

Nishga 1913

DEPARTMENT OF INDIAN AFFAIRS, CANADA,
OTTAWA, March 11, 1914.

The Honourable
The Superintendent General of Indians Affairs.

The undersigned has given consideration to the petition of the Nishga Indians to the Privy Council, with reference to the alleged claim of those Indians to title in the lands of British Columbia and to a like claim on the part of the other Indians of the Province. I find indications in the papers that the Government is not unwilling to submit this claim to the courts, but the difficulties which are inherent in the claim and which may have prevented its submission have so far not been overcome; the two main difficulties would appear to be:—

1. The refusal of British Columbia to consent to a stated case which would include any reference to the Indian title.
2. Uncertainty as to the extent of compensation which might be demanded by the Indians if they were successful before the courts, and if the Crown found it good policy to extinguish the title of the Indians.

With reference to the first difficulty I would propose that it be held that British Columbia has fully discharged its obligation to the natives by granting from the public domain of the Province reserve lands to be administered exclusively for their benefit, and that, if the Indian claim is found valid by the Court or the Privy Council, and, if it is thought advisable to offer anything further for extinguishment of title, the Dominion should assume the burden and compensate the Indians according to the past usage in such arrangements as have been made by the good-will of the Crown with the aborigines. The Dominion has interest in the lands in the Railway belt, and, to this extent, would benefit by extinguishment of the Indian title.

There are two Indian treaties which might be taken as prototypes for this divided responsibility, namely, the Treaty known as the Northwest Angle Treaty No. 3, and Treaty No. 9; both of these treaties are within the Province of Ontario. The first was negotiated when the Dominion Government thought the territory covered belonged to the Dominion. When by settlement of the boundary question it was discovered that most of the territory lay in Ontario, the Dominion claimed from Ontario for past expenditure and for the discharge of future liabilities. The case went to the courts and was decided in favour of Ontario. Ontario thereupon expressed her willingness to grant the reserves, and the Dominion bears the financial outlay for annuities and the other considerations.

Treaty No. 9 formed the subject of an agreement between the Governments of the Dominion and the Province of Ontario. Ontario agreed to furnish reserves and pay the annuities; the Dominion was to bear the cost of administration, education and the other provisions of the treaty.

Dealing with the second difficulty,—it would be a serious matter if the Dominion were to assume the undetermined liability which might arise if the Indians' claim were upheld by the courts. The erroneous view of the Indians as regards the nature of the aboriginal title is shown by a memorandum from the Nishga Nation, of which I attach a copy. I may quote here the sentences bearing on this point:—

"Some of the advantages to be derived from establishing our aboriginal rights are:—

1. That it will place us in a position to reserve for our own use and benefit such portions of our territory as are required for the future well-being of our people.
2. That it will enable us to a much greater extent and in a free and independent manner to make use of the fisheries and other natural resources pertaining to our territory."

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"We cannot prevent the Province from persisting in this attempt, but we can and do respectfully declare that we intend to persist in making our claim against the Province of British Columbia for the following among other reasons."

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"4. While we claim the right to be compensated for those portions of our territory which we may agree to surrender, we claim as even more important the right to reserve other portions permanently for our own use and benefit, and beyond doubt the portions which we would desire so to reserve would include much of the land which has been sold by the Province.

We are not opposed to the coming of the white people into our territory, provided this be carried out justly and in accordance with the British principles embodied in the Royal Proclamation. If, therefore, as we expect, the aboriginal rights which we claim should be established by the decision of His Majesty's Privy Council, we would be prepared to take a moderate and reasonable position. In that event, while claiming the right to decide for ourselves the terms upon which we would deal with our territory, we would be willing that all matters outstanding between the Province and ourselves should be finally adjusted by some equitable method to be agreed upon which should include representation of the Indian Tribes upon any Commission which might then be appointed."

From these words it will become apparent what fancies occupy the minds of the Indians when they think of the aboriginal title and its purchase.

The Privy Council, to which the Nishga Nation desire to appeal, has already pronounced upon the nature of the Indian title, describing it as "a personal and usufructuary right dependent upon the good-will of the Sovereign."

