as Commissioner was his 81-page memo addressed to the Minister of the Interior and dated September 29th, 1876.<sup>63</sup> In the Memorandum, Sproat outlines his understanding of the issues relating to Indian Affairs, including what he believed are the views of the Indians, the settlers, the missionaries, and the two governments.

During the winter of 1876-1877, the Joint Indian Reserve Commissioners began their work by travelling from village to village meeting with the Indians' representatives and allotting or adjusting reserves. Their work commenced at Musqueam, on the North Arm of the Fraser River, proceeded to Burrard Inlet and Howe Sound where they allotted lands to the Squamish, on to Sechelt, and then crossed to Vancouver Island where they met first with the Comox and then made their way south, allotting lands among the Nanaimo, Chemainus, Cowichan and Saanich.<sup>64</sup> The JIRC kept account of

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<sup>63</sup> Memorandum from Gilbert Malcolm Sproat, Joint Commissioner, Victoria, B.C. to the Honorable, the Minister of the Interior, Ottawa Canada. BCARS, Add. MSS. 257, Vol. 1, File 15.

<sup>64</sup> The "Report of the Proceedings of the Joint Commission for the Settlement of the Indian Reserves..." dated March 21st, 1877, and signed by A.C. Anderson, Dominion Commissioner, Archibald McKinlay, Provincial Commissioner, and Gilbert Malcolm Sproat, Joint Commissioner, provides an account of the work undertaken among each of these groups. NAC, RG 10, Vol. 3645, File 7936. Sproat, himself, submitted a summarized account dated 29th March 1877. NAC, RG 10, Vol. 3611, File 3756-11. "Minutes of Decision," reports prepared by the Commissioners for Government outlining the nature and extent of lands allotted for individual Native groups, were  
(continued...)

the acreage allotted per adult male and reported this figure, specifically to the Province, to indicate that reserve allotments were not too large. The Commissioners did not adhere to an acreage standard when setting aside lands for Native use, but did try to achieve equity of benefit.

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

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

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

The formal minutes and maps of the Commission which, as soon as outstanding questions are settled, will be signed by the three Commissioners, are sent to both governments, as well as to the Indian Superintendents in this Province, will show the number and extent and locality of the reserves laid out...<sup>65</sup>

Additionally, reports signed by all three Commissioners were submitted to both governments. Commissioners Anderson and

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<sup>64</sup>(...continued)  
submitted in June 1877 for the above-noted tribes.

<sup>65</sup> Sproat to the Minister of the Interior, 29th March 1877. NAC, RG 10, Vol. 3756-11.

McKinlay kept daily journals.<sup>66</sup> According to a notation on the top of Anderson's journal, he forwarded his to the Indian Department in Victoria. It is not clear if Commissioner McKinlay's jottings were produced as a requirement of his position or for his private use.

While assigning reserves in the lower mainland, the Commissioners had the Lands Office near at hand where they could confirm the availability of acreage (unencumbered by pre-emption) that could be allotted to Natives. McKinlay's diary identified one procedure whereby the surveyor, Edward Mohun, examined the Lands Office records subsequent to the Commissioners identifying which lands they wished reserved.<sup>67</sup> While in the Interior, the Commissioners met with settlers and with surveyors working on behalf of settlers who advised them of claimed lands. Additionally, maps were requested from the C.C.L.&W. illustrating the locations of pre-emptions.<sup>68</sup> These were not always provided in a timely manner and became the source of immense frustration.

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<sup>66</sup> "Journal of Proceedings of the Commission for the settlement of the Indian Reserves in the Province of British Columbia, continued from Vol. 1, remaining in the Office of the Indn. Dept. at Victoria," signed Alex C. Anderson, 8th February 1878. NAC, RG 10, Vol. 1284; [Diary] of Archibald McKinlay, 1877. BCARS, E/C/M21/pt.2

<sup>67</sup> Surveyors attached to the Joint Indian Reserve Commission include: Edward Mohun, W.C. Jemmett, and Ashdown Green

<sup>68</sup> McKinlay, Diary. BCARS, E/C/M21

The Commissioners were accompanied by enumerator George Blenkinsop who kept a census providing the names of household heads, the total number of family members and their ability to speak English, the type of residence in which they lived, as well as their occupation and religion.<sup>69</sup>

Problems with the Commission, particularly focusing upon its expense, were evident from the beginning. Thus it was not surprising that on January 27th, 1877 the B.C. Provincial Secretary prepared a report to the Minister of the Interior concerning the enormous expense to the Government of B.C. of the work of the JIRC. He recommended that the Commission be allowed to persevere, for the time being, but that its labours be restricted to those areas where Whites and Natives were living in close proximity, and to areas where there were difficulties. The Provincial Secretary also recommended that the JIRC be dissolved by the end of the year, proposing instead that the Indian Superintendents in B.C. then apportion lands for reserves, subject to the approval of the C.C.L.&W., before being gazetted. The cost would be borne by Ottawa. It was the

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<sup>69</sup> Draft and final copies of Blenkinsop's censuses provide variant data. Compare for example: "Census of Indian Tribes, Winter 1876-1877." NAC, RG 88, Vol. 494, and "Census of the Muskweam and Skwawmish Indians in British Columbia, November 27, 1876." NAC, RG 10, Vol. 10.010. An abstract of these data can be found in: BCARS, GR 494, Box 1, File 25. Census data collected among Interior tribes can be found in "Census of Indian Tribes, Summer 1877 and 1878." NAC, RG 88, Vol. 494.

Provincial Secretary's recommended that differences of opinion be referred to a Judge of the Supreme Court for a binding decision.<sup>70</sup>

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

The lands thus apportioned should however be subject to the approval of the Chief Commissioner of Lands and Works, acting on behalf of the Provincial Government, before being finally gazetted as Indian reserves. In the event of any differences existing between the Chief Commissioner of Lands and Works and the Superintendents of Indian Affairs as to size or extent of lands to be allotted to any Indian tribe, the matter could be referred to one of the Judges of the Supreme Court, whose decision should be final.<sup>71</sup>

On February 22nd, 1877 the Federal Minister of the Interior wrote to the Privy Council in response to the Provincial Secretary's letter and suggested that the plan recommended by the Province (and subsequently approved by Indian Superintendent Powell) be adopted. The Governor General-in-Council approved the report of the Minister of the Interior on February 23rd, 1877 (PCOC 145). Thus, the Commission continued under the authority of BCOC 279/77.

The Commissioners themselves submitted their views concerning the proposed restructuring of the JIRC, advising

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<sup>70</sup> A.C. Elliott, Provincial Secretary, to the Minister of the Interior, 27th January 1877. NAC, RG 10, Vol. 3641, File 7567

<sup>71</sup> BCOC 279, 30th January 1877

the government that the restructuring had not taken into consideration the wishes or expectations of the Indians. Such restructuring, they opined, would undermine the little confidence that the Indian people had in their work.<sup>72</sup> Sproat described the proposal as "cumbrous, unworkable, confused, expensive on the face of it, and...unsuited to the work that had to be done." To Meredith he referred to it as "a grave joke."<sup>73</sup>

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

Once the Commissioners were in the Interior of B.C. in the summer of 1877, they wrote, collectively and

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<sup>72</sup> "Memorandum by the Indian Reserve Commissioners upon an Order of the Canadian Privy Council dated 23rd February 1877," signed by A.C. Anderson, Archibald McKinlay and G.M. Sproat, April 7th, 1877. NAC, RG 10, Vol. 3641, File 7567.

<sup>73</sup> Letter from G.M. Sproat to E.A. Meredith, 9th April 1877. NAC, RG 10, Vol. 3641, File 7567.



individually, describing the exceedingly tense situation that existed amongst the Indians, and the real possibility of war. A telegram from the Secretary of State, R.W. Scott, was sent to Commissioners Anderson and Sproat advising them to inform the Indians that "both governments were endeavouring to remove the causes of irritation."<sup>74</sup> Indian Superintendent Lenihan was also instructed to transmit the government's sentiments to the Indians at Kamloops.

