COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: ***Chingee v. Canada (Attorney General),*** 2005 BCCA 446

Date: 20050913
Docket: CA031734

Between:

Bernie Chingee, Sheila Chingee, Justin Chingee and Jokey Chingee

Respondents (Plaintiffs)

And

The Attorney General of Canada

Appellant (Defendant)

And

The Attorney General of British Columbia

Respondent (Defendant)

Before: The Honourable Madam Justice Southin
The Honourable Mr. Justice Braidwood
The Honourable Mr. Justice Smith

K. M. Ring and M. L. French	Counsel for the Appellant
M. L. Mandell, Q.C. and B. C. Elwood	Counsel for the Respondents
L. J. Mrozinski and P. E. Yearwood	Counsel for the Attorney General of British Columbia
Place and Date of Hearing:	Vancouver, British Columbia 20th, 21st and 22nd April, 2005
Written submissions received:	29th April, 6th, 11th, 26th, 27th May, and 30th June, 2005
Place and Date of Judgment:	Vancouver, British Columbia 13th September, 2005

Written Reasons by:
The Honourable Madam Justice Southin

Concurred in by:
The Honourable Mr. Justice Braidwood
The Honourable Mr. Justice Smith

Reasons for Judgment of the Honourable Madam Justice Southin:

[1] On the 8th November, 2002, the Honourable Mr. Justice Cohen delivered the judgment in issue in this appeal, in these words:

> [94] In the result, I find that the plaintiffs are entitled to a declaration that the lands which have been provided by British Columbia, pursuant to Article 8.4 of the Agreement, are "lands reserved for Indians" within the meaning of s. 91(24) of the ***Constitution Act***, ***1867***.

[2] The learned judge's reasons are reported at (2002), 8 B.C.L.R. (4th) 149, and the reader should read those reasons as a prelude to these reasons.

[3] The Attorney General of Canada, on the 19th March, 2004, gave notice of appeal. [I assume that the respondents had consented to an extension of time for appeal]. Shortly put, Canada, by its appeal, disclaims any legislative jurisdiction over the lands mentioned in the judgment.

[4] On the same day or a day thereafter, the Attorney General of British Columbia also gave notice of appeal. Before us now is the appeal of the Attorney General of Canada. The appeal of the Attorney General of British Columbia is in abeyance.

[5] The respondents/plaintiffs are all members of the McLeod Lake Indian Band. The respondent, Sheila Chingee, is the mother of the respondents, Justin Chingee and Jokey Chingee. The respondent, Bernie Chingee, is brother to the respondent, Sheila Chingee, and therefore uncle to the other respondents.

[6] Although the respondents gave no evidence as to why they want the lands in issue to fall within the legislative jurisdiction of Parliament rather than the legislative jurisdiction of the Legislature, I deduce a principal reason is financial: by section 87 of the ***Indian Act***, R.S.C. 1985, c. I-5:

> **87.** (1) Notwithstanding any other Act of Parliament or any Act of the legislature of a province, but subject to section 83, the following property is exempt from taxation, namely,
>
> (*a*) the interest of an Indian or a band in reserve lands or surrendered lands; and
>
> (*b*) the personal property of an Indian or a band situated on a reserve.
>
> (2) No Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (1)(*a*) or (*b*) or is otherwise subject to taxation in respect of any such property.
>
> (3) No succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any property mentioned in paragraphs (1)(*a*) or (*b*) or the succession thereto if the property passes to an Indian, nor shall any such property be taken into account in determining the duty payable under the *Dominion Succession Duty Act*, chapter 89 of the Revised Statutes of Canada, 1952, or the tax payable under the *Estate Tax Act*, chapter E-9 of the Revised Statutes of Canada, 1970, on or in respect of other property passing to an Indian.

[7] I attach to these reasons, as schedules, excerpts from various documents which I perceive to be of assistance in the resolution of the issue before the Court:

Schedule A: McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement

Schedule B: Appointment of Commission to negotiate treaty, Treaty No. 8, adhesion of Beaver Indians at Fort St. John in 1900, and report of the Treaty Commissioner referring thereto

Schedule C: ***McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement Act***, S.B.C. 2000, c. 8

Schedule D:	Extract From Terms Of Union, 1871; Order Admitting Colony To Canada, 1871 ***Constitution Act, 1867***, ss. 91(24) and 92(13)
Schedule E:	***An Act relating to the Island Railway, the Graving Dock, and Railway Lands of the Province***, R.S.B.C. 1888, c. 14, No. 51; ***An Act respecting the transfer of the Railway Belt and the Peace River Block***, S.C. 1930, c. 37
Schedule F:	***Indian Acts***, 1868-1906
Schedule G:	***Indian Affairs Settlement Act***, S.B.C. 1919, c. 32, s. 2 and Order in Council 911 of 1923
Schedule H:	***Alberta Act***, S.C. 1905 (4-5 Edw. VII), c. 3, and ***Alberta Natural Resources Act***, S.C. 1930 (20-21 Geo. V), c. 3

[8] In 1991, in ***British Columbia (Attorney General) v. Mount Currie Indian Band***, 54 B.C.L.R. (2d) 156 (C.A.) at 176, I set out at very considerable length a substantial portion of the history of this Province relating to Indian claims to land. I shall assume for the purposes of these reasons that the reader is familiar with the history therein set out.

[9] As to that judgment, I have had no second thoughts, save as to one passage in it. At page 187, para. 76, I said:

> 3. As there is nothing in s. 91(24) as to how lands become "reserved" nor requiring the assent of the Dominion to lands becoming "reserved", lands become "reserved" when the Province does some act or series of acts which, upon their true construction mean that the Province has "reserved" the lands for the Indians.

[10] I say that because, in 2000, in ***Musqueam Holdings Ltd. v. British Columbia (Assessor of Area No. 09 – Vancouver)***, 76 B.C.L.R. (3d) 323 at 336, I said, with the concurrence of my colleagues:

> [37] Mr. Roberts argues that not only will lands which were held in trust by other persons before Confederation fall within the purview of the present *Indian Act*, but so will any other lands which any person at any time, with or without the consent of the federal Crown, determines to set apart for Indians.
>
> [38] But as to that interpretation, I say that, quite apart from the constitutional clash between Parliament and the provinces which such an interpretation would cause, it would mean that in 1951 Parliament intended by s. 36 to supplant provincial jurisdiction and to divest the Crown in right of Canada of its prerogative right to decline a legal burden.
>
> [Emphasis added.]

THE JUDGMENT BELOW

[11] The heart of the learned judge's judgment is, as I read it, in these paragraphs:

> [65] In my opinion, although the lands selected by the plaintiffs in severalty under the terms of the Treaty and the Agreement are outside the reserve system governed by Canada under the ***Indian Act***, I find that the legal status of those lands is, nonetheless, s. 91(24) lands. I come to this conclusion based on the following four factors:
>
> 1. My interpretation, based on the treaty interpretation principles set out earlier in these reasons, of Canada and the Indians' intentions, as evidenced by the negotiations leading up to the signing of the Treaty, the historical documents surrounding the signing and implementation of the Treaty, and the parties' post-Treaty conduct;
>
> 2. The historical fiduciary duty of the Crown, as evidenced by the proviso as to non-alienation in the Treaty, and Article 8.5 of the Agreement;
>
> 3. On a recognition set out in the authorities, that lands reserved for Indians need not solely be regarded as "reserve lands" under the ***Indian Act***; and,
>
> 4. On a recognition that strict legal impediments cannot thwart the intention of the parties.
>
> * * *
>
> [67] In the instant case, the terms of the Treaty were discussed and agreed to with the Indians orally, and then reduced to writing

> afterwards by the Commissioners. Accordingly, the content of the Treaty must be found in the substance of the promises actually made to the Indians and agreed to by them. Therefore, Canada's obligations under the Treaty should not be limited, or altered, by the wording that Canada's representatives afterwards chose for the written text of the Treaty, and in particular, should not be limited by any technical terms those representatives decided to insert into the Treaty language.
>
> [68] Thus, while counsel for Canada and British Columbia argued that a literal interpretation of the wording of the Treaty discloses an interest in severalty lands as being in fee simple, I am not persuaded that the Indians recognized or understood the subtle distinction in the Treaty language now being relied upon by counsel. Nor is there evidence that the Indians were made aware of, or were in agreement, as to the possible effect of the Treaty language on the legal status of the severalty lands.

THE RANGE OF THIS CASE

[12] The learned judge below set out the submissions to him.

[13] In this Court, the arguments ranged in part because of questions from the Court considerably beyond what I understand the submissions to the learned judge to have been. In particular, this Court has received submissions as to the implications for this case of the Terms of Union. As will appear, I consider it significant that the lands west of the 120th parallel of longitude (save that part within the Peace River Block), in the area of Treaty 8 as delineated in its opening words, were, in 1899 and 1900, subject to a constitutional and legal regime very different from the lands within the area of Treaty No. 8 east of that meridian. The unalienated lands east of that meridian were lands of the Dominion which had come to it from the Imperial Crown, which had taken a surrender of them, as I understand it, in the latter part of the 19th century from the Hudson's Bay Company. Indeed, those lands, so

far as they had not been alienated, remained Dominion lands and were therefore within the legislative purview of Parliament, even after Alberta became a province in 1905, and did not become public lands of the Province of Alberta until 1930. (See Schedule H.)

[14] I also consider it significant that for good or ill the Dominion had embodied in a statutory regime a policy for the enfranchisement of Indians, a policy which contemplated the loss by those who chose to be enfranchised of any special status founded upon their Indian descent. Although the statutory regime did not extend to Western Canada, it is my opinion that the terms of Treaty 8 reflect that policy. I shall have more to say on this point hereafter.

THE GENERAL RULES FOR THE INTERPRETATION OF TREATIES

[15] In ***R. v. Marshall***, [1999] 3 S.C.R. 456 at 511-513, para. 78, the Chief Justice of Canada, as she now is, said:

> A. *What Principles of Interpretation Apply to the Interpretation of the Treaty Trade Clause?*
>
> This Court has set out the principles governing treaty interpretation on many occasions. They include the following.
>
> 1. Aboriginal treaties constitute a unique type of agreement and attract special principles of interpretation: *R. v. Sundown*, [1999] 1 S.C.R. 393, at para. 24; *R. v. Badger,* [1996] 1 S.C.R. 771, at para. 78; *R. v. Sioui*, [1990] 1 S.C.R. 1025, at p. 1043; *Simon v. The Queen*, [1985] 2 S.C.R. 387, at p. 404. See also: J. [Sákéj] Youngblood Henderson, "Interpreting *Sui Generis* Treaties" (1997), 36 *Alta. L. Rev*. 46; L. I. Rotman, "Defining Parameters: Aboriginal Rights, Treaty Rights, and the *Sparrow* Justificatory Test" (1997), 36 *Alta. L. Rev*. 149.
>
> 2. Treaties should be liberally construed and ambiguities or doubtful expressions should be resolved in favour of the

aboriginal signatories: *Simon, supra*, at p. 402; *Sioui, supra*, at p. 1035; *Badger, supra*, at para. 52.