It follows that the Indian title, when acknowledged by the Crown, cannot be separated from what the Crown elects to grant. In appraising the Indian title we should go back to the time when the lands were a wilderness, when we find a wild people upon an unimproved estate. The Indian title cannot increase in value with civilized development; cession of Indian territory has always preceded the settlement of the country and whatever has been granted for the transfer has represented the good-will of the Crown, not the intrinsic value of the land at the time of the cession, and assuredly not the value enhanced by the activities of a white population. From the earliest times this beneficial interest has ever been appraised by the Crown, the Indians accepting what was offered, with, upon occasion, slight alterations in terms previously fixed by the Crown. It is optional when, if at all, the Crown may proceed to extinguish the Indian title, and, therefore, if it is decided that the Indians of British Columbia have a title of this nature, there can be no claim for deferred benefit from the Crown.

I would, therefore, propose that the claim be referred to the Exchequer Court, with right of appeal to the Privy Council upon the following conditions:—

1. That the Indians of British Columbia shall, by their Chiefs or representatives, in a binding way, agree, if the Court, or, on appeal, the Privy Council, decides that they have a title to lands of the Province, to surrender such title, receiving from the Dominion benefits to be granted for extinguishment of title in accordance with past usage of the Crown in satisfying the Indian claim to unsurrendered territories, and to accept the finding of the Royal Commission on Indian Affairs in British Columbia, as approved by the Governments of the Dominion and the Province, as a full allotment of Reserve lands to be administered for their benefit as part of the compensation.

2. That the Province of British Columbia by granting the said reserves as approved shall be held to have satisfied all claims of the Indians against the Province.

That the remaining considerations shall be provided and the cost thereof borne by the Government of the Dominion of Canada.

3. That the Government of British Columbia shall be represented by counsel, that the Indians shall be represented by counsel nominated and paid by the Dominion.

4. That in the event of the Court or the Privy Council deciding that the Indians have no title in the lands of the Province of British Columbia, the policy of the Dominion towards the Indians shall be governed by consideration of their interests and future development.

DUNCAN C. SCOTT,

Deputy Superintendent General.

STATEMENT OF THE NISHGA NATION OR TRIBE OF INDIANS.

From time immemorial the Nishga Nation or Tribe of Indians possessed, occupied and used the territory generally known as the Valley of the Naas River, the boundaries of which are well defined.

The claims which we make in respect of this territory are clear and simple, We lay claim to the rights of men. We claim to be aboriginal inhabitants of this country and to have rights as such. We claim that our aboriginal rights have been guaranteed by Proclamation of King George Third and recognized by Acts of the Parliament of Great Britain. We claim that holding under the words of that Proclamation a tribal ownership of the territory, we should be dealt with in accordance with its provision, and that no part of our lands should be taken from us or in any way disposed of until the same has been purchased by the Crown.

By reason of our aboriginal rights above stated, we claim tribal ownership of all fisheries and other natural resources pertaining to the territory above-mentioned.

For more than twenty-five years, being convinced that the recognition of our aboriginal rights would be of very great material advantage to us and would open the way for the intellectual, social and industrial advance of our people, we have in common with other tribes of British Columbia, actively pressed our claims upon the Governments concerned. In recent years, being more than ever convinced of the advantages to be derived from such recognition and fearing that without such the advance of settlement would endanger our whole future, we have pressed these claims with greatly increased earnestness.

Some of the advantages to be derived from establishing our aboriginal rights are:—

1. That it will place us in a position to reserve for own use and benefit such portions of our territory as are required for the future well-being of our people.

2. That it will enable us to a much greater extent and in a free and independent manner to make use of the fisheries and other natural resources pertaining to our territory.

3. That it will open the way for bringing to an end as rapidly as possible the system of Reserves and substituting a system of individual ownership.

4. That it will open the way for putting an end to all uncertainty and unrest, bringing about a permanent and satisfactory settlement between the white people and ourselves, and thus removing the danger of serious trouble which now undoubtedly exists.

5. That it will open the way for our taking our place as not only loyal British subjects but also Canadian citizens, as for many years we have desired to do.