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

I would therefore earnestly press upon the attention of the Commissioners the propriety of meeting every reasonable demand on the part of the Indians both as to the extent and locality of their Reservations.<sup>75</sup>

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<sup>74</sup> Telegram from R.W. Scott, to Indian Commissioners Anderson and Sproat, 23rd July 1877. NAC, RG 10, Vol. 3651, File 8540.

<sup>75</sup> Letter from David Mills, Minister of the Interior, Ottawa to Gilbert Malcolm Sproat, Esqr., Indian Land Commissioner, Kamloops, B.C.. NAC, RG 10, Vol. 3997, File 1353

Mills blamed the current situation entirely on the policy the British Columbia Government took towards the Indian people, which he characterized as unwise, unjust, and illegal. Mills noted that British Columbia's position had always been that the Indians had no right to the soil, an assumption completely at variance with the policy of the Crown in dealing with Native peoples in other parts of North America.<sup>76</sup> Sproat himself informed the Lieutenant Governor on 2nd September 1877 that he did not consider the above letter to be an amended instruction.<sup>77</sup>

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

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

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

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<sup>76</sup> *Ibid.*

<sup>77</sup> Sproat to the Lieutenant Governor, 2nd September 1877. BCARS, GR 495, Box 1, File 1.

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

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

It is the most earnest wish of the Provincial Government that the Indians of British Columbia should be dealt with not only justly but generously--and the instructions issued to Mr. McKinlay the Provincial Commissioner conclusively prove that fact--but at the same time justice requires that the interests of the old settlers of the Province should not be sacrificed.<sup>78</sup>

Over the winter of 1876-1877 the Commissioners occupied themselves in Victoria finishing reports and accounts, and assigning reserves to the Becher Bay, Sooke and Esquimalt people.<sup>79</sup>

The second (and last) expedition of the JIRC occurred in the summer of 1877. Rumours had reached Victoria of a great council being held among the Okanagan and Shuswap

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<sup>78</sup> A.C. Elliott, Provincial Secretary, to G.M. Sproat, 27th September 1877. NAC, RG 10, Vol. 3651, File 8540.

<sup>79</sup> "Second Condensed Report by the Joint Commissioners Appointed by the Governments of Canada and British Columbia," dated December 1st, 1877, and submitted by G.M. Sproat. BCARS, GR 494, Box 1, File 46.

Indians at the head of Okanagan Lake to debate whether or not to drive the Whites from the Interior. Such tales alarmed the settlers and induced the Government to despatch the Commissioners with great urgency. These rumours were not groundless; the Interior Indians were in constant communication with their American relatives some of whom were engaged in armed battles with United States troops.

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

Native people in the Interior were engaged in farming and stock raising, both pursuits requiring extensive acreage. Moreover, they were acutely aware of how much land was being pre-empted by Whites involved in these same activities. Land, therefore, was highly valued by the Interior Natives. Consequently, the Commissioners confronted profound problems in satisfying Indian demands while at the same time appeasing anxious settlers. Within a six-month period between June and December 1877, the Commissioners assigned reserves for seven Shuswap Bands and four Okanagan

Bands. Also assigned were two "Commonages," i.e., grazing lands to be used jointly by Indians and Whites.<sup>80</sup>

### 3.2.2 The Sproat Indian Reserve Commission

Mr. Sproat, in his critique of the Province's proposed new arrangement, had put himself forward as a willing candidate to be sole Commissioner, thereby replacing the 3-person body.<sup>81</sup> This suggestion met with the approval of the Dominion government. The subject had been raised before with the Provincial government; on February 4th, 1878 Canada telegraphed the Province:

No answer to Confidential Despatch twentieth December respecting Indian Commission. Does your Government desire Continuance of present Commission or would they prefer Mr. Sproat as sole Commissioner. Answer.<sup>82</sup>

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

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<sup>80</sup> "Second Condensed Report by the Joint Commissioners Appointed by the Governments of Canada and British Columbia," dated December 1st, 1877, and submitted by G.M. Sproat. BCARS, GR 494, Box 1, File 46. A second copy of this report, dated 1st January 1878, was signed by both Archibald McKinlay and G.M. Sproat. BCARS, GR 494, Box 2, File 53. Correspondence concerning the JIRC can be found in BCARS, GR 494.

<sup>81</sup> Sproat to the Lieutenant Governor, 12th June 1878. GR 494, Box 1, File 45.

<sup>82</sup> Telegram from David Mills, Minister of the Interior, to the Lieutenant Governor of B.C., February 4th, 1878. BCARS, GR 443, Vol. 27.

Dominion Government wish arrangement approved by order Privy Council 23rd February last respecting Indian land Commissioners to take effect now.<sup>83</sup>

Ottawa responded on the 16th February 1878:

Government think continuance of Indian Commission necessary either as it stands or as suggested by letter of December. Arrangement proposed by Order of Council of February would not satisfy Indians. Answer.<sup>84</sup>

Several weeks passed and the Province informed the Dominion government that B.C. would not "recede from position taken regarding discontinuance of Indian Commission".<sup>85</sup> Ottawa responded further by issuing Order-in-Council 170/78 dated March 8th, 1878 noting that the Provincial government's suggestion of having the Indian Superintendents allot reserves was impracticable and unwise, and instead proposing that G.M. Sproat be appointed sole Commissioner. The PCOC relied substantially on the March 2nd, 1878 letter of David Mills, which is appended to the Order-In-Council:

With the additional knowledge which we now possess from the detailed reports of the Commissioners of the critical condition of affairs among the Indian Tribes in the interior of British Columbia and of the many difficulties which beset the question of assigning the Reserves in such a way as to satisfy the white settlers and the natives, it is submitted that it would be highly impolitic & inexpedient to bring into effect the arrangements

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<sup>83</sup> BCOC 519, February 4th, 1878.

<sup>84</sup> Telegram of David Mills to the Lieutenant Governor, February 16th, 1878. BCARS, GR 443, Vol. 27.

<sup>85</sup> BCOC 541/78, March 2nd, 1878.

proposed by the Order in Council last cited until all the reserves in the vicinity of white settlements are made...

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

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

By this means the continuity of the present Commission would be preserved and the Indians would have a guarantee that the same policy which has hitherto guided the Commission in dealing with their Reserves would be continued in the future.<sup>86</sup>

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

Please carry out order of February seventy seven respecting Indian Commission substituting Sproat

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<sup>86</sup> Letter from David Mills, March 7th, 1878, appended to PCOC 170, dated March 8th, 1878.

for Indian Supt. Notify Commissioner accordingly.<sup>87</sup>

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

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

This simplifies matters, but it was necessary to have it clearly understood, and I should have been glad to have had the information sooner, in reply to my letter upon the subject to the Prov. Govt dated 3 June 1878.<sup>88</sup>

On March 18th, 1878 Sproat informed the S.G.I.A. that he had received notice from the Lieutenant Governor of B.C. concerning his appointment.<sup>89</sup> A further communication dated the 18th March 1878 advised the S.G.I.A. that Sproat had an interview with Mr. Elliott of the Province on the same day.

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<sup>87</sup> Telegram from Mills to the Lieutenant Governor, March 15th, 1878. BCARS, GR 443, Vol. 27.

<sup>88</sup> Sproat to SGIA, 28th May 1878. G.M. Sproat letterbook No. 3, pp. 243-45. Indian Land Registry, Indian and Northern Affairs Headquarters, Ottawa.

<sup>89</sup> Sproat to SGIA, 18th March 1878. NAC, RG 10, Vol. 3641, File 7567.