3. The goal of treaty interpretation is to choose from among the various possible interpretations of common intention the one which best reconciles the interests of both parties at the time the treaty was signed: *Sioui, supra*, at pp. 1068-69.

4. In searching for the common intention of the parties, the integrity and honour of the Crown is presumed: *Badger, supra*, at para. 41.

5. In determining the signatories' respective understanding and intentions, the court must be sensitive to the unique cultural and linguistic differences between the parties: *Badger, supra*, at paras. 52-54; *R. v. Horseman*, [1990] 1 S.C.R. 901, at p. 907.

6. The words of the treaty must be given the sense which they would naturally have held for the parties at the time: *Badger*, *supra*, at paras. 53 *et seq*.; *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, at p. 36.

7. A technical or contractual interpretation of treaty wording should be avoided: *Badger, supra*; *Horseman, supra*; *Nowegijick, supra*.

8. While construing the language generously, courts cannot alter the terms of the treaty by exceeding what "is possible on the language" or realistic: *Badger, supra*, at para. 76; *Sioui, supra*, at p. 1069; *Horseman, supra*, at p. 908.

9. Treaty rights of aboriginal peoples must not be interpreted in a static or rigid way. They are not frozen at the date of signature. The interpreting court must update treaty rights to provide for their modern exercise. This involves determining what modern practices are reasonably incidental to the core treaty right in its modern context: *Sundown, supra*, at para. 32; *Simon, supra*, at p. 402.

[16] But this passage does not address, for the issue did not arise in ***R. v. Marshall***, the role in interpretation, if any, of provincial powers when the area of the treaty at the time of its first making was partly in a province and partly in "unorganized" Dominion lands. Nor does it address the question of interpretation

when an adhesion takes place, as the adhesion did here, one hundred years after the first adhesion. That question arises because of the words of Article 3.1, "This Agreement will not be construed as a modification or novation of Treaty No. 8." Nor does this passage address the point concerning the policy evidenced by the ***Indian Acts*** to which I have adverted.

[17] Mindful though I am of the seventh of the principles of treaty interpretation, I think it appropriate to begin by asking what the words "in severalty" meant in that treaty, at least to the commissioners who drafted it.

[18] Many different definitions of the term taken from various authors were put before the learned judge and were put before us.

[19] But I have turned to *The Oxford English Dictionary*, the relevant passages of which were prepared between 1908 and 1914 (see the historical introduction to *The Oxford English Dictionary* finally published by The Oxford University Press in its full range in 1933 and reprinted in 1961 and 1970). I see no difference between the text relating to the phrase "in severalty" in that edition and that in the second edition, which was published by the Clarendon Press at Oxford in 1989.

[20] This is part of that definition:

> **2. in severalty** [AF. *en severalte*]. a. *Law.* Of land: (Held) in a person's own right without being joined in interest with another (opposed to joint-tenancy, coparcenary, and tenancy-in-common); (held) as private enclosed property (opposed to common).

[21] In my opinion, when one considers the provisions of the ***Indian Act*** concerning enfranchisement, one is driven to the conclusion that, at least on the part of the commissioners, they had in mind that the persons who chose land in severalty would be obtaining private enclosed property as opposed to property held in common with other members of the tribe.

[22] If that is the correct meaning of the term in the Treaty, it cannot be said to be "technical" although it is a term of art.

[23] I infer in coming to this conclusion that those who had the charge of the business of Canada at the end of the 19th century including those who drafted this Treaty would have been familiar with such events in the United Kingdom as the Inclosure Acts (see Holdsworth, *A History of English Law*, vol. xiii, p. 352) and the Highland clearances (much of the population of Nova Scotia is descended from those thus dispossessed) which were part of a movement away from interests held in common to private interests. In so remarking, I am quite well aware that those who suffered in consequence would not have thought the destruction of interests in common was a good thing.

THE PROVISO AS TO NON-ALIENATION

[24] The learned judge placed emphasis on that proviso by saying, at para. 65, "I find that the legal status of those lands is, nonetheless, s. 91(24) lands. I come to this conclusion based on ... [t]he historical fiduciary duty of the Crown, as evidenced by the proviso as to non-alienation in the Treaty, and Article 8.5 of the Agreement." As Schedule F shows, the origin of the proviso is the Act of 1884, but a similar

provision had existed in Canada in the Provincial Statutes of 1850, c. 74, entitled "An Act for the protection of the Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury." That Act began in these terms:

> WHEREAS it is expedient to make provision for the protection of the Indians in Upper Canada, who, in their intercourse with the other inhabitants thereof, are exposed to be imposed upon by the designing and unprincipled, as well as to provide more summary and effectual means for the protection of such Indians in the unmolested possession and enjoyment of the lands and other property in their use or occupation: ...

[25] From time immemorial, the Crown has, of course, exercised, first by the prerogative and then under a legislative regime, a power to protect from imposition those who are thought to be unable to protect themselves. Hence, of course, the legislation relating to infants and the original jurisdiction of the Court of Chancery in wardship. But that jurisdiction, whatever label one puts on it, is a jurisdiction of the Crown both in right of a province and in right of Canada. Thus, in my view, nothing should be made of this point in determining where the legislative jurisdiction lies over lands conveyed "in severalty".

POST TREATY CONDUCT

[26] The learned judge referred, as did counsel in this Court, to all manner of communications, some by persons of standing, relating to lands taken up under the treaty. So far as I am able to deduce, all those documents relate to lands not within British Columbia. This is not surprising as the Indians who adhered at Fort St. John were few in number (see Schedule B). No evidence was adduced that any Indian

chose lands west of the 120th meridian "in severalty", which lands were either within or without the Peace River Block.

[27] If such choices had been made, then conduct of provincial officials relating to those lands might indeed be relevant, but I am unable to see how conduct of federal officials relating to lands outside British Columbia can bear on the issue in light of the relationship arising under the Terms of Union between British Columbia and the Dominion in the matter of public lands. In 1900, the question of the fulfilment of the 13th Term was very much up in the air.

[28] That relationship was described thus by the Supreme Court of Canada in ***Wewaykum Indian Band v. Canada***, [2002] 4 S.C.R. 245 at 261:

> [15] Federal-provincial cooperation was required in the reserve-creation process because, while the federal government had jurisdiction over "Indians, and Lands reserved for the Indians" under s. 91(24) of the *Constitution Act, 1867*, Crown lands in British Columbia, on which any reserve would have to be established, were retained as provincial property. Any unilateral attempt by the federal government to establish a reserve on the public lands of the province would be invalid: *Ontario Mining Co. v. Seybold*, [1903] A.C. 73 (P.C.). Equally, the province had no jurisdiction to establish an Indian reserve within the meaning of the *Indian Act*, as to do so would invade exclusive federal jurisdiction over "Indians, and Lands reserved for the Indians".

THE NEGOTIATIONS LEADING UP TO THE SIGNING OF THE TREATY

[29] While there is a considerable body of evidence as to the events at Lesser Slave Lake in 1899 there is little evidence of the events at Fort St. John. See Schedule B, the Report of 11th December, 1900. There is nothing to indicate that the Indians at Fort St. John, even if any of them came from outside the Peace River

Block, gave any thought to the division of legislative jurisdiction between British Columbia and Canada. There is also no evidence that the Indians of Fort St. John had explained to them s. 77 of the ***Indian Act***, R.S.C. 1886, c. 43.

STRICT LEGAL IMPEDIMENTS CANNOT THWART THE INTENTION OF THE PARTIES

[30] I do not know quite what the learned trial judge meant by that remark but I am unable to see what it has to do with the resolution of the issue here of constitutional jurisdiction.

CONCLUSION

[31] In my opinion lands in severalty conveyed pursuant to the McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement are simply not within the legislative jurisdiction of Canada, such lands neither being offered to Canada by British Columbia as "lands reserved for the Indians" nor accepted by Canada as such. It follows that I would allow the appeal of the Attorney General of Canada.

[32] As to the terms of the order of this Court, some difficulty arises because, for reasons which I do not understand, two judgments have been entered in the court below in this cause both bearing the date 8th November, 2002.

[33] The first, entered on the 21st June, 2004, is in these terms:

> THE APPLICATION OF the Plaintiffs for judgment pursuant to Rule 18A coming on for hearing at Vancouver, British Columbia on June 25, 27, 28 and July 9, 2002, and on hearing Louise Mandell, Q.C. and Anne Gilmour, counsel for the Plaintiffs, Lisa Mrozinski and Darlene Leavitt, counsel for the Attorney General of British Columbia, Keith

> Phillips and Laryssa Borowyk, Counsel for the Attorney General of Canada, AND UPON judgment being reserved to this date; AND UPON the application of the Plaintiffs to settle the terms of this Order coming on for hearing on February 19, 2004:
>
> THIS COURT ORDERS THAT:
>
> 1. The Plaintiffs are entitled to a declaration that the lands which have been provided by British Columbia, pursuant to Article 8.4 of the Agreement, are "lands reserved for Indians" within the meaning of s. 91(24) of the *Constitution Act*, *1867*.
>
> 2. Each Party shall bear their own costs of the application.

[34] The second, entered 8th November, 2004, is this:

> THE APPLICATION OF the Plaintiffs for judgment pursuant to Rule 18A coming on for hearing at Vancouver, British Columbia on June 25, 27, 28 and July 9, 2002, and on hearing Louise Mandell, Q.C. and Anne Gilmour, counsel for the Plaintiffs, Lisa Mrozinski and Darlene Leavitt, counsel for the Attorney General of British Columbia, Keith Phillips and Laryssa Borowyk, Counsel for the Attorney General of Canada, AND UPON judgment being reserved to this date;
>
> THIS COURT ORDERS THAT:
>
> 1. The Plaintiffs are entitled to a declaration that the lands provided by British Columbia, pursuant to Treaty No. 8 and Article 8.5 of the Adhesion Agreement, are "lands reserved for Indians" within the meaning of s. 91(24) of the *Constitution Act*, *1867*; and
>
> 2. The Plaintiffs are entitled to costs of their Rule 18A application.