In thus seeking to realize what is highest and best for our people, we have encountered a very serious difficulty in the attitude which has been assumed by the Government of British Columbia. That Government has neglected and refused to recognize our claims, and for many years has been selling over our heads large tracts of our lands. We claim that every such transaction entered into in respect of any part of these lands under the assumed authority of the Provincial Land Act has been entered into in violation of the Proclamation above mentioned. These transactions have been entered into notwithstanding our protests, oral and written, presented to the Government of British Columbia, surveyors employed by that Government and intending purchasers.

The request of the Indian Tribes of British Columbia made through their Provincial Organization, that the matter of Indian title be submitted to the Judicial Committee of His Majesty's Privy Council, having been before the Imperial Government and the Canadian Government for three years, and grave constitutional difficulties arising from the refusal of British Columbia to consent to a reference, having been encountered in dealing with that request, we resolved independently and directly to place a petition before His Majesty's Privy Council.

In following that course we desire to act to the fullest possible extent in harmony both with other tribes of British Columbia and with the Government of Canada.

We are informed that Mr. J. A. J. McKenna sent out by the Government of Canada has made a report in which he does not mention the claims which the Indians of the Province have been making for so many years, and assigns as the cause of all the trouble, the reversionary claim of the Province. Whatever other things Mr. McKenna found out during his stay, we are sure that he did not find out our mind or the real cause of the trouble.

We are also informed of the agreement relating only to the so-called reserves which was entered into by Mr. McKenna and Premier McBride. We are glad from its provisions to know that the Province has expressed willingness to abandon to a large extent the reversionary claim which has been made. We cannot, however, regard that agreement as forming a possible basis for settling the land question. We cannot concede that the two Governments have power by the agreement in question or any other agreement to dispose of the so-called Reserves or any other lands of British Columbia, until the territory of each nation or tribe has been purchased by the Crown as required by the Proclamation of King George Third.

We are also informed that in the course of recent negotiations, the Government of British Columbia has contended that under the terms of Union the Dominion of Canada is responsible for making treaties with the Indian Tribes in settlement of their claims. This attempt to shift responsibility to Canada and by doing so render it more difficult for us to establish our rights, seems to us utterly unfair and unjustifiable. We cannot prevent the Province from persisting in this attempt, but we can and do respectfully declare that we intend to persist in making our claim against the Province of British Columbia for the following among other reasons:—

1. We are advised that at the time of Confederation all lands embraced within our territory became the property of the province subject to any interest other than that of the province therein.

2. We have for a long time known that in 1875 the Department of Justice of Canada reported that the Indian Tribes of British Columbia are entitled to an interest in the lands of the province.

3. Notwithstanding the report then made and the position in accordance with that report consistently taken by every representative of Canada from the time of Lord Dufferin's speeches until the spring of the present year, and in

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defiance of our frequent protests, the Province has sold a large proportion of the best lands of our territory and has by means of such wrongful sales received a large amount of money.

4. While we claim the right to be compensated for those portions of our territory which we may agree to surrender, we claim as even more important the right to reserve other portions permanently for our own use and benefit, and beyond doubt the portions which we would desire so to reserve would include much of the land which has been sold by the Province.

We are not opposed to the coming of the white people into our territory provided this be carried out justly and in accordance with the British principles embodied in the Royal Proclamation. If, therefore, as we expect, the aboriginal rights which we claim should be established by the decision of His Majesty's Privy Council, we would be prepared to take a moderate and reasonable position. In that event, while claiming the right to decide for ourselves the terms upon which we would deal with our territory, we would be willing that all matters outstanding between the Province and ourselves should be finally adjusted by some equitable method to be agreed upon which should include representation of the Indian Tribes upon any Commission which then might be appointed.

The above statement was unanimously adopted at a meeting of the Nishga Nation or Tribe of Indians held at Kincolith on the 22nd day of January, 1913, and it was resolved that a copy of same be placed in the hands of each of the following:—

The Secretary of State for the Colonies, the Prime Minister of Canada, the Minister of Indian Affairs, the Minister of Justice, Mr. J. M. Clark, K.C., Counsel for the Indian Rights Association of British Columbia, and the Chairman of the "Friends of the Indians of British Columbia."

W. J. LINCOLN,

Chairman of Meeting.