In addition to the Province's reticence regarding a contribution to the costs associated with the settlement of the reserve allotments, Mr. Elliott expressed reluctance at permitting Sproat's decisions to be final. In reviewing this conversation in his letter to the S.G.I.A., Sproat raised arguments countering Elliott's insistence that Sproat seek the approval of the Chief Commissioner of Lands and Works before reserves could be finalized. Sproat concluded that he was still hopeful that the Provincial government would "leave the matter virtually in my hands, with an apparent control exercised by the Land Office to satisfy the sentiment of the public in the Province" [underlining as in original].<sup>90</sup>

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

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

Such approval or notice of appeal, must of course be given on the spot, and at the time of my decision in the case of each reserve. It will not be prudent to give any information to the Indians

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<sup>90</sup> Sproat to SGIA, 18th March 1878. NAC, RG 10. Vol. 3641, File 7567.

as to the proposed Reserves until the question has been finally arranged between yourself and me.

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

I presume the whole cost of the appeals will be paid by the Provincial Government.<sup>91</sup>

An official notification of his appointment was sent to Sproat on March 25th, 1878, again confirming that the approval of the Chief Commissioner of Lands and Works would be required, and that unresolved differences would be referred to a Judge of the Supreme Court of B.C.. Also on March 25th, 1878, the Deputy Minister of the Interior, E.A. Meredith, advised Sproat by this letter "not to take any action until notified that the Local Government has approved of the scheme submitted to their consideration by the Government of the Dominion."<sup>92</sup>

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

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<sup>91</sup> Sproat to George Vernon, C.C.L.&W., 19th march 1878. G.M. Sproat Letterbook No. 2, p.1. Indian Land Registry, Indian and Northern Affairs Headquarters, Ottawa.

<sup>92</sup> E.A. Meredith, Deputy Minister of the Interior, to G.M. Sproat, 25th March 1878. NAC, RG 10, Vol. 4405, pp. 126-131.

a proposal:

Will your government regard Sproat's allotments of Reserves as final with merely apparent control by land officers. If so all expenses will be paid by Dominion. If otherwise Commissioner of Lands and Works must accompany Sproat at expense of Province and in case referee is required his expenses must be shared equally.<sup>93</sup>

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

On a memorandum from the Honble Chief Commissioner of Lands and Works dated the 16th day of April 1878 reporting upon the Telegram...and recommending that the following Telegram be sent to the Minister of the Interior by His Honor the Lieutenant Governor. "Government are not prepared to regard settlement of reserves by Sproat as final but will not interfere with his action except in extreme cases. The Dominion Government to pay all expenses of Sproat and half the cost of referee. Answer."<sup>94</sup>

The above-noted telegram was sent on April 18th, 1878.

This proposal was accepted by the Dominion government and notification telegraphed to the Province on April 24th, 1878.<sup>95</sup>

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

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<sup>93</sup> Mills to Lieutenant Governor Richards, April 4th, 1878. BCARS, GR 443, Vol. 27.

<sup>94</sup> BCOC 598/78, April 17th, 1878.

<sup>95</sup> Telegram to the Lieutenant Governor from R. Scott, April 24th, 1878. BCARS, GR 443, Vol. 27.

recommending:

...that all Mr. Sproat's decisions regarding Indian land questions in the Electoral District of Yale be regarded as final excepting those of which he shall have received notice from either Mr. Teague or Mr. Ussher Government Agents to lay over.<sup>96</sup>

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

I have the honor to inform you that there is not any particular grievance that I am aware of to report existing between the Indians and Whites that will call the attention of the Indian Commissioners to arrange in my division of the Yale district, however, in the meantime I have to report that the Indian Chiefs have been labouring under an impression that the commissioners would before this had given them some decided information upon the question relative to their allotments of land. They are also anxious to meet the Commissioners on this important question to arrange with some definite information relative of settling upon some land. A great number of Indians have been constantly enquiring of me about their land and who appear to be very anxious to settle thereon with the intention of improving it.<sup>97</sup>

A reply dated 20th April 1878 from Mr. Ussher, the Government Agent in charge of the Kamloops area of Yale District, and addressed to the C.C.L.&W., described the

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<sup>96</sup> BCOC 615/78, dated April 26th, 1878.

<sup>97</sup> Letter from William Teague, Government Agent, to the C.C.L.&W., 12th April 1878. BCARS, GR 1440, letter 900/78.

situation at Nicola, informing the C.C.L.&W. that there was only one important dispute between the Indians and Whites in his district, but that "other cases of which I have no knowledge may arise when the Indian Commissioner is on the spot - the tribes unsettled with are very reticent."<sup>98</sup>

Consequently, at the time the Province announced the passage of BCOC 615/78 to the Dominion government on the 26th April 1878, stating that Sproat's decisions in the electoral district of Yale would be regarded as final unless Sproat had received notice from either of the local Government Agents, they (the Province) were already aware that at least one of the Agents had no immediate concerns that would impede Sproat's work. And, more significantly, the C.C.L.&W. and Sproat were soon informed that a problem existed at Nicola that was going to require the attention of the Indian Reserve Commissioner.

Coincident with the several-month-long discussion of the Indian Reserve Commissioner's authority in the Yale District that was on-going between the two governments, Mr. Sproat submitted several letters to the Dominion government complaining of his restricted powers of authority.<sup>99</sup> On the

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<sup>98</sup> Letter from John Ussher, Government Agent, to George Vernon, April 20th, 1878. BCARS, GR 868, Box 3.

<sup>99</sup> Sproat to SGIA, 18th March 1878. NAC RG 10, Vol. 3641, File 7567; Sproat to SGIA, 29th April 1878. NAC, RG 10, Vol. 3641, File 7567; Sproat to SGIA, 6th May 1878. NAC, RG 10, Vol. 3663, File 9803.

29th April, 1878, after Sproat had received a copy of BCOC 615/78, he replied to a telegram of 4th April from the S.G.I.A. regarding the finality of his decisions:

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

I have conversed also with His Honour the Lieut Governor.

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

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

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

Knowing, from the Order in Council of your Government, that you did not wish the policy of Canada towards these Indians to be changed, and Knowing that, practically, the above telegraphic arrangement would change that policy, I told the Provincial Government that in my first

conversations on this subject I had gone to extreme length that you would be likely to go to, and that I would not undertake the work, unless my powers were extended to the extent I at first proposed.

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

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

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

His Honour Governor Richards, in conversation, expressed an opinion that I should not press the Provincial Government too much in this matter seeing that they were so dependent on the House of Assembly, and would probably be criticised if they gave away their power of control, and to what His Honour said I listened with due respect, but at the same time the Provincial Government, it seemed to me, had by their proposal to abolish the three-composed commission, relinquished the opportunity of being fully represented in the field in this Indian work, and they did so to save money. It was not reasonable that they should do nothing and pay nothing, and yet retain their powers. At the same time, of course, the facts of the position of the government might fairly be considered, but subject to the necessity that there should be no change of policy towards the Indians, and this latter I could judge of...<sup>100</sup>

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

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

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<sup>100</sup> Sproat to SGIA, 29th April 1878. NAC, RG 10, Vol. 3641, File 7567.

As regards even these latter, I have notified the Prov. Govt that they must let me know in time about them, while I am working up the waggon road from Yale to Lytton, or I will not visit Nicola and other places, but will leave the Indians and the Provincial Govt face to face, the result of which would be that the Indians would take possession of the district.<sup>101</sup>

Sproat's view of BCOC 615/78 was that it largely extended his powers.<sup>102</sup> BCOC may have removed the requirement of seeking the approval of the C.C.L.&W., but it still required Sproat to consult with the local Government Agents. Sproat's correspondence indicates that he was in close contact with the relevant Government Agents, Teague and Ussher.<sup>103</sup> His letterbooks also reveal that he communicated regularly with the C.C.L.&W., the Attorney General and the Government Agents regarding problems in the field, principally those involving non-Indians. While working in the Lytton area, Sproat wrote to the C.C.L.&W. with a request:

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

If the Prov. Govt. will have the goodness, at their earliest convenience, to state the principles on which in their opinion my decision

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<sup>101</sup> Sproat to SGIA, 6th May 1878. NAC RG 10, Vol. 3663. File 9803.