[35] What counsel thought they were doing when they drew up the instrument entered the 8th November, 2004 is quite beyond me. If the judgment entered the 21st June, 2004 contained errors, an application should have been made to amend it. It is irrational for there to be two judgments covering the same ground.

[36] I invite counsel to submit a draft of the order of the Court.

[37] There is one other procedural point and that relates to the style of cause. First, it is inappropriate to refer to Ministers of the Crown when sued in their official capacity by their private names. Secondly, in light of the issue brought to this Court, the proper representative of the Crown in right of British Columbia is the Attorney General of British Columbia. That being so, the style of cause of the order of this Court when drawn up shall be as it appears on these reasons for judgment.

[38] The Attorney General of Canada is entitled to costs of this appeal against the plaintiffs if demanded. As to the costs of the Attorney General of British Columbia, the Court will entertain submissions if the Attorney General claims such costs.

[39] I leave it to the parties to arrange the order of all necessary submissions for the purpose of bringing this case to a conclusion.

"The Honourable Madam Justice Southin"

I agree:

"The Honourable Mr. Justice Braidwood"

I agree:

"The Honourable Mr. Justice Smith"

SCHEDULE A

MCLEOD LAKE INDIAN BAND TREATY NO. 8 ADHESION AND SETTLEMENT AGREEMENT

This Agreement made this *27* day of *March*, 2000

BETWEEN:

McLEOD LAKE INDIAN BAND and the Members of the McLeod Lake Indian Band

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Minister of Indian Affairs and Northern Development

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

WHEREAS:

1. In the summer of 1899, Canada entered into a treaty known as Treaty No. 8 with certain Beaver, Chipewyan, Cree and other Indians.

2. Since 1899, Canada has taken a number of adhesions to Treaty No. 8 from other Indians considered by Canada to have inhabited the Treaty No. 8 area.

3. McLeod Lake wishes to adhere to Treaty No. 8 and Canada wishes to take this adhesion.

4. Canada asserts that the aboriginal title and rights to land of Indians inhabiting the Treaty No. 8 area were extinguished when Treaty No. 8 was approved by the Governor in Council on February 20, 1900.

5. Canada and McLeod Lake assert that the western boundary of Treaty No. 8 follows the height of land separating the waters draining into the Arctic Ocean and the Pacific Ocean. British Columbia does not agree with this assertion.

6. McLeod Lake has brought various claims against Canada, British Columbia, or both, as set out in:

a. *Chingee and others v. Her Majesty the Queen in right of the Province of British Columbia and others*, (B.C.S.C., Vancouver Registry No. C821901);

b. *Chingee and others v. Her Majesty the Queen in right of the Province of British Columbia and others*, (B.C.S.C., Vancouver Registry No. C964263, formerly B.C.S.C., Prince George Registry No. 10232/86); and

c. *Chingee and others v. Her Majesty the Queen in right of Canada* (Federal Court of Canada, Trial Division, Registry No. T1264/89).

7. British Columbia has brought a claim against McLeod Lake to recover debts, penalties or assessments arising under the *Forest Act*, R.S.B.C. 1996, c.157 and *Forest Practices Code of British Columbia Act*, R.S.B.C. 1996, c. 159 in relation to alleged trespasses that occurred between September and December, 1988. British Columbia's claim is set out in *Her Majesty the Queen in right of the Province of British Columbia v. McLeod Lake Indian Band* (B.C.S.C., Vancouver Registry No. A971649).

8. In 1986, McLeod Lake brought a specific claim against Canada under Canada's Specific Claims Policy claiming that approximately 50 acres were omitted from McLeod Lake's reserves due to survey errors.

9. Further to an agreement that was reached between McLeod Lake and British Columbia in 1973 regarding the purchase of 13.726 acres of land for a road right of way through an existing McLeod Lake reserve, McLeod Lake was entitled to but has not yet purchased and received 13.726 acres of reserve lands to replace those purchased by British Columbia for the road right of way.

10. The Parties intend to resolve these disputes in accordance with this Agreement.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1: DEFINITIONS & INTERPRETATION

Definitions

1.1 In this Agreement:

* * *

1.1.3 **"Additional Reserve Lands"** means:

a. any alternate lands selected in accordance with article 4.2.5(a); or

b. the lands referred to and surveyed in accordance with article 4.5.

* * *

1.1.19 ***"Indian Act"*** means the *Indian Act*, R.S.C. 1985, c. I-5.

1.1.20 **"McLeod Lake"** means the McLeod Lake Indian Band, which is a "band", as that term is defined in the *Indian Act*.

1.1.21 **"Member"** means a "member of the band", as defined in the *Indian Act*, of McLeod Lake, except where defined otherwise in this Agreement.

* * *

1.1.28 **"Proposed Reserve Lands"** means:

a. the parcels of land (collectively 63 hectares) shown in Schedule "C" and described as approximately:

i. 1.0 hectare on Finlay Bay,
ii. 1.0 hectare on Weston Bay,
iii. 2.0 hectares on the Hominka River,
iv. 2.0 hectares on Tacheeda Lake,
v. 1.0 hectare on Davie Lake,
vi. 2.0 hectares on Arctic Lake,
vii. 1.9 hectares on Blue Lake,
viii. 2.0 hectares on McIntyre Lake,
ix. 12.0 hectares on McLeod Lake,
x. 4.0 hectares on Weedon Lake,
xi. 26.0 hectares at the community of Bear Lake, and
xii. 8.1 hectares in the District Municipality of Mackenzie; and

b. those lands outlined in bold on maps recorded in the Vancouver, British Columbia Office of Legal Surveys Division, Natural Resources Canada, that are described as:

i. Approximately 8,720.7 hectares of land in the vicinity of McLeod Lake and shown in orthophoto map #990 as "McLeod Lake East" and "McLeod Lake West";

ii. Approximately 4,122 hectares of land in the vicinity of Kerry Lake and shown in orthophoto map #991 as "Kerry Lake West" and "Kerry Lake East";

iii. Approximately 2,579 hectares of land in the vicinity of Weedon Lake and shown in orthophoto map #992 as "Weedon Carp"; and

iv. Approximately 4,334 hectares of land in the vicinity of Carp Lake and shown in orthophoto map #993 as "Carp South";

all of which above parcels are shown for ease of reference on the map in Schedule "C".

* * *

ARTICLE 2: TREATY

2.1 McLeod Lake joins in the cession made by Treaty No. 8 and agrees to adhere to the terms thereof in consideration of the undertakings made therein and may exercise the rights set out in Treaty No. 8 throughout the Treaty No. 8 Area.

2.2 Canada accepts and British Columbia agrees to the adhesion set out in article 2.1.

2.3 Without limiting Treaty No. 8, the rights of McLeod Lake under Treaty No. 8, or the geographic extent of those rights, the Parties agree that, within any Claimed Traditional Territory outside the Treaty No. 8 Area, McLeod Lake has and may hold and exercise rights as set out in Treaty No. 8, subject to the conditions and cession set out in that treaty, as if Treaty No. 8 applied to the Claimed Traditional Territory outside the Treaty No. 8 Area.

2.4 If article 2.3 is a grant of treaty rights, which grant is not pursuant to Treaty No. 8, then:

2.4.1 the grant of treaty rights does not affect, recognize or provide any rights under section 35 of the *Constitution Act, 1982* for any aboriginal people other than McLeod Lake; and

2.4.2 if a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that any aboriginal people, other than McLeod Lake, has rights under section 35 of the *Constitution Act, 1982* that are adversely affected by the grant of treaty rights under article 2.3, then:

a. McLeod Lake may exercise the rights granted under article 2.3 to the extent that such rights do not adversely affect the section 35 rights of the other aboriginal people; and

b. Canada and British Columbia will negotiate and attempt to reach agreement with McLeod Lake in order to provide McLeod Lake with additional or replacement rights or, if such rights are not agreed to by the Parties, other remedies.

2.5 Article 2.4 does not apply to the Reserve Lands.

2.6 The rights acquired by McLeod Lake under Treaty No. 8 and articles 2.3 to 2.5, inclusive, are rights acquired under a treaty and land claims agreement,

respectively, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

ARTICLE 3: FULFILMENT OF TREATY OBLIGATIONS

3.1 This Agreement will not be construed as a modification or novation of Treaty No. 8.

3.2 Upon Canada and British Columbia carrying out their respective obligations under this Agreement, the following will be fulfilled and satisfied:

3.2.1 the provision of reserves and land in severalty, including resources on, under and within such reserves; and

3.2.2 the provision of that which is underlined in Schedule "B".

3.3 Notwithstanding the common law and the geographic extent of rights acquired by McLeod Lake under article 2, McLeod Lake agrees that any obligation by British Columbia to consult McLeod Lake is limited to activities that may have an impact upon McLeod Lake's rights under s. 35 of the *Constitution Act*, 1982 within the Claimed Traditional Territory and for greater certainty, British Columbia will have no obligation to consult McLeod Lake with respect to activities that may have an impact upon their s. 35 rights outside of McLeod Lake's Claimed Traditional Territory.

ARTICLE 4: TRANSFER OF PROPOSED & ADDITIONAL RESERVE LANDS

4.1 Transfer of the Proposed Reserve Lands

4.1.1 British Columbia will transfer the administration, control and benefit of the Proposed Reserve Lands to Canada free and clear of all interests, except those encumbrances listed as follows:

a. British Columbia Hydro and Power Authority Flowage Agreement, substantially in the form attached as Schedule "D";

b. British Columbia Hydro and Power Authority Right of Way, substantially in the form attached as Schedule "E".

* * *

4.4 Reserve Entitlement

4.4.1 The calculation in relation to the area of Proposed Reserve Lands or any Additional Reserve Lands to be transferred to Canada is based on the membership of McLeod Lake of 387 Members as of May 1, 1998, which is deemed to be the population of McLeod Lake for the purposes of this Agreement.

4.4.2 Subject to article 8, McLeod Lake's Treaty No. 8 reserve land entitlement is 20,047 hectares (or 49,536 acres).

4.4.3 Lands currently set aside as reserves for McLeod Lake of approximately 237.3 hectares (586.37 acres) are deemed to be part of McLeod Lake's Treaty No. 8 reserve land entitlement.

