

Niska (Nishga) "Land Question"

The basic question has finally got into the courts  
 1. Statement of Claim In the Supreme Court of B.C.

"aboriginal title"

Preamble  
 Secs 8  
 10  
 12 Royal Procl.  
 13, 15  
 19.  
 20  
 Wherefore...

2 The Nishga people

4 tribes                      2 at mouth  
    2 upriver

4 bands or villages (mission villages) est. 1870's

Kincolith	826
Greenville	669
Canyon City	129
Gitlakdamiks	<u>749</u>
aryanch	2373 (but 837 or 35% live off reserve)
	inc 2.7%/yr.
In 1910 were	800.

3 The Land Question (deal with whole thing later.  
 (now only a survey of Nishga part.

It involves the simple fact, <sup>of history</sup> that the British came and took sovereignty over the lands without recognizing or extinguishing the native interest.

1. Area became part of the Crown Colony of B.C. in  
1866 (as we know it)  
1871 - Confederation

2. Confederation - 2 different policies

a) Canada - treaties

b) BC - no recognition or treaties } they made a deal  
RESERVES

p 125

Indians own voice began to be heard - Kishya leaders

3. 1887 Commission - N Han C p. 127

Revised  
many  
out

Commission

p 126, 128 4 Laurier speech 128 Dufferin 126

p 128 5. 1913 Kishya petition to Privy Council 128-9.

p 129 6. 1926-7 Joint Committee (BC Special)

7 1955 Kishya tribal council

1968 Moore

8 1969 Calder v. Attorney general

Could

Appeal Court

What Laurier talked about was dead already.

What is aboriginal title?

# 'Justice on trial' in B.C. Indian case

Nov 29  
- 71

By ALEX VOLKOFF  
Special to The Sun

OTTAWA —British justice is on trial in the land bid by B.C.'s Nishga Indians being heard before the Supreme Court of Canada today, says Frank Calder, MLA for Atlin.

"The United States Senate recently gave \$925 million to the natives in Alaska," he said in an interview today.

"I am most gratified the U.S. has upheld British justice, but why has this country not done so?"

Calder, head of B.C.'s Nishga Tribal Council and a New Democratic Party MLA, is a plaintiff in the appeal.

The Nishga suit is for a declaration that their aboriginal title to 4,300 square miles in the Nass River valley has never been lawfully extinguished.

"We are fighting a giant," said Calder. "We are fighting all the owners of natural resources in B.C. and the provincial government.

Calder said the Nishgas do not want the land returned to the Indians, "but please recognize we are the original owners of the land and pay us for it."

He would not put a price on the 4,300 square miles under contention but said, "once we have won the case here, our tribe will start determining the price."

And if the case is dismissed?

"We'll go to the United Nations and the International Court at The Hague if we have to."

Calder added he has received letters of support from minority groups in Africa, Sweden and New Zealand.

Some of the strongest opposition the Nishga tribe has encountered is among their fellow Indians on the executive of the National Indian Brotherhood.

The NIB was opposed to the tribe bringing the case to court in the first place, claiming the aboriginal rights question is a political, not a legal, one.

But Calder said: "We're fed up with negotiations. We're fed up with hearings. We're fed up with commissions.

"Now we're before the top dog and it's going to be decided: That land — is it mine or yours?"

**NISHGA'S CLAIM****Indian law code cited in court**

By ALEX VOLKOFF  
Special to The Sun

OTTAWA — Before the white man came, North American Indians had sophisticated legal conceptions of their own, the Supreme Court of Canada was told today.

Lawyer Tom Berger opened the second day of Nishga Indian appeal by telling the court that Indian laws, though differently developed, provided rights equal to those arising under English law.

The Nishga claim is for recognition of aboriginal title to 4,300 square miles of Nass River Valley in Northwest B.C.

If their suit against the attorney-general of B.C. is successful it could have far-reaching consequences for all non-treaty Indians in Canada, including those in Quebec and the Northwest Territories.

"The fact is the Crown made treaties with the Indians of the eastern woodlands and the prairies to extinguish their title," said Berger.

"It is therefore absurd to say that the Nishga people have not developed legal conceptions which could attract legal definitions under English law."

Berger opened his case for the defence Monday by stating the Indians are not claiming compensation against the province.

"Their claim is for a declaration that their aboriginal title has never been lawfully extinguished," he said.