<sup>102</sup> Telegram from Sproat to S.G.I.A., 29th April 1878. G.M. Sproat Letterbook No.2, Indian Land Registry, Indian and Northern Affairs Headquarters, Ottawa.

<sup>103</sup> On 27th May 1878, Sproat wrote to Ussher inquiring if any issues had arisen that should receive the attention of the Provincial government. Sproat to John Ussher, Government Agent, 27th May 1878. G.M. Sproat Letterbook No. 2, p. 129. Indian Land Registry, Indian and Northern Affairs Headquarters, Ottawa.



in this matter would be based, particularly as regards water for irrigation, I will if I approve the principles submit a scheme of adjustment involving the minimum of expenditure and of disturbance to existing interests, and show at the same time, as far as may be, what the practical effect will be on all concerned [underlining in original].<sup>104</sup>

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

A major problem Sproat encountered was brought to his attention by a delegation of Indians Chiefs from the Fraser Valley. It was their concern that lands they wished reserved for their own use were being pre-empted by settlers prior to the Commissioner having visited their area. Repeatedly, albeit unsuccessfully, the Commissioner beseeched the Provincial Government through the C.C.L.&W. to avoid issuing additional pre-emptions until the land question had been fully settled.<sup>105</sup> Sproat spoke also with local land agents, but purchases and pre-emptions continued to be registered, although it is evident that the Province did recognize lands set aside by the Commission and refrained from granting these same lands to non-Indians.

In one situation involving an inter-racial land dispute at Spuzzum, in the Yale District, Sproat wrote directly to

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<sup>104</sup> Sproat to the C.C.L.&W., 24th July 1878. G.M. Sproat Letterbook No.2, pp.185-6. Indian Land Registry, Indian and Northern Affairs Headquarters, Ottawa.

<sup>105</sup> Sproat to the C.C.L.&W., 12th April 1878. G.M. Sproat Letterbook No.2, pp.10-13. Indian Land Registry, Indian and Northern Affairs Headquarters, Ottawa.

the C.C.L.&W., but had the Government Agent deliver the communication so that the two Provincial representatives could discuss the issue personally. In this correspondence, the extent of Sproat's authority was also discussed. He wrote:

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

If these questions are left over the work of the Comr is damaged, the satisfaction of the Indians is lessened and a heavy expense is caused to the Dom Govt...<sup>106</sup>

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

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

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<sup>106</sup> Sproat to the C.C.L.&W., 4th June 1878. G.M. Sproat Letterbook No. 2, pp.146-147. Indian Land Registry, Indian and Northern Affairs Headquarters, Ottawa.

I am very sorry to feel, after two years and a half of the Reserve Comsn work, constrained to say that the indifference and inaction of the prov. Govt. are great difficulties in the way.<sup>107</sup>

With this same letter, Commissioner Sproat provided a copy of a list of matters requiring the attention of the Provincial Government that he had forwarded to the C.C.L.&W., mentioning the length of time that each issue had been before the government.<sup>108</sup>

Meanwhile, Sproat continued allotting reserves throughout Thompson, Shuswap and Okanagan territory. His procedure, at least in the Interior, included observing the desired lands in the presence of the Indians, and preparing detailed Field Minutes<sup>109</sup> showing the surveyors what was to be done and the reasons for it.<sup>110</sup> Minutes of Decisions

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<sup>107</sup> Sproat to the S.G.I.A., 26th November 1878. G.M. Sproat Letterbook No.2, pp.321ff. Indian Land Registry, Indian and Northern Affairs Headquarters, Ottawa.

<sup>108</sup> A similar letter summarizing "Matters Unattended by the Provincial Government," dated 18th April 1879, was sent from Sproat to the C.C.L.&W., with a copy to the S.G.I.A. G.M. Sproat Letterbook No. 3, pp. 171-176. Indian Land Registry, Indian and Northern Affairs Headquarters, Ottawa.

<sup>109</sup> Sproat's Field Minutes describe reserve allotments assigned between June and September 1878 for the following groups, as identified by the Commissioner: Boston Bar; Lytton; Lower Nicola; Nicola River; Nicola-Mameet Reserve; Nicola; Upper Nicola: Nicola and Douglas Lakes. The originals of these Field Minutes are held by the Indian Land Registry, Indian and Northern Affairs, Ottawa, with the exception of the Lytton Field Minute which can be found in NAC, RG 10, Vol. 3666, File 10,176, pt.2.

<sup>110</sup> Sproat to the S.G.I.A., 7th February 1879. G.M. Sproat Letterbook No. 3, pp. 14-15. Indian Land Registry, Indian and Northern Affairs, Ottawa.

recorded the results of the land allotments. Following the compilation of these documents, the surveyors were instructed to conduct surveys of each reserve and to submit their fieldnotes, sketches and plans. These were then to be sent to both governments.<sup>111</sup>

The Commissioner was informed in 1879 that only reserves laid out in conformation with the recently-passed *Land Amendment Act* would now be permitted, but that all surveys would be acceptable if conforming to the Act. This meant that natural topographical features could not be used as boundaries. Consequently, Sproat revised his "decisions" and his "instructions to surveyors" prior to their leaving for the field.<sup>112</sup>

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

The House of Assembly here has passed a resolution that the Local Government shall gazette the decision of the Reserve Commission. The Government have had decisions for nearly two years in their hands, and have not made them public - I believe

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<sup>111</sup> The *Annual Reports of the Department of Indian Affairs*, from 1879 to 1910 contain reports of the Indian Reserve Commission.

<sup>112</sup> Sproat described the process of his work in the Interior in a letter to the S.G.I.A., 27th May 1879. NAC, RG 10, Vol. 3679, File 12,068.

they have never themselves looked at them.<sup>113</sup>

As Sproat's extended powers related only to the Yale District, he wrote several times to the government asking that he be given the same authority in other districts.<sup>114</sup> On March 19th, 1878 he requested from the C.C.L.&W. to be "furnished with the requisite authority from the Provincial government, so far as they are concerned, for prosecuting the adjustment of the Indian land question in the districts not yet examined."<sup>115</sup> At one point he was told that his "powers were ample."<sup>116</sup>

Hampered in his work by not receiving replies to questions addressed to the Chief Commissioner of Lands and Works regarding his powers of authority with respect to future work, Sproat made a personal visit to the C.C.L.&W.

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<sup>113</sup> Sproat to the S.G.I.A., 25th February 1879. NAC, RG 10, Vol. 3679, File 12,068.

<sup>114</sup> The authority of the Joint Indian Reserve Commission and that of Mr. Sproat as sole Commissioner have been scrutinized subsequent to the dissolution of the Commission, and continue to be examined today with respect to Specific Claims. Divergent views have been expressed.

<sup>115</sup> Sproat to the C.C.L.&W., 17th March 1879. G.M. Sproat Letterbook No. 3, pp. 87-88, Indian Land Registry, Indian and Northern Affairs, Ottawa.

<sup>116</sup> Sproat to L. Vankoughnet, D.S.G.I.A., 29th July 1879. G.M. Sproat Letterbook No. 3, pp. 364-66, Indian Land Registry, Indian and Northern Affairs, Ottawa.

and left him with a Memorandum dated 26th May, 1879.<sup>117</sup>  
Sproat then submitted to the S.G.I.A. a copy of the reply of  
the C.C.L.&W., dated the 28th May 1879, and Sproat's  
response dated the 29th<sup>118</sup>. The C.C.L.&W., Sproat noted, did  
not consider that a Provincial OIC was required to empower  
Sproat:

I presume he considers that as single  
Commissioner, succeeding by agreement to the three  
Commissioners, I have the power which they had by  
the original agreements between the two govt.  
contained in the proposal sent by the Sec. of  
State to the Lt. Governor 15 Decr 1875 and  
accepted as per letter of the Lt. Governor to the  
Sec. of State 8 Jany 1876 transmitting a  
Provincial Order in Council.<sup>119</sup>

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

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<sup>117</sup> Sproat to the S.G.I.A., 28th may, 1878. G.M. Sproat  
Letterbook No. 3, pp. 243-45, Indian Land Registry, Indian and  
Northern Affairs, Ottawa.