* * *

4.6 Provincial Order

4.6.1 Within 4 months following the completion of the matters described in articles 4.1 to 4.5 inclusive, except for articles 4.2.2, 4.2.3 and 4.2.6, a Minister or Ministers of the Province of British Columbia will recommend to the Lieutenant-Governor in Council that the administration, control and benefit of that portion of the Proposed Reserve Lands or any Additional Reserve Lands defined in a Provincial Order be transferred to Canada in accordance with that Provincial Order.

4.6.2 The Parties are aware that other Indian Bands, First Nations or aboriginal people have brought, and may in the future bring, court actions challenging the validity of provincial Order in Council 1036/1938. Accordingly, if in a court action brought by or on behalf of another Indian Band, First Nation or aboriginal people, a court holds that provisions, or portions thereof, within Order in Council 1036/1938 are invalid or inapplicable in respect of the lands transferred under that Order in Council, any corresponding provision, or portion thereof, within the Provincial Order will be deemed to be invalid or inapplicable in respect of the lands transferred under the Provincial Order.

4.6.3 The benefit of a court ruling under article 4.6.2 will be applied to McLeod Lake once applicable time limits for the filing of appeals have expired, or alternatively, once any appeals, if pursued, have been finally determined in favour of the Indian Band, First Nation or aboriginal people.

4.7 Federal Order

4.7.1 Provided Canada is satisfied that the Proposed Reserve Lands or any Additional Reserve Lands defined in a Provincial Order meet Canada's Additions to Reserve Policy, as attached in Attachment "D" (the "ATR Policy"), Canada's Minister of Indian Affairs and Northern Development will recommend to the Governor in Council that:

a. the transfer of the administration, control and benefit of those lands be accepted pursuant to the Federal Real Property Act, S.C. 1991, c. 50, and the Minister will make best efforts to do so within 6 months of delivery of the corresponding Provincial Order; and

b. those lands be set aside as reserves for the use and benefit of McLeod Lake in accordance with the Federal Order.

* * *

ARTICLE 7: NON-RESERVE LANDS

7.1 Map Reserves

7.1.1 Within thirty days after the Effective Date, British Columbia will withdraw from disposition under section 16 of the *Land Act*, R.S.B.C. 1996, c. 245 and will establish map reserves for the benefit of McLeod Lake, for hunting, trapping and berry picking purposes on the lands shown and outlined in bold in Schedule "J", being approximately:

a. 1.0 hectare at Colbourne Creek;

b. 1.0 hectare on Reynolds Creek;

c. 1.0 hectare on Chuyazega Lake;

d. 1.0 hectare on Grayling Lake;

e. 1.0 hectare on Firth Lake;

f. 1.0 hectare on McLeod Lake;

g. 1.0 hectare on the Parsnip River; and

h. 1.0 hectare on Isadore Creek.

7.1.2 The map reserves established under article 7.1.1 will only be amended or cancelled by British Columbia in consultation with McLeod Lake.

7.2 Fee Simple Sites

7.2.1 Within one year after the Effective Date, British Columbia will offer to sell to McLeod Lake at fair market value the lands, shown and outlined in bold on the maps in Schedule "K", being approximately:

a. 56.0 hectares on Summit Lake; and

b. 43.0 hectares at Mackenzie Junction.

7.2.2 In accordance with the manner in which Crown land is sold to other residents of British Columbia, the purchase price of the Fee Simple Sites will be based on both the fair market value of the bare land and the fair market value of the merchantable timber, if any, on the land, but no double compensation will occur.

* * *

ARTICLE 8: LAND IN SEVERALTY

8.1 In article 8, "Individual" means a Member as of the Effective Date, except that if such Member is a minor or has been declared incapable of managing his or her affairs by a court of competent jurisdiction or under applicable legislation,

it means the legal representative of that Member instead of, and for and on behalf of, that Member.

8.2 Pursuant to Treaty No. 8, any Individual of McLeod Lake who prefers to live apart from existing McLeod Lake reserves and the Proposed Reserve Lands or any Additional Reserve Lands has the option to select land in severalty to the extent of 160 acres.

8.3 Canada has established a process for Individuals to elect land in severalty or to be counted towards McLeod Lake's reserve land entitlement. This process is set out in Attachment "B".

8.4 Within two months of the Effective Date, Canada and British Columbia will enter into joint negotiations with each Individual who, in accordance with the process set out in Attachment "B", elected land in severalty and is eligible to receive it. During the negotiations, Canada and British Columbia will consult with each such Individual as to the locality of the 160 acres to determine if the lands selected by the Individual are suitable and open for selection.

8.5 If the land selected by the Individual is found to be suitable and open for selection pursuant to article 8.4, British Columbia will convey the land to the Member, or to a legal representative in trust for such Member, as the case may be, with a proviso as to non-alienation without the consent of the Governor General in Council.

8.6 The total amount of McLeod Lake's reserve entitlement set out in article 4.4.2 will be reduced by 128 acres for each Individual who elects to receive land in severalty pursuant to article 8.4. If prior to any conveyance pursuant to article 8.5, any Individual provides Canada and British Columbia with a statutory declaration that he or she no longer wishes to receive land in severalty, then 128 acres will be returned to McLeod Lake's reserve land entitlement and provided as reserve lands as set out in this Agreement and any obligations of Canada and British Columbia to such Individual or Member, as the case may be, set out in articles 8.4 and 8.5 will end.

8.7 Canada and British Columbia require that an Individual who elects land in severalty provide a release and indemnity to Canada and British Columbia with respect to that Individual's election to take land in severalty.

8.8 Canada will provide a release to British Columbia for land in severalty provided pursuant to article 8.5.

8.9 This Agreement does not prejudice and will not be interpreted in any manner to prejudice the position that each of the Parties may take, or the position that any Individual may take, in relation to the form of conveyance of land in severalty or the status of such lands, including, without limitation, the constitutional or reserve status of such lands.

* * *

ARTICLE 11: RELEASES, INDEMNITIES AND LITIGATION

* * *

11.2 Releases to Canada from McLeod Lake

11.2.1 McLeod Lake and its Members release Canada from any Claims that McLeod Lake and its Members ever had, now have, or may in the future have against Canada with respect to:

a. the Actions, subject to article 11.5;

b. Canada's obligations under those underlined portions of Treaty No. 8 set out in Schedule "B";

c. all past claims as set out in Treaty No. 8;

d. any act or omission by Canada before the Effective Date that may have affected or infringed any of McLeod Lake's rights under Treaty No. 8 to pursue their usual vocations of hunting, trapping and fishing;

e. lands that should have been allotted or set apart for McLeod Lake as a reserve under Treaty No. 8, or in any other manner, prior to the Effective Date, or past loss of use and benefit of those lands, except any Claims to enforce the provision of Proposed or Additional Reserve Lands in accordance with this Agreement;

f. upon acceptance of the transfer of the Proposed Reserve Lands and any Additional Reserve Lands in accordance with this Agreement, the provision of reserve lands for McLeod Lake under Treaty No. 8;

* * *

11.4 Releases to British Columbia from McLeod Lake

11.4.1 McLeod Lake and its Members release British Columbia from any Claims that McLeod Lake and its Members ever had, now have, or may in the future have against British Columbia with respect to:

a. the Actions, subject to article 11.5;

b. all past claims as set out in Treaty No. 8;

c. upon acceptance of the transfer of the Proposed Reserve Lands and any Additional Reserve Lands in accordance with this Agreement, the provision of reserve lands for McLeod Lake under Treaty No. 8;

d. lands that should have been allotted or set apart for McLeod Lake as a reserve under Treaty No. 8, or in any other manner, prior to the Effective Date, or past loss of use and benefit of those lands, except

any Claims to enforce the provision of Proposed or Additional Reserve Lands in accordance with this Agreement;

* * *

11.8 Indemnity to McLeod Lake from British Columbia

11.8.1 British Columbia indemnifies McLeod Lake from any Claim made by a person with respect to an encumbrance, estate, interest, charge, license or permit granted or agreed to by British Columbia:

a. on the Proposed Reserve Lands, but this indemnity does not apply to any Claim in relation to the charges in favour of British Columbia Hydro and Power Authority, Westcoast Energy Inc., and Federated Pipelines (Western) Ltd., referred to in article 4.1; or

b. on the Additional Reserve Lands, if any, but this indemnity does not apply to any Claim in relation to an encumbrance, estate, interest, charge, license or permit on the Additional Reserve Lands that McLeod Lake agrees may remain in place.

* * *

ARTICLE 15: NO PREJUDICE AND NO ADMISSIONS

15.1 This Agreement deals with the unique circumstances surrounding McLeod Lake and Treaty No. 8 and is not a precedent for the negotiation or interpretation of treaties involving any other Indian Band, first Nation or aboriginal people.

15.2 Nothing in this Agreement will constitute an admission by British Columbia as to:

15.2.1 the location of the western boundary of the area defined and described in Treaty no. 8; and

15.2.2 any obligation to provide land under Treaty No. 8.

15.3 This Agreement is without prejudice to the positions that British Columbia and Canada may take with respect to any person other than McLeod Lake and its Members.

15.4 This Agreement does not constitute any admission of facts and will not be construed as an admission of liability on the part of any of the Parties.

SCHEDULE B

ORDER IN COUNCIL SETTING UP COMMISSION FOR TREATY 8

P.C. No. 2749

On a report dated 30th November, 1898, from the Superintendent General of Indian Affairs, stating with reference to his report of the 18th June, 1898, upon which was based the Minute of Council approved on the 27th of the same month, authorizing the appointing of Commissioners to negotiate a treaty with the Indians occupying territory to the north of that already ceded and shown in pink on the attached map, that in that report it was set forth that the Commissioner of the North West Mounted Police had pointed out the desirability of steps being taken for the making of a treaty with the Indians occupying the proposed line of route from Edmonton to Pelly River; that he had intimated that these Indians, as well as the Beaver Indians of the Peace and Nelson Rivers, and the Sicamas and Nihames Indians, were inclined to be turbulent and were liable to give trouble to isolated parties of miners or traders who might be regarded by the Indians as interfering with what they considered their vested rights; and that he had stated that the situation was made more difficult by the presence of the numerous travellers who had come into the country and were scattered at various points between Lesser Slave Lake and Peace River.