He defined the case further by identifying the issues as:

1. Whether the Nishga tribe had aboriginal title to territory in northwest B.C. and
2. If they did have title, was it extinguished by the old colony of B.C.?

This aboriginal right stems from the Nishga tribe's habitation "from time immemorial" of the territory under question, he said.

Berger brought forward evidence by Professor Wilson Duff of the University of B.C. who told the B.C. Supreme Court that "patterns of ownership and utilization which the

Nishga tribe imposed upon the lands and waters were different from those recognized by our system of law but were nonetheless clearly defined and mutually respected."

Berger told the seven Supreme Court judges hearing the case Indian title is not inconsistent with the underlying title of the Crown.

"The applicants claim is for a declaration," he said.

"Such a claim does not impeach the estate of the Crown."

At the end of Monday's session Berger started to define the concept of aboriginal title.

He claimed it is founded on immemorial occupation and does not originate by statute, treaty or proclamation.

During his definition Berger made reference to a book written by two law professors from York University dealing with the legal aspects of aboriginal rights

Entitled Native Rights in Canada the book "analyses the whole question of aboriginal rights and emphatically states they are a sound legal property," Berger said in an interview before the case opened in court.

Berger made copies of the book available to the Supreme Court judges last Friday.

He refuses to admit to anything more than happy coincidence in the book's appearance at this particular point.

In the meantime, Nishga Indians involved are optimistic about the outcome of the case.

In an interview Monday Frank Calder, MLA for Atlin, said the U.S. Senate recently gave \$925 million to the natives in Alaska.

Calder, head of the Nishga Tribal Council, is a plaintiff in the appeal.

He would not put a price on the 4,300 square miles under contention but said "once we have won the case here our tribe will start determining the price."

And if the case is dismissed?

"We'll go to the United Nations and the International Court at The Hague if we have to," he said.

# Nishga land bid decision reserved

Special to The Sun

OTTAWA — A week-long bid by the Nishga Indians of Northern B.C. for declaration of their aboriginal rights ended Friday in the Supreme Court of Canada.

The seven judges reserved decision, but when it comes in the new year it will affect not only Indians in B.C. but throughout Canada.

In 1969 Prime Minister Pierre Elliott Trudeau made a speech in Vancouver in which he said the government does not recognize a b o r i g i n a l rights.

The Nishga action was to test the issue legally. If the claim for title to 4,300 square miles is accepted even in part by the Supreme Court, they will have a hefty lever to use on the federal government.

If the Indians win the case, the government can expect a rash of petitions for compensation.

Ruling in the case is applicable only to B.C. but it cannot help but have an effect on the status of non-treaty Indians in Quebec and the Northwest Territories.

The case ended Friday with the Nishga tribe's lawyer, Tom Berger, giving his definition of Indian title.

Primarily it is an interest which is a burden on the title of the Crown provincial, he said.

Second, it is usufructuary in nature, which means natives may enjoy the uses and advantages of the land—they may occupy it without owning it.

And, finally, the rights are inalienable except to the Crown.

"Extinguishment can only take place by surrender of these rights to the Crown or by legislative enactments by Parliament," said Berger.

Throughout the hearing he has stressed his claim that aboriginal rights are not inconsistent with ownership by the Crown.

"The Crown has the right to grant the soil while yet in possession of the Indians, subject, however, to their right of occupancy," he said.

He has conceded that where the land has been alienated, these rights are "dormant."

That doesn't mean they have been extinguished, however, because if the alienated land ever reverts to the Crown, these rights "spring up again," he said.

Lawyer for the attorney-general of B.C., D. Mck. Brown claims the rights were extinguished "by the scheme of Confederation."

He has based his case on proclamations by the old colony of B.C. giving permission to prospective settlers to buy land and on a joint Senate-House of Commons report to Parliament on Indian affairs in 1927.

The first person definitely presumed to have practised public accounting on a full-time basis in Western Europe was George A. Watson, born in 1645 in Edinburgh.

London



## LAND CLAIM CASE

# Crown took over Indians, court told

By ALEX VOLKOFF  
Special to The Sun

OTTAWA — Once the white man arrived in North America, resident Indians were at the grace of the Crown, the Supreme Court of Canada was told Thursday.

Lawyer Douglas McK. Brown made the remark as he closed his defence for the attorney-general in the Nishga Indian land bid.

The Nishga tribe is seeking a declaration that their aboriginal rights to 4,300 square miles in the Nass River valley have never been lawfully extinguished.