<sup>118</sup> Sproat to the C.C.L.&W., 29 May 1879. G.M. Sproat  
Letterbook No. 3, p. 242, Indian Land Registry, Indian and  
Northern Affairs, Ottawa.

<sup>119</sup> Sproat to S.G.I.A., 28th May 1879. G.M. Sproat  
Letterbook No. 3, pp. 243-45, Indian Land Registry, Indian and  
Northern Affairs, Ottawa.

the entire proposed railway route were now adjusted.<sup>120</sup> This work was later criticized rigorously by Powell who maintained that there had been no problems on the north end of Vancouver island which required the Commissioner's immediate attention, while conversely, Sproat had neglected the important areas of Cache Creek, Williams Lake and Lillooet. Powell further suggested that many of Sproat's reserves required adjustment, especially since he had allotted some of the coastal ones by examining an Admiralty chart instead of examining the lands "on the spot," as the two governments had agreed upon.<sup>121</sup>

Throughout 1879 and the first few month of 1880, public pressure had mounted to such an extent against the Indian Reserve Commission, and against Sproat personally, that he was eliminated from any role in directing Indian policy.<sup>122</sup> The growing discontent with Sproat was shared by Indian Superintendent I.W. Powell.

In March 1880, a final rift between Sproat and his

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<sup>120</sup> "Summary of Year's Work," submitted by G.M. Sproat, Commissioner, 24th November 1879. *Canada Sessional Paper* (1880):3:141-142.

<sup>121</sup> Report of I.W. Powell, Indian Superintendent, 15th November 1880. *Canada Sessional Paper for 1880-1881*. Vol. 8:117-122. Included in Powell's report is a list of reserves allotted, as stated in Sproat's Minutes of Decision, as well as a list of surveys undertaken by Mohun and Jemmett.

<sup>122</sup> Fisher, *Contact and Conflict*, pp. 198-99. Fisher reviews some of the bitter criticism levelled against Sproat which contributed to his resignation.

colleagues came after Sproat had reported on a meeting held among the Thompson Indians for the purpose of establishing a constitution for the reorganization of their tribal life. Forbes G. Vernon, C.C.L.&W. for the Province, complained in his "Memorandum on Indian Matters in B.C." about many of Sproat's actions, including his involvement with these meetings the interior tribes were holding.<sup>123</sup> Having received instructions to discourage the Indians in this activity, Sproat, who was vehemently adverse to doing so, submitted his resignation:

Under these circumstances, it seems to me that the only proper course open to me is to cease to act in the laborious and responsible position of Reserve Commissioner.<sup>124</sup>

His resignation was accepted by D.S.G.I.A. Lawrence Vankoughnet on 31st March 1880.<sup>125</sup> Sproat continued to act in the position of Indian Reserve Commissioner until July, 1880, during which time he finalized his Minutes of Decisions and oversaw the production of survey maps and field notes. On July 3rd, 1880, however, D.S.G.I.A. Vankoughnet wrote to Sproat advising him to complete his

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<sup>123</sup> "Memorandum Upon Indian Matters in British Columbia," by Forbes G. Vernon, December 1879. NAC, RG 10, Vol. 3705, File 18,019.

<sup>124</sup> Sproat to the S.G.I.A., 3rd March 1880. NAC, RG 10, Vol. 3711, File 19,581.

<sup>125</sup> L. Vankoughnet, D.S.G.I.A. to Sproat, 31st March 1880. NAC, RG 10, Vol. 19,581.



work by the month's end.<sup>126</sup>

### 3.2.3 The O'Reilly Indian Reserve Commission

For a few months following the resignation of Sproat the two governments debated the relative qualifications and merits of individuals being considered to replace the Indian Reserve Commissioner. Among the contenders was Peter O'Reilly, who in addition to being a County Court Judge and Stipendiary Magistrate, was the brother-in-law of Joseph Trutch. O'Reilly was selected.

A draft Order-in-Council was prepared by the Acting Minister of the Interior sometime in July 1880 outlining the proposed mandate of the Commissioner.<sup>127</sup> Finally, on July 19th, 1880, Privy Council Order 1334 appointed "Patrick" [*sic*, Peter] O'Reilly<sup>128</sup> as Indian Reserve Commissioner. With respect to O'Reilly's duties, the PCOC embodied a recommendation submitted by Joseph Trutch to Sir John A.

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<sup>126</sup> Vankoughnet to Sproat, 3rd July 1880. NAC, RG 10, Vol. 1022.

<sup>127</sup> Acting Minister of the Interior to the Privy Council, July 1880. NAC, RG 10, Vol. 3711, File 19,581.

<sup>128</sup> Historians have argued that Peter O'Reilly's affinal relationship to Trutch, and the new Commissioner's concern with "the public interest" (referring to the appeasement of settler's demands), were in accord with those of Trutch, himself, and others in the Walkem government. See Fisher, *Contact and Conflict*, pp.198-201.

Macdonald on 19th May 1880.<sup>129</sup> The final PCOC read as

follows:

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

That his Department has recently been advised by the Hon. J.W. Trutch, Confidential Agent at Victoria of the Dominion that after consultation with the Hon. Mr. Walkem, Chief Commr of Lands and Works & Dr. I.W. Powell, Indian Superintendent for British Columbia, they had agreed as to the suitability for the position of Patrick [sic] O'Reilly...

That Mr. Trutch suggests that the Reserve Commission instead of being placed, as at present, under the direction of the Indian Superintendent for British Columbia should act on his own discretion in furtherance of the joint suggestions of the Chief Commissioner of Lands and Works representing the Provincial Government, and the Indian Superintendent, representing the Dominion Government, as to the particular points to be visited, and Reserves to be established; and that the action of the Reserve Commissioner should in all cases be subject to confirmation by those Officers; and that failing their agreement any and every question at issue between them should be referred for settlement to the Lieutenant Governor, whose decision shall be final and binding.<sup>130</sup>

Instructions to O'Reilly drafted by Lawrence

Vankoughnet [?], 9th August 1880, advised the new

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<sup>129</sup> Joseph W. Trutch to Sir John A. Macdonald, 19th May 1880. NAC, RG 10, Vol. 3711, File 19,581.

<sup>130</sup> PCOC 1334, dated 19th July 1880. NAC, RG 10, Vol. 3716, File 22,195.

Commissioner to:

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

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

...The Government consider it paramount importance that in the settlement of the land question, nothing should be done to militate against the maintenance of friendly relations between the Government and the Indians, you should therefore interfere as little as possible with any fur trading posts, settlements, clearings, burials places and fishing stations occupied by them and to which they may be specially attached...You should in making allotments of lands for Reserves [underlining in original] make no attempt to cause any violent or sudden change in the habits of the Indian Band for which you may be setting apart the Reserve land; or to divert the Indians from any legitimate pursuits or occupations which they may be profitably following or engaged in; you should to the contrary encourage them in any branch of industry in which you find them so engaged...<sup>131</sup>

It was Indian Superintendent Powell's opinion,

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<sup>131</sup> Vankoughnet (?) to Peter O'Reilly, Indian Reserve Commissioner, 9th August 1880. NAC, RG 10, Vol. 3716, File 22,195.

expressed to the S.G.I.A. on August 23rd, 1880, that the restrictions on O'Reilly's authority were antithetical to a quick and satisfactory resolution of the Indian land allotments. Powell suggested that "the Yale District, which includes Nicola and Okanagan, could not have been settled satisfactorily to this Department upon the plan now arranged." The inference was that Powell considered Sproat's allotments in the Yale District to be final, and that the same extensive powers should be granted to the new Commissioner.<sup>132</sup>

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

Coincident with the appointment of O'Reilly was the establishment of Indian Agencies in British Columbia, with each district to be administered by an Indian Agent who lived among the Indians and was accessible to them. The Agents were to serve under a single superintendent, responsible to the Minister of the Interior. By an Order-in-Council approved 3rd April 1881, six local Agents were appointed, three for Vancouver Island, and one each for the

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<sup>132</sup> I.W. Powell, Indian Superintendent, to the S.G.I.A., 23rd August 1880. NAC, RG 10, Vol. 3716, File 22,195.

lower Fraser River, Kamloops and Okanagan.<sup>133</sup> Powell was retained as Indian Superintendent.