* * *

The Minister, in this connection, draws attention to the fact that that part of the territory marked "A" on the plan attached is within the boundaries of the Province of British Columbia, and that in the past no treaties such as have been made with the Indians of the North West have been made with any of the Indians whose habitat is west of the Mountains. An arrangement was come to in 1876 under which the British Columbia Government agreed to the setting aside by a Commission subject to the approval of that Government, of land which might be considered necessary for Indian reserves in different parts of the Province, and later on the agreement was varied so as to provide that the setting apart should be made by a Commissioner appointed by the Dominion Government whose allotment would be subject to the approval of the Commissioner of Lands and Works of the Province.

* * *

The Minister submits that it will neither be politic nor practicable to exclude from the treaty Indians whose habitat is in the territory lying between the height of land and the eastern boundary of British Columbia, as they know nothing of the artificial boundary, and, being allied to the Indians of Athabasca, will look for the same treatment as is given to the Indians whose habitat is in that district.

Although the rule has been laid down by the Judicial Committee of the Privy Council that the Province benefitting by a surrender of Indian title should bear the burdens incident to that surrender, he the Minister after careful consideration does not think it desirable that any demand should be made upon the Province of British Columbia for any money payment in connection with the proposed treaty.

That from the information in possession of the Department of Indian Affairs it is not at present clear whether it will be necessary to set apart any land for a reserve or reserves for Indians in that part of the Province of British Columbia which will be covered by the proposed treaty, but if the Commissioners should find it necessary to agree to the setting apart of any reserve or reserves in that territory, the Minister is of opinion that the same may properly be set aside under the agreement of 1876 already referred to.

As it is in the interest of the Province of British Columbia, as well as in that of the Dominion, that the country to be treated for should be thrown open to development and the lives and property of those who may enter therein safeguarded by the making of provision which will remove all hostile feeling from the minds of the Indians and lead them to peacefully acquiesce in the changing conditions, he the Minister would suggest that the Government of British Columbia be apprised of the intention to negotiate the proposed treaty; and as it is of the utmost importance that the Commissioners should have full power to give such guarantees as may be found necessary in regard to the setting apart of land for reserves the Minister further recommends that the Government of British Columbia be asked to formally acquiesce in the action taken by Your Excellency's Government in the matter and to intimate its readiness to confirm any reserves which it may be found necessary to set apart within the portion of the Province already described.

The Minister further recommends that a certified copy of this Minute, if approved, and of the map attached hereto be transmitted to the Lieutenant Governor of the Province of British Columbia for the information of his Government.

The Committee submit the same for Your Excellency's approval.

(sgd.) R. W. SCOTT.

[His Excellency did approve the Minute and the Minute and map were transmitted to the Lieutenant Governor.]

TREATY No. 8

ARTICLES OF A TREATY made and concluded at the several dates mentioned therein, in the year of Our Lord one thousand eight hundred and ninety-nine, between Her most Gracious Majesty the Queen of Great Britain and Ireland, by Her Commissioners the Honourable David Laird, of Winnipeg, Manitoba, Indian Commissioner for the said Province and the Northwest Territories; James Andrew Joseph McKenna, of Ottawa, Ontario, Esquire, and the Honourable James Hamilton Ross, of Regina, in the Northwest Territories, of the one part; and the Cree, Beaver, Chipewyan and other Indians, inhabitants of the territory within the limits hereinafter defined and described, by their Chiefs and Headmen, hereunto subscribed, of the other part:–

WHEREAS, the Indians inhabiting the territory hereinafter defined have, pursuant to notice given by the Honourable Superintendent General of Indian Affairs in the year 1898, been convened to meet a Commission representing Her Majesty's Government of the Dominion of Canada at certain places in the said territory in this present year 1899, to deliberate upon certain matters of interest of Her Most Gracious Majesty, of the one part, and the said Indians of the other.

AND WHEREAS, the said Indians have been notified and informed by Her Majesty's said Commission that it is Her desire to open for settlement, immigration, trade, travel, mining, lumbering and such other purposes as to Her Majesty may seem meet, a tract of country bounded and described as hereinafter mentioned, and to obtain the consent thereto of Her Indian subjects inhabiting the said tract, and to make a treaty, and arrange with them, so that there may be peace and good will between them and Her Majesty's other subjects, and that Her Indian people may know and be assured of what allowances they are to count upon and receive from Her Majesty's bounty and benevolence.

AND WHEREAS, the Indians of the said tract, duly convened in council at the respective points named hereunder, and being requested by Her Majesty's Commissioners to name certain Chiefs and Headmen who should be authorized on their behalf to conduct such negotiations and sign any treaty to be founded thereon, and to become responsible to Her Majesty for the faithful performance by their respective bands of such obligations as shall be assumed by them, the said Indians have therefore acknowledged for that purpose the several Chiefs and Headmen who have subscribed hereto.

AND WHEREAS, the said Commissioners have proceeded to negotiate a treaty with the Cree, Beaver, Chipewyan and other Indians, inhabiting the district hereinafter defined and described, and the same has been agreed upon and concluded by the respective bands at the dates mentioned hereunder, the said Indians DO HEREBY CEDE, RELEASE, SURRENDER AND YIELD UP to the Government of the Dominion of Canada, for Her Majesty the Queen and Her successors for ever, all their rights, titles and privileges whatsoever, to the lands included within the following limits, that is to say:–

Commencing at the source of the main branch of the Red Deer River in Alberta, thence due west to the central range of the Rocky Mountains, thence northwesterly along the said range to the point where it intersects the 60th parallel of north latitude, thence east along said parallel to the point where it intersects Hay River, thence northeasterly down said river to the south shore of Great Slave Lake, thence along the said shore northeasterly (and including such rights to the islands in said lakes as the Indians mentioned in the treaty may possess), and thence easterly and northeasterly along the south shores of Christie's Bay and McLeod's Bay to old Fort Reliance near the mouth of Lockhart's River, thence southeasterly in a straight line to and including Black Lake, thence southwesterly up the stream from Cree Lake, thence including said lake southwesterly along the height of land between the Athabasca and Churchill Rivers to where it intersects the northern boundary of Treaty Six, and along the said boundary easterly, northerly and southwesterly, to the place of commencement.

AND ALSO the said Indian rights, titles and privileges whatsoever to all other lands wherever situated in the Northwest Territories, British Columbia, or in any other portion of the Dominion of Canada.

TO HAVE AND TO HOLD the same to Her Majesty the Queen and Her successors for ever.

And Her Majesty the Queen HEREBY AGREES with the said Indians that they shall have right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.

And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for such bands as desire reserves, the same not to exceed in all one square mile for each family of five for such number of families as may elect to reside on reserves, or in that proportion for larger or smaller families; and for such families or individual Indians as may prefer to live apart from band reserves, Her Majesty undertakes to provide land in severalty to the extent of 160 acres to each Indian, the land to be conveyed with a proviso as to non-alienation without the consent of the Governor General in Council of Canada, the selection of such reserves, and lands in severalty, to be made in the manner following, namely, the Superintendent General of Indian Affairs shall depute and send a suitable person to determine and set apart such reserves and lands, after consulting with the Indians concerned as to the locality which may be found suitable and open for selection.

Provided, however, that Her Majesty reserves the right to deal with any settlers within the bounds of any lands reserved for any band as She may see fit; and also that the aforesaid reserves of land, or any interest therein, may be sold or

otherwise disposed of by Her Majesty's Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained.

It is further agreed between Her Majesty and Her said Indian subjects that such portions of the reserves and lands above indicated as may at any time be required for public works, buildings, railways, or roads of whatsoever nature may be appropriated for that purpose by Her Majesty's Government of the Dominion of Canada, due compensation being made to the Indians for the value of any improvements thereon, and an equivalent in land, money or other consideration for the area of the reserve so appropriated.

And with a view to show the satisfaction of Her Majesty with the behaviour and good conduct of Her Indians, and in extinguishment of all their past claims, She hereby, through Her Commissioners, agrees to make each Chief a present of thirty-two dollars in cash, to each Headman twenty-two dollars, and to every other Indian of whatever age, of the families represented at the time and place of payment, twelve dollars.

Her Majesty also agrees that next year, and annually afterwards for ever, She will cause to be paid to the said Indians in cash, at suitable places and dates, of which the said Indians shall be duly notified, to each Chief twenty-five dollars, each Headman, not to exceed four to a large Band and two to a small Band, fifteen dollars, and to every other Indian, of whatever age, five dollars, the same, unless there be some exceptional reason, to be paid only to heads of families for those belonging thereto.

FURTHER, Her Majesty agrees that each Chief, after signing the treaty, shall receive a silver medal and a suitable flag, and next year, and every third year thereafter, each Chief and Headman shall receive a suitable suit of clothing.

FURTHER, Her Majesty agrees to pay the salaries of such teachers to instruct the children of said Indians as to Her Majesty's Government of Canada may seem advisable.

FURTHER, Her Majesty agrees to supply each Chief of a Band that selects a reserve, for the use of that Band, ten axes, five hand-saws, five augers, one grindstone, and the necessary files and whetstones.

FURTHER, Her Majesty agrees that each Band that elects to take a reserve and cultivate the soil, shall, as soon as convenient after such reserve is set aside and settled upon, and the Band has signified its choice and is prepared to break up the soil, receive two hoes, one spade, one scythe and two hay forks for every family so settled, and for every three families one plough and one harrow, and to the Chief, for the use of his Band, two horses or a yoke of oxen, and for each Band potatoes, barley, oats and wheat (if such seed be suited to the locality of the reserve), to plant the land actually broken up, and provisions for one month in the spring for several years while planting such seeds; and to every family one cow, and every Chief one

bull, and one mowing-machine and one reaper for the use of his Band when it is ready for them; for such families as prefer to raise stock instead of cultivating the soil, every family of five persons, two cows, and every Chief two bulls and two mowing-machines when ready for their use, and a like proportion for smaller or larger families. The aforesaid articles, machines and cattle to be given one for all for the encouragement of agriculture and stock raising; and for such Bands as prefer to continue hunting and fishing, as much ammunition and twine for making nets annually as will amount in value to one dollar per head of the families so engaged in hunting and fishing.

And the undersigned Cree, Beaver, Chipewyan and other Indian Chiefs and Headmen, on their own behalf and on behalf of all the Indians whom they represent, DO HEREBY SOLEMNLY PROMISE and engage to strictly observe this Treaty, and also to conduct and behave themselves as good and loyal subjects of Her Majesty the Queen.

