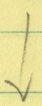


301- Dec 6. '72

Helen MacIsaac

731-4084

Map



Masset
brig

1. Blackboard NISHGA CASE
"Aboriginal Title"

2. Supreme Court - now writing judgments. Jan decision
- heard case Nov. '71 over a year
- deciding one simple thing: whether Nishga's
aboriginal title to their tribal territories
has been lawfully extinguished

Katwanoocool
1910

3. Katwanoocool - The Indians owned the lands

- poles stood as deeds to territories

- Government agreed - published book

History, Territories and Laws of Katwanoocool

1957

- Reserves - now only little patches;

what happened?

1971

When, how was our native title extinguished?

Squamish
Kamlayelt

4. When? did they take the land from us? (legally)
How?

a) Sovereignty? discovery? settlement

- Britain always recognized native rights.

Indian title remains as a burden on sovereignty

Royal Proclamation of 1763 } that's what
Treaties } they are about

b) Conquest? in a "just" war? NO

c) Treaty? the usual way of exting. native title
In BC, only V.I. & Treaty 8

→ Map

Most of BC non-treaty

Polson

Map
↓

- d) Reserves? 'put on reserves'?
- basis for reserves never negotiated (reserves without treaties)
 - the actual transactions - explicitly said that title was not involved.

That was a separate matter

Then when was the land taken, and how

- e) Laws? ^{→ No law ever did it expressly.} legislation competent to extinguish native title (do job of treaty?)
- Crown Proclamation? (Douglas, 1858)
 - Statutes having to do with land?
 - Robbing away of rights by all laws?

Indian View:

- 1) Aboriginal title has not been ^{been extinguished} extinguished (Meeha)
- 2) Aboriginal rights have been eroded away
∴ Indian Claims Commission - Compensation
E. Dove Fulton (Union)
- 3) now - statutes say they will be involved too

How seen

Map

5 Why the Meeha? - they have always taken the lead.

- a) 1887 Commission
- 1887 Conditions - Christian ^{sidewalks} ^{street lighting} ^{fire brigade}
- did not want - Agent
 - Reserves

Read speeches

b) 1910 Sir W. Laurier Peace Report

"The only way to settle this question... is by a decision of the Judicial Committee, and I will take steps to help you."

c) 1913 Miska Petition to Privy Council in London
1914 Government's counter offer

d) Allied Tribes of BC 1910-1927

e) 1926 Joint Senate House Special Committee

Indians have not established abot. title

BC Special \$100,000/yr

Allied Tribes deed, so did land question

a lot of water flowed down the old Nass R.

f) 1955. Miska Tribal Council reformed
considered negotiating, or going to court

g) 1960's attempts to Unify BC Indians
and negotiate with L'Amq.

Confederation fell apart

h) 1967 Tom Berger → BC Supreme Court

Who?

Prof Duff testified - made way to safeguard
Caldor vs. Att. Gen. Kitwancool

Who are they?
THIS LAND

What do they ask?

[Statement of Claim]

read it

- not compensation

Nass
Scene

Miska
tribe

Kitwancool

Now
Amend

7. Decision - BC Supreme Court (Kould)
- against Mchga
- if an aboriginal title had existed,
it was extinguished in Colonial times
by proclamations and statutes involving
land.

8. BC Court of Appeal

Davey
Tyson
McBean

[May '70] - strongly against Mchga.

1. Aboriginal title is not a principle embodied in laws binding this court.
2. Royal Proclamation has never applied.
3. Colonial Policy extinguished any title
- Indians become trespassers

9. Supreme Court of Canada Nov. 71

Factum - the same old case

What if they were?

- Still can't sue ^{Crown} for compensation without ^{Crown} government consent
- Still have to defend aboriginal title and its value today

Probably - Indian Claims Commission, @ would negotiate for:

- adequate land
 - compensation for lands given up
 - whatever native rights can be kept.
-
- full rights of citizenship

4. Berger's Case: (Factum)

Statement of Facts

Argument (giving legal cases of highest courts, cases NA, AF, NZ)

- what is being claimed (^{declaration} not compensation)
- the (legal) concept of aboriginal title is embedded in British Law
- aboriginal title arises from aboriginal occupancy
{ anthropological evidence on facts of occupancy
and concepts of ownership

- Royal Proclamation confirmed it
it applied
it came to apply as British laws reached
into "Indian territories"

Statutes setting up Colonies refer to "Indian Territories"

- The Aboriginal Title has never been extinguished
Colonial legislation did not
Crown grants in Haida territory did not

- Treaty # 8 acknowledge Indian Title in B.C.

- DNA Act recognized Indian title
and put it beyond legal jur. of Province

p66 Order requested