For the next eighteen years,<sup>134</sup> Peter O'Reilly toured the Province allotting lands where needed, adjusting Sproat's work, and reducing reserves thought to be excessive for the Indians's actual requirements.<sup>135</sup> The procedure that O'Reilly was to follow for the approval of reserve assignment was not formalized, although he did establish a customary process. After visiting a Native community, meeting with its representatives and allotting lands, O'Reilly forwarded for approval "Minutes of Decision" to both the Chief Commissioner of Lands and Works, as representative of the Province, and the Indian Superintendent of B.C. as representative of the Dominion. The C.C.L.&W. would then inform O'Reilly whether or not the reserves were acceptable or not. The Indian Superintendent does not appear to have rejected any of the O'Reilly

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<sup>133</sup> Cail, *Land, Man and the Law*, p.192; The announcement of the appointment of the Agents was published in the "Report of the Department of Indian Affairs," *Canada Sessional Papers*, 4th Parl., 4th sess., 1882, no.6, p.139. Reports submitted by the Indian Agents were published annually in the "Report of the Department of Indian Affairs," *Canada Sessional Papers*.

<sup>134</sup> O'Reilly's work was suspended temporarily in 1885 due to an injury he sustained prior to leaving for the field. *Canada, Sessional Paper*, 5th Parl., 4th sess., 1886, p.iv.

<sup>135</sup> During this time O'Reilly kept daily diaries noting his whereabouts and including a brief mention of his activities. BCARS, Microfilm 12A & 13A.

allotments. Once approved, the reserves could be surveyed. The completed survey plans were then signed by the C.C.L.&W.. In the cases where O'Reilly's initial allotments were rejected, he adjusted the reserves in accordance with instructions from the C.C.L.&W. and resubmitted an amended Minute.

During his first year (1880), Commissioner O'Reilly completed some of the assignments left unfinished by Sproat, such as those around Yale.<sup>136</sup> Additionally, he visited the area between Quesnel and Lytton where profound problems awaited him, since all good land had already been taken up by settlers. In one instance, the Dominion Government purchased several pre-emptions in order to allot a reserve of sufficient size, as throughout the Chilcotin and northern Shuswap areas the situation was the same--the best lands were gone. Moreover, the chiefs alleged that several ancestral settlements were now occupied by non-Indians. O'Reilly marked off graveyards within these pre-emptions but did not attempt to evict the settlers from these settlements

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<sup>136</sup> A memorandum prepared for the Deputy Minister of Indian Affairs by Sam Bray, dated 13th March 1888, tabulates the reserves established or partly defined by Commissioner Sproat, as well as the number of these lands for Bands that Commissioner O'Reilly revised, either completely or partly. Additionally, Bray provides an indication of the number of reserves approved by the C.C.L.&W. The handwritten manuscript of this tabulation can be found in: Minutes of Decision and Correspondence--O'Reilly, File 29858-4, Vol. 5. Indian Land Registry, Indian and Northern Affairs, Ottawa.

pursuant to the *B.C. Land Act*.<sup>137</sup>

Fisher<sup>138</sup> points out that O'Reilly's procedures "were in marked contrast to the meticulous care with which Sproat worked," a style Fisher characterized as "a return to the earlier method of rushing into an area, making a decision with little or no consultation, imposing it on the Indians, and then wondering why they were dissatisfied."

The early years of O'Reilly's work as Commissioner were relatively uneventful, but by 1884, with the increase in numbers of settlers and the changes in governments, the question of the size of Indian Reserves once again came under review. As noted also by Fisher<sup>139</sup>, "at a meeting of the Legislative Assembly on 14th January 1884, a resolution was passed recommending to the Dominion Government that it rearrange Indians reserves so that unused agricultural or timber lands could be thrown open to settlers." Even remote areas of the Province were now in demand. With the completion of the Canadian Pacific Railway in 1886, the white population was growing at an accelerating pace, surpassing, for the first time in B.C., the ever declining

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<sup>137</sup> O'Reilly to the S.G.I.A., 22nd September 1881. "Report of the Department of Indian Affairs," *Canada Sessional Paper*, 4th parl., 4th sess., no. 6, 1882, pp. 177-195.

<sup>138</sup> Fisher, *Contact and Conflict*, pp. 200-1.

<sup>139</sup> Fisher, *Contact and Conflict*, p. 200.

Native population.<sup>140</sup> Increasingly, words appeared in Provincial correspondence of this time referring to undeveloped Reserve land in a manner denoting displeasure with the Indians's non-White land use: "uncultivated lands," "immense areas of land lying in a wild, waste condition."

Historians now regard the tenure of O'Reilly as the period in which reserve allocations followed Provincial Indian policy--driven mostly by the interests of settlers--leaving mass Indian dissatisfaction in their wake.<sup>141</sup>

An example of the Province's view on reserve allocations was evident during an interview between O'Reilly and Smithe, Chief Commissioner of Lands and Works, early in 1886. O'Reilly was informed that Smithe's predecessors Walkem and Beavan refused "to sanction the reserves made by Mr. Sproat, on account of their vast extent, an opinion with

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<sup>140</sup> Fisher, *Contact and Conflict*, pp. 201-2.

<sup>141</sup> Tennant, *Aboriginal Peoples*, pp. 50-1. Although Tennant argues that reserve reductions were the hallmark of O'Reilly's reserve allocations, he has relied substantially on the work of Fisher, *Contact and Conflict*, pp. 180-211, to support his conclusion. A thorough study focusing on the O'Reilly years remains to be done. Concerning Indian grievances, Tennant (pp.55-67) does present a more detailed description of the Indian delegations visiting Ottawa and Victoria, the increasing number of Native gatherings that were being held at this time for protesting the government's Indian land policy, and the eloquently-stated complaints aired by the Native representatives attending the joint Provincial-Federal North Coast Enquiry of 1887. This public enquiry is mentioned briefly in the work of Cail, *Land, Man and the Law*, p.225. Sixty pages of letters and reports of the enquiry, known as the Planta-Cornwall Commission, were published in the *B.C. Sessional Papers*, 1888.



which he fully concurred in."<sup>142</sup> As pointed out by Cail and Fisher<sup>143</sup>, Smithe's criticism extended occasionally to O'Reilly, himself, such as in the Kootenay district where the Commissioner was accused of having "over-estimated the requirements of the Indians and under-estimated those of the whites." Generally, though, O'Reilly's allotments were approved by the Provincial Government, despite the vocal dissatisfaction of the Indians. At one point, Smithe, comparing Peter O'Reilly to the previous Commissioner, stated that O'Reilly showed "a much fairer and more accurate appreciation of the duties and responsibilities of the office."<sup>144</sup> Ironically, in defence of the Kootenay allotments, which Fisher<sup>145</sup> characterizes as being illustrative of O'Reilly's "customary clumsiness," O'Reilly wrote to Smithe insisting that the seemingly-large allotments were necessary in light of the Kootenay Indian people's close relationship to the American tribes who had vast reservations.<sup>146</sup>

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<sup>142</sup> Peter O'Reilly, Indian Reserve Commissioner, to the S.G.I.A., 10th May 1886. NAC, RG 10, Vol. 3704, File 17,867.

<sup>143</sup> Cail, *Land, Man and the Law*, p.220; Fisher, *Contact and Conflict*, p. 203.