"Here are people who are admittedly occupying a vast territory in B.C., Mr. Justice Bora Laskin said and then asked, "Are they trespassers? Are they tenants at will?"

The Indians were in an uncertain status until the Crown expressed its will, Brown said.

Brown's claim is that laws were passed almost immediately which were inconsistent with aboriginal title.

To support his case he cited at length proclamations passed by the old colony of B.C. expressing the will of the government to populate the territory.

This implication stemming from the proclamations is enough, Brown said, to deny the existence of Indian title.

"Our submission does not wait upon the selling of land

piece by piece to obliterate title," he said.

Brown spent most of Thursday's session repeating his former claim that the attorney-general is the wrong authority to attack in the case.

The attorney-general does not relish carrying a brief for the Dominion of Canada, he said.

Quoting extensively from a joint Senate-House of Commons report to Parliament in 1927, Brown said Indians in the Nass River valley had not accepted terms put before them by the federal government.

The report concludes that Canada has fulfilled all its obligation under Confederation in a generous manner, he said.

"I don't think this court wants to get into the position of having to evaluate acts of Parliament."

The presiding judge, Mr. Justice Roland Martlan, agreed but added the Supreme Court is not being asked to investigate Parliament's actions over the years but to make a declaratory judgment on aboriginal rights.

The appeal continues today with lawyer Tom Berger's reply.

A decision is not expected to be handed down for at least two months, but it will have far-reaching consequences for all non-treaty Indians in Canada no matter which way the judges decide.

# B.C. case could settle Indian rights question

OTTAWA (CP) — Do Indians hold a legal claim over vast parts of Canada, including all of Quebec, by reason of aboriginal rights?

The Supreme Court of Canada will provide at least a partial answer in late November when it hears an appeal by the Nishga Indians who seek a declaration that they are owners of about 4,000 square miles of land in northwest British Columbia because of their long-time occupation of it.

One of the reasons Indians rejected the new federal poli-

cy on Indians was its silence on aboriginal rights.

Until these rights are settled, Indians will not embrace any new agreements with the government, says George Manuel, president of the National Indian Brotherhood.

As an example, they have refused to co-operate with Lloyd Barber, a Saskatchewan University professor named by Prime Minister Pierre Elliott Trudeau to settle long-standing Indian land claims.

Barber's terms of reference do not include settlement of

claims under a boriginal rights. As a result, he has made little or no progress since his appointment two years ago.

Manuel said Indians would continue to feel a grievance regardless of the court decision.

The national brotherhood, in common with provincial brotherhood, feels it is premature to argue the case for aboriginal rights.

With funds provided by the federal government, the brotherhoods are doing research on these claims.

Manuel said it might be five years before they are ready to put their case before the government.

Indians Affairs Minister Jean Chretien has said he won't comment on aboriginal rights until the Supreme Court renders its decision.

But he indicated that the high court would answer the case for aboriginal rights for all non-treaty Indians.

It thus also would decide the claims of Eskimos in Arctic Quebec and the Northwest Territories who did not sign treaties.

## MINE C

### Jobs blocked

CADILLAC, Citizens from eastern Quebec to roadblock Sunday straight day to ensure of Priests Mines, the company employer.

The blockade road between Riverview and Val D'Or began Sunday after government representatives failed to as promised at a meeting Tuesday night to describe the government's progress in lowering unemployment in the area.

Labor Minister Jean Noyon said late Friday government would re-open Lacorne Molybdenum Mine, 57 miles away, for one beginning today as a project.

Cournoyer said the Lacorne mine will provide 150 jobs and operate on an estimated \$400,000 deficit, to be made up by the federal and provincial governments.

### Wreck blocks line

PIAPOT, Sask. (CP) — Canadian Pacific's main line was blocked Sunday when a train carrying 30 boxcars of grain derailed in the CPR yard.

## 21 fired over payless work

BLIND RIVER, Ont. (CP) — All 21 employees of a prefabricated house plant have been fired because they refused to work without pay an extra 20 hours during the weekend.

Ross Shouldice, president of Wholesale Homes Ltd., asked the men to work two 10-hour shifts without pay to help meet production deadlines

with the promise of \$500 Christmas bonuses if the deadlines were met.

A former union leader contacted by the workers for advice said Shouldice was calling for "the impossible."

Shouldice described his request as "a way of finding out if they were really interested in the job, the company and their community."