THEY PROMISE AND ENGAGE that they will, in all respects, obey and abide by the law; that they will maintain peace between each other, and between themselves and other tribes of Indians, and between themselves and others of Her Majesty's subjects, whether Indians, half-breeds or whites, this year inhabiting and hereafter to inhabit any part of the said ceded territory; and that they will not molest the person or property of any inhabitant of such ceded tract, or of any other district or country, or interfere with or trouble any person passing or travelling through the said tract or any part thereof, and that they will assist the officers of Her Majesty in bringing to justice and punishment any Indian offending against the stipulations of this Treaty or infringing the law in force in the country so ceded.

IN WITNESS WHEREOF Her Majesty's said Commissioners and the Cree Chief and Headmen of Lesser Slave Lake and the adjacent territory, HAVE HEREUNTO SET THEIR HANDS at Lesser Slave Lake on the twenty-first day of June, in the year herein first above written.

_____

REPORT OF COMMISSIONER FOR TREATY No. 8.

DEPARTMENT OF INDIAN AFFAIRS,

OTTAWA, December 11, 1900.

The Honourable
The Superintendent General of Indian Affairs,
Ottawa.

SIR,—I beg to report having, in pursuance of the commissions entrusted to me by you, visited the territory covered by Treaty No. 8, and all the posts from Fort St. John, on the Upper Peace River in the west, to Fort Resolution on Great Slave lake in the north. During that visit, acting as your commissioner for the purpose, formal adhesions to treaty were taken from certain Indian inhabitants of the ceded territory belonging to eight bands who were not treated with last year, annuities were paid to all treaty Indians, and business of a general character was transacted with and for them; acting as a commissioner to receive and hear half-breed claims, over three hundred and fifty cases were dealt with; and acting magisterially as a commissioner of Dominion police and a justice of the peace for the Territories, nineteen cases of crime and misdemeanour were disposed of. Separate reports touching upon half-breed claims, public order and minor Indian matters are being submitted.

My commission to take adhesions to Treaty Eight was designed to enable me to treat with the Indians of Fort St. John in the Upper Peace river, and the various bands on Great Slave lake that trade at Fort Resolution, to the end of bringing them into treaty relations with Her Majesty's government.

There came to meet me, however, in addition to these, two bands of Indians, undoubted inhabitants of the tract covered by Treaty No. 8, with whom I was not empowered to deal, one of Crees from Sturgeon lake and one of Slaves from the Upper Hay river. Both of these desired to enter into treaty, and it became necessary to decide whether they, after having come from distant points to meet one whom they looked upon as a representative of the government, were to be dismissed non-plussed and dissatisfied, or to be allowed to give in their adhesions. It being impossible to communicate with the department, and as the title of these people to the benefits of the treaty was beyond question, the conclusion was unhesitatingly adopted that it was my duty to assume responsibility and concede those benefits to them. The instruments embodying their adhesions are submitted herewith together with those I was empowered to take, which contain the adhesions of certain of the Indians of Fort St. John and the whole of those of Fort Resolution on Great Slave lake, whose hunting grounds lie within treaty limits. It is hoped that you will approve this assumption of responsibility, and that the sanction of His Excellency in Council will be extended to all the adhesions.

Last year 2,217 Indians were paid. This year 3,323 claimed the annuity, an increase of 1,106, or almost fifty per cent. Of this increased number 248 belong to or have now joined, bands treated with in 1899, and 858 to the following bands

which remained undealt with in that year, namely, Crees of Sturgeon lake; Beavers of Fort St. John; Slaves of Upper Hay river, who trade at Vermilion; and the Dogribs, Yellowknives, Chipewyans and Slaves of Lower Hay river, who trade at Fort Resolution. Some Caribooeaters, belonging to the country east of Smith's Landing on Great Slave river, also came into treaty, but they were incorporated with the Chipewyan band of Smith's Landing, being allied thereto. Six new chiefs were recognized.

As was reported by your commissioners last year, there is little disposition on the part of most of the northern Indians to settle down upon land or to ask to have reserves set apart. Dealing, under your instructions, with demands for land, two small provisional reserves were laid out at Lesser Slave Lake for Kinosayo's band, and fifteen or sixteen applications were registered for land in severalty by Indians who have already, to some extent, taken to agriculture.

It appears that this disinclination to adopt agriculture as a means of livelihood is not unwisely entertained, for the more congenial occupations of hunting and fishing are still open, and agriculture is not only arduous to those untrained to it, but in many districts it as yet remains untried. A consequence of this preference of old pursuits is that the government will not be called upon for years to make those expenditures which are entailed by the treaty when the Indians take to the soil for subsistence.

The health of the Indians in the district seems to vary with the times. When game is plentiful it is good; when scarce, it is bad. The want of rabbits along the Peace and Hay rivers caused suffering to the Beavers and Slaves in part of the western portion of the territory last winter; but, in the eastern portion, the Chipewyans were unusually well off, cariboo being plentiful. At Fond du Lac, it was said, there was less disease than for many years. No such loss of life from starvation as has often characterized northern winters was reported, and the measures for relieving sick and destitute Indians planned by the commissioners last year, operated well and alleviated distress in many deserving cases. Dr. Edwards, who accompanied me, gave advice and dispensed medicine to a large number of Indians and vaccinated many. Great appreciation of his services was manifested.

At nearly all the important points the chiefs and more intelligent men who were present at the making of treaty last year, asked for extended explanations of its terms, in order that those of their bands who had failed to grasp its true meaning might be enlightened, and that those who were coming into treaty for the first time might fully understand what they were doing. In the course of the councils held for this purpose, it was possible to eradicate any little misunderstanding that had arisen in the minds of the more intelligent, and great pains were taken to give such explanations as seemed most likely to prevent any possibility of misunderstandings in future.

Each of the many appointments made was punctually kept, a fact which appeared to give great satisfaction to both the traders and the Indians.

Appended is a summary of the bands paid, showing the admissions to treaty permitted this year.

There yet remains a number of persons leading an Indian life in the country north of Lesser Slave lake, who have not accepted treaty as Indians, or scrip as half-breeds, but this is not so much through indisposition to do so as because they live at points distant from those visited, and are not pressed by want. The Indians of all parts of the territory who have not yet been paid annuity probably number about 500 exclusive of those in the extreme northwestern portion, but as most, if not all, of this number belong to bands that have already joined in the treaty, the Indian title to the tract it covers may be fairly regarded as being extinguished.

Most respectfully submitting this report,

I have, &c.,
J. A. MACRAE,
Commissioner.

* * *

The Beaver Indians of the Upper Peace River and the country thereabouts, having met at Fort St. John, on this thirtieth day of May, in this present year 1900, Her Majesty's Commissioner, James Ansdell Macrae, Esquire, and having had explained to them the terms of the treaty unto which the Chief and Headmen of the Indians of Lesser Slave Lake and adjacent country set their hands on the twenty-first day of June, in the year 1899, do join in the cession made by the said treaty, and agree to adhere to the terms thereof, in consideration of the undertakings made therein.

In witness whereof, Her Majesty's said Commissioner, and the following of the said Beaver Indians, have hereunto set their hands, at Fort St. John, on this the thirtieth day of May, in the year herein first above written.

Signed by the parties thereto in the presence of the undersigned witnesses, after the same had been read and explained to the Indians by John Shaw, Interpreter.

JOHN SHAW, *Interpreter*,
W. J. O'DONNELL.

J. A. MACRAE, *Commissioner*,
his
MUCKITEAY x
mark
his
AGINAA x
mark
his
DISLISICI x
mark
his
TACHEA x
mark
his
APPAN x
mark
his
ATTACHIE x
mark
his
ALLALIE x
mark
his
YATSOOSE x
mark

* * *

STATEMENT showing the number of Indians who joined Treaty No. 8 in A.D. 1900 and received annuity and gratuity—the bands treated with for the first time being denoted by italics (annuities paid to those dealt with in 1899 not shown).

Band.	Whereabouts.	Chiefs.	Head-men.	Indians.	Cash paid.
					$ cts.
Crees (Kinoosayo's)	Lesser Slave Lake	.....	.....	10	120 00
Crees	Sturgeon Lake	1	1	93	1,170 00
Crees (Testawit's)	Peace River Crossing	.....	.....	20	240 00
Beavers	Fort St. John	.....	.....	46	552 00
Beavers	Fort Dunvegan	1	.....	74	921 00
Beavers (Tete Noire's)	Fort Vermilion	.....	.....	18	216 00
Slaves of Upper Hay River	"	1	2	175	2,176 00
Crees (Tall Cree's)	"	.....	.....	43	516 00
Little Red River	Little Red River	.....	.....	9	108 00
Chipewyans	Fort Chipewyan	.....	.....	1	12 00
Crees	"	.....	.....	1	12 00
Chipewyans	Smith's Landing	.....	1	35	462 00
Chipewyans	Fort Resolution	1	1	111	1,386 00
Yellowknives	"	1	2	191	2,388 00
Dogribs	"	1	2	119	1,524 00
Slaves of Lower Hay River	"	.....	1	103	1,248 00
Chipewyans (Maurice's)	Fond du Lac (Lake Athabasca)	.....	.....	63	720 00
Crees	Fort McMurray	.....	.....	30	360 00
Stragglers	"	.....	.....	17	204 00
Crees	Wabiscow	.....	.....	39	468 00
Crees	Whitefish Lake	.....	.....	2	24 00
Crees	Trout Lake	.....	.....	1	12 00
		6	10	1,203	14,888 00

SUMMARY.

Total admitted in 1899	2,217
" 1900	1,238
Total of Indian annuitants under Treaty No. 8	3,328

Certified correct,

J. A. MACRAE,
Commissioner.

SCHEDULE C

McLEOD LAKE INDIAN BAND TREATY No. 8 ADHESION AND SETTLEMENT AGREEMENT ACT [SBC 2000] CHAPTER 8

Assented to June 12, 2000

* * *

Definitions

1 In this Act

* * *

"MLIB Agreement" means the McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement entered into by the McLeod Lake Indian Band, Her Majesty the Queen in right of Canada and Her Majesty the Queen in right of British Columbia;

* * *

"transfer of Crown land to Canada" means a transfer, required or permitted under the MLIB Agreement, from the government of British Columbia to Canada, of the administration, control and benefit of Crown land;

* * *

Certain interests cease on land transfer

4 (1) Subject to subsection (2), on a transfer of Crown land to Canada every interest that, immediately before the transfer of the land became effective, encumbered or applied to the transferred land or its use ceases to exist, except

(a) those encumbrances that are listed in article 4.1.1 (a) and (b) of the MLIB Agreement, and

(b) those encumbrances that,

(i) under article 4.5 of the MLIB Agreement, Canada and the Council of the McLeod Lake Indian Band agree may remain in place, and

(ii) are specifically identified in the transfer as encumbrances that remain in place after the transfer.