<sup>144</sup> Smithe to O'Reilly, 29th November 1884. B.C. *Sessional Papers*, 1885.

<sup>145</sup> Fisher, *Contact and Conflict*, p.203.

<sup>146</sup> O'Reilly to Smithe, 10th December 1884. B.C. *Sessional Papers*, 4th Parl., 3rd sess., 1885, p.xxi, following p.410.

Much of O'Reilly's time was spent reviewing earlier allotments and ascertaining if reduction was feasible. One issue that required investigation was the setting aside of "Commonages" by the former Commissioner, Mr. Sproat. This issue was raised by the Provincial Government, who when asked to establish a new reserve at Westbank for a branch of the Okanagan Indians, took the opportunity to complain about the size of existing Reserves. Being uncertain if the lands were actually needed by the Indians, the Federal Government asked Commissioner O'Reilly to visit the Interior and report back before Canada would agree to any reduction of the Indian Lands. O'Reilly's investigation of the Okanagan Commonages in 1888, and later the Nicola (Douglas Lake) Commonage in 1889, resulted in their disallowance. He found their reserves ample, and the grasslands overgrazed.<sup>147</sup> Amidst protestations from the Native ranchers, the Commonages were opened to pre-emption.

O'Reilly was guided in his allotments by his original instructions to consider the "legitimate pursuits or occupations which they [Native people] may be profitably following or engaged in." It is common for the Commissioner's reports to describe the quality and purpose of his allotments with respect to the activities of the

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<sup>147</sup> O'Reilly to the S.G.I.A., 5th December 1888. NAC, RG 10, Vol. 3704, File 17,867. O'Reilly to the S.G.I.A., 23rd November 1889. NAC, RG 10, Vol. 1277, pp. 236-240.

individual Bands for whom he set aside reserves. In the Interior, farming and stock-raising dominated economic endeavours and O'Reilly's allotments reflected this change from traditional subsistence activities. On the Coast, however, where agricultural lands were not as readily available, O'Reilly recognized the aboriginal people's dependence on marine resources, particularly salmon, by assigning fishing reserves and, in the first few years of his appointment, by assigning an exclusive right to fish in areas apart from or adjacent to reserves. An extended correspondence between the Department of Indian Affairs and the Department of Fisheries focusing on these latter assignments resulted in O'Reilly's discontinuance of reserving fisheries for "exclusive use" after 1882. None of the fishery allocations forwarded to the Department of Fisheries for approval were ratified.<sup>148</sup>

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

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<sup>148</sup> This point is noted in the published (1993) Court of Appeal Judgement of Mr. Justice Hutcheon, *The Queen v. N.T.C. Smokehouse*. CA 011962, Vancouver Registry, where it is stated: "The historical documents filed on behalf of the Canadian National Railway Company, establish beyond question the adamant stand of the Department against such grants. The public was not to be deprived of the right to fish in tidal waters."

traffic" in salmon.<sup>149</sup> By 1891, the seemingly-benevolent attitude expressed in O'Reilly's original instructions, had ceased to exist, and D.S.G.I.A. Lawrence Vankoughnet informed O'Reilly to impress upon the Indians:

...the fact that in extending to them the privilege which they at present enjoy, of taking fish for their own use whenever and howsoever they choose, such permission is not to be considered by the Indians as a right, but as a privilege extended to them as an act of grace on the part of the Government which may at any time be withdrawn should it be found that the same is abused, or used for other purposes than those for which it is granted, or in such a manner as to embarrass the action of the Department of Fisheries, and interfere with its Officers in the performance of their duties.<sup>150</sup>

With the assistance of the local Indian Agents, O'Reilly continued allotting reserves throughout British Columbia. After 1890, he was aided in his work by A.W. Vowell, the new Indian Superintendent in B.C., following the resignation of I.W. Powell.<sup>151</sup> Yet the process of assigning reserves was prolonged. Cail<sup>152</sup> observes that by 1885, 621

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<sup>149</sup> *Canada Gazette*, December 1st, 1888; The 1990 *Sparrow* case found that Native people have a right to fish for food and ceremonial purposes, and that Canada has a fiduciary duty to protect the Native people's access to the fishery as a first priority among users.

<sup>150</sup> Lawrence Vankoughnet, D.S.G.I.A., to Peter O'Reilly, 2nd September 1891. NAC, RG 10, Vol. 11011.

<sup>151</sup> Titley, *A Narrow Vision*, p.137.

<sup>152</sup> Cail, *Land, Man and the Law*, p. 224. Cail's figures come from the *B.C. Sessional Paper*, 4th Parl., 3rd sess., 1885, pp. 402-412.

reserves had been allotted, but of these, while only 477 had been surveyed, only 239 had been approved. By 1897, the majority of the reserves had been granted, but the funds provided by the Dominion Government for surveying these lands had been exhausted for several years. As a result, the survey crews were discharged with work left undone. At that time, a total of 718,568 acres of land had been allotted as Indian Reserve, and as calculated by Titley<sup>153</sup>, with an Indian population of 23,620, the acreage per capita amounted to 30.42 acres. The distribution and quality of these lands was extremely uneven.

Peter O'Reilly continued as Indian Reserve Commissioner until his retirement in 1898.<sup>154</sup> He was succeeded by Indian Superintendent Vowell who assumed the position as Indian Reserve Commissioner in addition to his regular duties.<sup>155</sup>

#### 3.2.4 The Vowell Indian Reserve Commission

Little remained to be done when A.W. Vowell became Indian Reserve Commissioner in 1898. Most reserves had been allotted, although Vowell occasionally went into the field

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<sup>153</sup> Titley, *A Narrow Vision*, p.137.

<sup>154</sup> Pylypchuk, "Organizational History," p.33.

<sup>155</sup> The recommendation that A.W. Vowell assume the position of Indian Reserve Commissioner came from a memorandum prepared by J.A. McKenna and submitted to the Minister of the Interior (?), 10th December 1897. This same Memorandum reviews the history of the Commission and its current state. NAC, RG 10, Vol. 3716, File 22,195.

to assign additional areas as fisheries, hay meadows or gardens, and to resolve land disputes between neighbouring Bands. Not all of Vowell's suggestions concerning reserve allotments were approved. For example, at the request of the Kamloops Indians, Vowell recommended the reservation of a 40-acre ancestral fishing and camping site at Trout Lake, only to be told that the Department of the Interior objected to the reserve on the grounds that it was required for a permanent timber reserve for protecting the water supply.<sup>156</sup>

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

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

established a joint ownership which made it impossible for the Dominion to dispose of any agricultural or timber lands reserved but not required by the Indians without the concurrence of

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<sup>156</sup> J.D. McLean, Secretary, Department of the Interior, to P.G. Keyes, Secretary, Department of the Interior, 19th August 1904. Keyes to J.D. McLean, 3rd October 1904; A.W. Vowell, I.R.C., to J.D. McLean, 15th December 1904; McLean to Keyes, 26th January 1905. Minutes of Decision - Vowell, File No. 29858-8, Vol. 9. Indian Land Registry, Indian and Northern Affairs, Ottawa.

the province. As a result, no excess Indian lands had ever been sold in British Columbia.<sup>157</sup>

It was the position of British Columbia that the Provincial Crown owned the land while the Indians had a right of use to Crown lands "reserved" for them for so long as they made use or benefit of the land.<sup>158</sup> The Federal Government took the position that they had the right to sell excess land and use the proceeds for the administration of Indian Affairs. The result was that Canada found it impossible to obtain surrenders, as the Bands would receive no benefit.

In 1901, Premier James Dunsmuir of British Columbia submitted a request to Canada for the negotiation of "Better Terms," [of Union] including a motion that reserves be re-assessed with respect to their size.<sup>159</sup> By April of 1901 discussions had escalated to a point where the Province recommended the formation of yet another Commission to resolve the impasse. Clifford Sifton, Minister of the Interior in the Laurier government, responded to a letter from Premier Dunsmuir, agreeing that:

while I consider the position of both governments in respect to lands set apart for Indians rather unsatisfactory, I fear that the remedy suggested

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<sup>157</sup> Cail, *Land, Man, and the Law*, p.230.

<sup>158</sup> David Borthwick, "The Provincial Reversionary Interest in Indian Reserves: A Unique Proposition" (1975). Copy held by Specific Claims West Reference Library, Indian and Northern Affairs, Vancouver.

<sup>159</sup> Dunsmuir to Sifton, 2nd February 1901. *B.C. Sessional Papers*, 9th Parl., 2d sess., 1901, p.581.

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

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

The reversionary right, which is an impediment to the administration of Indian Affairs in British Columbia, was not created of the motion of the Province. It is clear that the Provincial authorities, when negotiations were entered into for the setting aside of reserves for Indians, were prepared to set apart what they considered a reasonable acreage of land for each band without any intimation of a reversion. It was on the suggestion of Mr. Duncan, a missionary, that the unsatisfactory arrangement out of which the reversionary right grew was made.<sup>160</sup>

The reversionary interest issue intensified in 1905 with respect to the Tsimshian Reserve on Kaien Island in Prince Rupert Harbour. This situation has been described

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<sup>160</sup> Clifford Sifton, Minister of the Interior, to James Dunsmuir, Premier of British Columbia, 2nd April 1901. BCARS, GR 441, Vol. 16, File 130/01.



thoroughly by Cail<sup>161</sup> and by Shankel<sup>162</sup>. They report that during the previous year, the Province had been asked by the Grand Truck Pacific Railway to sell a portion of the Reserve for railway purposes. The Province advised them that the Federal Government would have to be willing to remove the Indians from the reserve before any action could be taken. However, when put before the Dominion Government, Canada approved a PCOC dated 2nd April 1906 requesting that the Province waive their reversionary interest in these lands. B.C. refused as it would receive no benefit from the sale. The Province, citing the 10th November 1875 agreement that "any land taken off a Reserve shall revert to the Province," continued to take a uncompromising stance. Moreover, Victoria was of the view that B.C. retained the reversionary right to reserves laid out within the Railway Belt prior to the creation of the Belt in 1884.<sup>163</sup> Believing that the reversion to the Province was to occur only in those cases where a Band became extinct, and that Canada held all interest to lands within the Railway Belt, the Federal government turned to the Department of Justice for a legal opinion.

Before the legal opinion had been obtained, Victoria

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<sup>161</sup> Cail, *Land, Man and the Law*, pp. 228-230.

<sup>162</sup> Shankel, "The Development of Indian Policy," pp. 214-221.

<sup>163</sup> Titley, *A Narrow Vision*, p.148.

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

It is further abundantly clear that the title of the Indians in these reserves is simply a right of use and occupation, and that the Dominion Government holds no proprietary rights on their reserves (and this letter was admitted by the Minister of the Interior in debate in the House of Commons on 25th of January last) and that when any Indian Band or Nation abandons or surrenders its rights or title to reserve, the entire beneficial interest in such reserve or portion of a reserve, immediately becomes vested in the Province, freed from incumbrances of any kind. The cases of *St. Catherine's Milling and Lumber Company v. the Queen*, 14 App. Cas, 46 and *Ontario Mining Company v. Seybold*, 1903, App. Cas, 73 and certain dicta in *Attorney General of Canada v. Attorney General of Province*, 1898, A.C. 700 it is submitted settle this conclusively.<sup>164</sup>

Recommendation was also made that:

... wherever any Indian Reserve, or portion of a reserve, has been leased, surrendered, granted or transferred, immediate steps be taken to assert and establish the right and title of the Province to such reserve or portion of reserve. And further that the Dominion Government be asked to confer with this Government on the question of Indian Reserves generally and to readjust the same, and arrange for the reversion to the Province of all surplus lands over and above what are reasonably sufficient for the use of the Indians.<sup>165</sup>

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<sup>164</sup> BCOC 125/1907. Copy of a Report of a Committee of the Honorable Executive Council, 28th February 1907. BCARS, GR 441, Vol. 149, f.2.

<sup>165</sup> *Ibid.*

Around April of 1907 the Province approved a Minute of the Executive Council calling for the return to the Province of 175,200 acres of land which in their opinion was in excess of what was sufficient for the Native residents of B.C.<sup>166</sup>

Subsequent to both Ottawa's and Victoria's review of the reversionary issue and the impasse concerning reserve allocation, a letter was sent from A.B. Aylesworth, Minister of Justice for Canada, to A.J. Bowser, K.C., Attorney General for B.C. In this letter, Aylesworth acknowledged receipt of a letter of April 1st, 1908 with respect to a proposed reference to the Supreme Court of British Columbia for the decision of questions affecting Indian Reserves in British Columbia. Aylesworth, however, recommended that the decision be put to the Supreme Court of Canada instead. In this same communication, the Minister recommended suspension of any dealings with reserves pending the settlement of the dispute.<sup>167</sup> This was in accordance with a decision of the Executive Council of B.C. and relayed to Ottawa in a letter from Commissioner Vowell to the D.S.G.I.A. dated 3rd April 1908, in which he stated:

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<sup>166</sup> Minute of the Executive Council, Government of B.C. BCARS, GR 441, Vol. 27, Folio 154ff.

<sup>167</sup> Letter from A.B. Aylesworth, Minister of Justice, Ottawa, to the Honourable, A.J. Bowser, K.C., Attorney General, Victoria, B.C., April 1908. BCARS, GR 429, Box 16, f.4, Item 2891/08. As both Ottawa and Victoria contemplated reverting to the Courts to have this matter resolved, the McBride Government in B.C. refused to co-operate in the laying out of any new reserves.

...owing to the unsatisfactory state of affairs between the Dominion and the Province in relation to the question of Indian Reserves, the Executive considers it inadvisable in the meantime to make further allotments.<sup>168</sup>

Although the notice effectively ended Vowell's role as Indian Reserve Commissioner, he stayed on with the department as Indian Superintendent until his retirement in 1911.

Without the involvement of Canada, the Executive Council of the Province, by BCOC 511/1908, prepared a list of questions concerning aboriginal title which they referred to the Supreme Court of B.C. for a ruling. But as Shankel<sup>169</sup> explains, the absence of the Dominion Government in the proceedings meant that when the question came before the Court, the case was not recognized, inasmuch as there was no agreement between the two governments as to what questions affecting Indian lands *could* be referred to Court. It had first to be decided what rights the Indians possessed before it could be determined how much land they could hold.

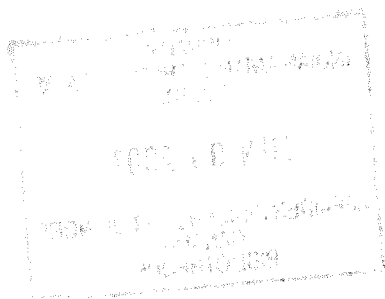
An additional and final step ending the Indian Reserve Commission was the agreement of the two governments to proceed to the Supreme Court of Canada for resolution of the stalemate. For the next several years, the Federal and

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<sup>168</sup> This decision of B.C.'s Executive Council was announced in a letter from Vowell to the D.S.G.I.A., dated 3rd April 1908. See also Titley, *A Narrow Vision*, p.139.

<sup>169</sup> Shankel, "The Development of Indian Policy," p.220.

Provincial Governments debated the nature of the questions to be resolved. As reported by Titley<sup>170</sup>, "the dispute between the two governments raged until after the federal election of 1911." In May 1911, the Federal government, failing to conclude an agreement with the Province with respect to the determination of the questions, decided to proceed to the Exchequer Court of Canada in the hope of finding resolution.<sup>171</sup>



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<sup>170</sup> Titley, *A Narrow Vision*, p.139.

<sup>171</sup> Shankel, "The Development of Indian Policy," pp. 221-222.





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