(2) Subsection (1) does not affect rights, interests, responsibilities or liabilities under

(a) section 5 or 6 or an agreement referred to in section 5 or 6, or

(b) a transferable silviculture prescription or transferable road deactivation obligation.

* * *

Crown grants of land in severalty

9 A Crown grant that, in fulfillment of article 8.5 of the MLIB Agreement, conveys land from the government of British Columbia to a member of the

McLeod Lake Indian Band, or to the legal representative of a member of the McLeod Lake Indian Band on the member's behalf, must contain a proviso as to non-alienation of the land without the consent of the Governor General in Council.

SCHEDULE D

EXTRACT FROM TERMS OF UNION, 1871

ORDER ADMITTING COLONY TO CANADA, 1871

Preamble

Whereas by the *British North America Act, 1867*, provision was made for the Union of the Provinces of Canada, Nova Scotia, and New Brunswick into the Dominion of Canada, and it was (amongst other things) enacted that it should be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and of the Legislature of the Colony of British Columbia, to admit that Colony into the said Union on such terms and conditions as should be in the Addresses expressed, and as the Queen should think fit to approve, subject to the provisions of the said Act; and it was further enacted that the provisions of any Order in Council in that behalf should have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland:

And whereas by Addresses from the Houses of the Parliament of Canada and from the Legislative Council of British Columbia respectively, of which Addresses copies are contained in the Schedule to this Order annexed, Her Majesty was prayed, by and with the advice of Her Most Honourable Privy Council, under section 146 of the hereinbefore recited Act, to admit British Columbia into the Dominion of Canada, on the terms and conditions set forth in the said Addresses: ....

TERMS OF UNION, 1871

THE TERMS OF UNION

———

SCHEDULE (*Part*)

* * *

***B.N.A. Act* to apply to British Columbia**

10. The provisions of the *British North America Act, 1867*, shall (except those parts thereof which are in terms made, or by reasonable intendment may be held to be specially applicable to and only affect one and not the whole of the Provinces now comprising the Dominion, and except so far as the same may be varied by this Minute) be applicable to British Columbia, in the same way and to the like extent as they apply to the other Provinces of the Dominion, and as if the Colony of British Columbia had been one of the Provinces originally united by the said Act.

* * *

Dominion Government to assume charge of Indians

13. 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 policy, tracts of land of such 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 of the Dominion Government in trust for the use and benefit of the Indians, on application of the Dominion Government; and in 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.

The Constitution Acts, 1867-1982

30 & 31 Victoria, c. 3.

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

* * *

24. Indians, and Lands reserved for the Indians.

* * *

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subject next hereinafter enumerated; that is to say,—

* * *

13. Property and Civil Rights in the Province.

SCHEDULE E

No. 51
47 Vict. Chap. 14.

[From R.S.B.C. 1888]

An Act relating to the Island Railway, the Graving Dock, and Railway Lands of the Province.

[*19th December, 1883.*]

WHEREAS negotiations between the Government of Canada and British Columbia have been recently pending, relative to delays in the commencement and construction of the Canadian Pacific Railway, and relative to the Island Railway, the Graving Dock, and the Railway Lands of the Province:

And whereas for the purpose of settling all existing disputes and difficulties between the two Governments, it hath been agreed as follows:—

* * *

(*c*.) The Government of British Columbia shall obtain the authority of the Legislature to convey to the Government of Canada three and one-half millions of acres of land in the Peace River district of British Columbia, in one rectangular block, East of the Rocky Mountains, and adjoining the North-West Territory of Canada:

* * *

And whereas it is expedient that the said agreement should be ratified, and that provision should be made to carry out the terms thereof:

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

* * *

7. There is hereby granted to the Dominion Government three and a half million acres of land in that portion of the Peace River District of British Columbia lying East of the Rocky Mountains and adjoining the North-West Territory of Canada, to be located by the Dominion in one rectangular block. ...

_____

S.C. 1930, c. 37

20-21 George V.

CHAP. 37.

An Act respecting the transfer of the Railway Belt and the Peace River Block.

[*Assented to 30th May, 1930.*]

HIS Majesty by, and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as *The Railway Belt and Peace River Block Act*.

2. The agreement set out in the schedule hereto is hereby approved.

SCHEDULE.

MEMORANDUM OF AGREEMENT.

Made this twentieth day of February, 1930.

BETWEEN:

THE GOVERNMENT OF THE DOMINION OF CANADA, represented herein by the Honourable Ernest Lapointe, Minister of Justice, and the Honourable Charles Stewart, Minister of the Interior,

of the First Part,

AND:

THE GOVERNMENT OF THE PROVINCE OF BRITISH COLUMBIA, represented herein by the Honourable Simon Fraser Tolmie, Premier and Minister of Railways of the said Province, and the Honourable Frederick Parker Burden, Minister of Lands thereof,

of the Second Part.

WHEREAS pursuant to paragraph eleven of the Terms of Union between the Dominion of Canada and the then Colony of British Columbia and to certain statutes of the Legislature of the Province of British Columbia, being chapter eleven of the statutes of the year eighteen hundred and eighty, chapter fourteen of the statutes of the year eighteen hundred and eighty-three, and chapter fourteen of the statutes of the year eighteen hundred and eighty-four, there were granted by the Province to Canada certain Crown lands in the Province by way of consideration for Canada's

undertaking to secure the construction of a railway to connect the seaboard of the Province with the railway system of Canada and of Canada's paying to the Province from the date of the Union an annual sum of one hundred thousand dollars, the said Crown lands being defined in the statutes aforesaid and having become known as the Railway Belt and the Peace River Block;

And whereas a railway such as is described in paragraph eleven of the Terms of Union has been duly constructed and is in operation, and the Province has requested the re-transfer to it of such of the lands in the said Railway Belt and Peace River Block as remain unalienated;

And whereas the Honourable W. M. Martin, one of the Judges of the Court of Appeal for the Province of Saskatchewan, having by Order in Council dated the eighth day of March, 1927 (P.C. 422) been appointed a commissioner under Part One of the *Inquiries Act* to receive and inquire into the arguments of the Government of the Province of British Columbia in support of its claim for the reconveyance of the said lands to the Province, submitted his report as such commissioner in which he expressed the opinion that the Province could not by reason of its own agreements and statutes advance any legal claim, but that its request should be considered from the standpoint of fairness and justice rather than from the strictly legal and contractual position, and in which he recommended that the said lands should be restored;

And whereas Canada has agreed accordingly to re-transfer the said lands to the Province on the terms hereinafter set out.

Now this Agreement Witnesseth that the parties have agreed as follows:

TRANSFER OF RAILWAY BELT AND PEACE RIVER BLOCK GENERALLY.

1. Subject as hereinafter provided, all and every interest of Canada in the lands granted by the Province to Canada as hereinbefore recited are hereby re-transferred by Canada to the Province and shall, from and after the date of the coming into force of this agreement, be subject to the laws of the Province then in force relating to the administration of Crown lands therein.

[The lands in question in this action are not within the lands subsequently delineated pursuant to s. 7 of the Act of 1883. The relevance of the statutes here quoted will be found in the text of this judgment.]

SCHEDULE F

Indian Acts, 1868-1906

S.C. 1868, c. 42 (31 Vict.)

CAP. XLII.

An Act providing for the organisation of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands.

[*Assented to 22nd May, 1868*.]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

* * *

6. All lands reserved for Indians or for any tribe, band or body of Indians, or held in trust for their benefit, shall be deemed to be reserved and held for the same purposes as before the passing of this Act, but subject to its provisions; and no such lands shall be sold, alienated or leased until they have been released or surrendered to the Crown for the purposes of this Act.

* * *

33. Nothing in this Act contained shall affect the provisions of the ninth chapter of the Consolidated Statutes of Canada, intituled: *An Act respecting the civilization and enfranchisement of certain Indians*, in so far as respects Indians in the Provinces of Quebec and Ontario, nor of any other Act when the same is not inconsistent with this Act.

S.C. 1869, c. 6 (32-33 Vict.)

CAP. VI.

An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42.

[*Assented to 22nd June, 1869*.]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

* * *

9. Upon the death of any Indian holding under location title any lot or parcel of land, the right and interest therein of such deceased Indian shall, together with his goods and chattels, devolve upon his children, on condition of their providing for the maintenance of their mother, if living; and such children shall have a life estate only in such land which shall not be transferable or subject to seizure under legal process, but should such Indian die without issue, such lot or parcel of land and goods and chattels shall be vested in the Crown for the benefit of the tribe, band or body of Indians, after providing for the support of the widow (if any) of such deceased Indian.

* * *

13. The Governor General in Council may on the report of the Superintendent General of Indian Affairs order the issue of Letters Patent granting to any Indian who from the degree of civilization to which he has attained, and the character for integrity and sobriety which he bears, appears to be a safe and suitable person for becoming a proprietor of land, a life estate in the land which has been or may be allotted to him within the Reserve belonging to the tribe band or body of which he is a member; and in such case such Indian shall have power to dispose of the same by will, to any of his children, and if he dies intestate as to any such lands, the same shall descend to his children according to the laws of that portion of the Dominion of Canada in which such lands are situate, and the said children to whom such land is so devised or descends shall have the fee simple thereof.

* * *

16. Every such Indian shall, before the issue of the letters patent mentioned in the thirteenth section of this Act, declare to the Superintendent General of Indian Affairs, the name and surname by which he wishes to be enfranchised and thereafter known, and on his receiving such letters patent, in such name and surname, he shall be held to be enfranchised, and he shall thereafter be known by such name and surname, and his wife and minor unmarried children, shall be held to be enfranchised; and from the date of such letters patent, the provisions of any Act or law making any distinction between the legal rights and liabilities of Indians and those of Her Majesty's other subjects shall cease to apply to any Indian, his wife or minor children as aforesaid, so declared to be enfranchised, who shall no longer be deemed Indians within the meaning of the laws relating to Indians, except in so far as their right to participate in the annuities and interest money and rents, of the tribe, band, or body of Indians to which they belonged is concerned; except that the twelfth, thirteenth, and fourteenth sections of the Act thirty-first Victoria, chapter forty-two, and the eleventh section of this Act, shall apply to such Indian, his wife and children.

_____

S.C. 1874, c. 21 (37 Vict.)

An Act to amend certain Laws respecting Indians, and to extend certain Laws relating to matters connected with Indians to the Provinces of Manitoba and British Columbia.

[*Assented to 26th May,* 1874.]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

* * *

10. The Acts and portions of Acts hereinbefore mentioned and hereby extended to and to be in force in the Provinces of Manitoba and of British Columbia, are as follows:—

* * *

2. Sections one to twenty-one, both inclusive, and section twenty-four of the Act passed in the thirty-second and thirty-third years of Her Majesty's reign, intituled: "*An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act thirty-first Victoria, chapter forty-two*;"

The Indian Act, 1876, S.C. 1876, c. 18 (39 Vict.)

An Act to amend and consolidate the laws respecting Indians.

[*Assented to 12th April,* 1876.]

WHEREAS it is expedient to amend and consolidate the laws respecting Indians: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

* * *

11. No person, or Indian other than an Indian of the band, shall settle, reside or hunt upon, occupy or use any land or marsh, or shall settle, reside upon or occupy any road, or allowance for roads running through any reserve belonging to or occupied by such band; and all mortgages or hypothecs given or consented to by any Indian, and all leases, contracts and agreements made or purporting to be made by any Indian, whereby persons or Indians other than Indians of the band are permitted to reside or hunt upon such reserve, shall be absolutely void.

* * *

64. No Indian or non-treaty Indian shall be liable to be taxed for any real or personal property, unless he holds real estate under lease or in fee simple, or

personal property, outside of the reserve or special reserve, in which case he shall be liable to be taxed for such real or personal property at the same rate as other persons in the locality in which it is situate.

* * *

86. Whenever any Indian man, or unmarried woman, of the full age of twenty-one years, obtains the consent of the band of which he or she is a member to become enfranchised, and whenever such Indian has been assigned by the band a suitable allotment of land for that purpose, the local agent shall report such action of the band, and the name of the applicant to the Superintendent-General; whereupon the said Superintendent-General, if satisfied that the proposed allotment of land is equitable, shall authorize some competent person to report whether the applicant is an Indian who, from the degree of civilization to which he or she has attained, and the character for integrity, morality and sobriety which he or she bears, appears to be qualified to become a proprietor of land in fee simple; and upon the favorable report of such person, the Superintendent-General may grant such Indian a location ticket as a probationary Indian, for the land allotted to him or her by the band.

(1.) Any Indian who may be admitted to the degree of Doctor of Medicine, or to any other degree by any University of Learning, or who may be admitted in any Province of the Dominion to practice law either as an Advocate or as a Barrister or Counsellor or Solicitor or Attorney or to be a Notary Public, or who may enter Holy Orders or who may be licensed by any denomination of Christians as a Minister of the Gospel, shall *ipso facto* become and be enfranchised under this Act.

87. After the expiration of three years (or such longer period as the Superintendent-General may deem necessary in the event of such Indian's conduct not being satisfactory), the Governor may, on the report of the Superintendent-General, order the issue of letters patent, granting to such Indian in fee simple the land which had, with this object in view, been allotted to him or her by location ticket.

88. Every such Indian shall, before the issue of the letters patent mentioned in the next preceding section, declare to the Superintendent-General the name and surname by which he or she wishes to be enfranchised and thereafter known, and on his or her receiving such letters patent, in such name and surname, he or she shall be held to be also enfranchised, and he or she shall thereafter be known by such name or surname, and if such Indian be a married man his wife and minor unmarried children also shall be held to be enfranchised; and from the date of such letters patent the provisions of this Act and of any Act or law making any distinction between the legal rights, privileges, disabilities and liabilities of Indians and those of Her Majesty's other subjects shall cease to apply to any Indian, or to the wife or minor unmarried children of any Indian as aforesaid, so declared to be enfranchised, who shall no longer be deemed Indians within the meaning of the laws relating to Indians, ...

* * *

94. Sections eighty-six to ninety-three, both inclusive, of this Act, shall not apply to any band of Indians in the Province of British Columbia, the Province of

Manitoba, the North-West Territories, or the Territory of Keewatin, save in so far as the said sections may, by proclamation of the Governor-General, be from time to time extended, as they may be, to any band of Indians in any of the said provinces or territories.

The Indian Act, 1880, S.C. 1880, c. 28 (43 Vict.)

An Act to amend and consolidate the laws respecting Indians.

[*Assented to 7th May,* 1880.]

WHEREAS it is expedient to amend and consolidate the laws respecting Indians: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

* * *

[Note:- The sections of the Act of 1880 *in pari materia* with the sections of the Act of 1876 quoted above do not appear to me to differ in any material respect from those sections.]

S.C. 1884, c. 27 (47 Vict.)

An Act further to amend "The Indian Act, 1880."

[*Assented to 19th April,* 1884.]

IN further amendment of "*The Indian Act*, 1880," Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

* * *

17. The one hundredth section of the said Act is hereby repealed, and the following substituted therefore:—

"**100**. After the expiration of three years (or such longer period as the Superintendent General deems necessary in the event of such Indian's conduct not being satisfactory), the Governor may, on the report of the Superintendent General, order the issue of letters patent, granting to such Indian the land in fee simple, which had, with this object in view, been allotted to him or her by location ticket, but without power to sell, lease or otherwise alienate the land, unless with the sanction of the Governor in Council; and provisos to such effect shall be inserted in the letters

patent conveying the land to the said Indian: and in such cases compliance with the provisions of sections thirty-six and thirty-seven of this Act shall not be necessary."

[Emphasis added.]

The Indian Act, R.S.C. 1886, c. 43

CHAPTER 43.

A. D. 1886

An Act respecting Indians.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

* * *

[Note:- The sections of this Act *in pari materia* with the sections hereinbefore quoted do not appear to me to have been changed in any material respect in the revision of 1886. Thus, s. 77 of this Act corresponds to s. 64 of the Act of 1876.]

Indian Act, R.S.C. 1906, c. 81

CHAPTER 81.

An Act respecting Indians.

[Note:- The sections of this Act do not appear to me to have made any change in substance. The exact text of the section relating to the transfer of lands to enfranchised Indians was this:]

112. After the expiration of three years, or, if the conduct of such Indian has not been satisfactory, after such longer period as the Superintendent General deems necessary, the Governor in Council may, on the report of the Superintendent General, order the issue of letters patent, granting to such Indian the land in fee simple, which has been allotted to him by location ticket.

2. Such letters patent shall contain a provision that such Indian shall not have power to sell, lease or otherwise alienate the land except with the sanction of the Governor in Council.

3. In such cases compliance with the provisions of this Part respecting leases or surrender of lands in a reserve shall not be necessary.

SCHEDULE G

Indian Affairs Settlement Act, S.B.C. 1919, c. 32

Now, therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:--

1. This Act may be cited as the "Indian Affairs Settlement Act."

2. To the full extent to which the Lieutenant Governor in Council may consider it reasonable and expedient, the Lieutenant Governor in Council may do, execute, and fulfil every act, deed, matter, or thing necessary for the carrying out the said Agreement between the Governments of the Dominion and the Province according to its true intent, and for giving effect to the report of the said Commission, either in whole or in part, and for the full and final adjustment and settlement of all differences between the said Governments respecting Indian lands and Indian affairs in the Province. ...

Order-in-Council (No. 911) of 1923

THAT the *Report of the Royal Commission of Indian Affairs* as made under date of the 30th day of June 1916, with the amendments thereto as made by the representatives of the two Governments, viz: Mr. W.E. Ditchburn, representing the Dominion Government and Major J.W. Clark, representing the Province, in so far as it covers the adjustments, readjustments or confirmation of the Reductions, Cut-offs and additions in respect of Indian Reserves proposed in the said report of the Royal Commission, as set out in the annexed schedules, b*e approved and confirmed as constituting full and final adjustment and settlement of all differences in respect thereto* between the Governments of the Dominion and the Province, in fulfilment of the said Agreement of the 24th day of September 1912, and also of Section 13 of the Terms of Union, except in respect to the provision for lands for Indians resident in that portion of British Columbia covered by Treaty No. 8, which forms the subject of Interim Report No. 91 of the Royal Commission: The settlement of which will be allowed to remain in abeyance until some more suitable time, but which shall not prevent the Government of the Province from dealing with vacant Crown lands under the provisions of the land laws of the Province from time to time in force and effect....

[Emphasis added.]

SCHEDULE H

Alberta Act, S.C. 1905

4-5 EDWARD VII.

CHAP. 3

An Act to establish and provide for the Government of the Province of Alberta.

[*Assented to 20th July,* 1905.]

* * *

21. All Crown lands, mines and minerals and royalties incident thereto, and the interest of the Crown in the waters within the province under *The North-west Irrigation Act*, 1898, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, subject to the provisions of any Act of the Parliament of Canada with respect to road allowances and roads or trails in force immediately before the coming into force of this Act, which shall apply to the said province with the substitution therein of the said province for the North-west Territories.

_____

The Alberta Natural Resources Act, S.C. 1930

20-21 GEORGE V.

CHAP. 3

An Act respecting the transfer of the Natural Resources of Alberta.

[*Assented to 30th May, 1930*.]

* * *

SCHEDULE

MEMORANDUM OF AGREEMENT

* * *

Now Therefore This Agreement Witnesseth:

TRANSFER OF PUBLIC LANDS GENERALLY

1. In order that the Province may be in the same position as the original Provinces of Confederation are in virtue of section one hundred and nine of the *British North America Act, 1867*, the interest of the Crown in all Crown lands, mines,

minerals (precious and base) and royalties derived therefrom within the Province, and all sums due or payable for such lands, mines, minerals or royalties, shall, from and after the coming into force of this agreement and subject as therein otherwise provided, belong to the Province, subject to any trusts existing in respect thereof, ...

* * *

INDIAN RESERVES

10. All lands included in Indian reserves within the Province, including those selected and surveyed but not yet confirmed, as well as those confirmed, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, and the Province will from time to time, upon the request of the Superintendent General of Indian Affairs, set aside, out of the unoccupied Crown lands hereby transferred to its administration, such further areas as the said Superintendent General may, in agreement with the appropriate Minister of the Province, select as necessary to enable Canada to fulfil its obligations under the treaties with the Indians of the Province, and such areas shall thereafter be administered by Canada in the same way in all respects as if they had never passed to the Province under the provisions hereof.