July 10,2008 Document by **"popois"**

Status of the Proclamations

Department of Indian Affairs

The British government adopted the somewhat unusual measure of issuing a royal proclamation declaring in resounding terms the basic tenets of British policy toward the Indian nations. At the same time it made provision for the territories recently ceded to Great Britain by France and Spain. By giving the Proclamation widespread publicity throughout the colonies, it was hoped to reassure Indian peoples of the good intentions of the British government.

This document, issued on 7 October 1763, is a landmark in British/Indian relations. It has been described by **Mr. Justice Hall of the Supreme Court of Canada** as the Indian Bill of Rights. "**Its force as a statute**"note 1, he writes, "is analogous to the status of Magna Carta which has always been considered to be the law throughout the Empire. It was a law which followed the flag as England assumed jurisdiction over newly discovered or acquired lands or territories."[26]

The Proclamation is a complex legal document, with several distinct parts and numerous subdivisions, whose scope differs from provision to provision. It resists easy summary, but it serves two main purposes. The first is to articulate the basic principles governing the Crown's relations with Indian nations. The second is to lay down the constitutions and boundaries of several new settler colonies, one being the colony of Quebec.

The basic viewpoint informing the Proclamation's Indian provisions is summarized in the preamble as follows:

And whereas it is just and reasonable, and essential to Our Interest and the Security of Our Colonies, that the several Nations or Tribes of Indians, with whom We are connected, and who live under Our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds...[27]

European jurists began to systematize their understanding of treaty law in the seventeenth century, drawing on Roman legal treatises as well as a growing body of European diplomatic precedents. From Roman law they adopted the essential principle *pacta sunt servanda* — **treaties shall be honoured in good faith**.

Since European nations wished to protect their newly won independence, jurists decided that treaties should be given the interpretation that is least restrictive of the parties' sovereignty.

As will become evident, these were to colour the subsequent history of relations between Europeans and Indigenous peoples in the Americas. The legacy of these differences continues to the present day.

Friday July 10.2008 by "popois" Sechelt agent for David Quinn

1763, OCTOBER 7.

BY THE KING.

A Proclamation

George r.

Promise

And whereas it is just and reasonable, and essential to Our Interest and the Security of Our Colonies, that the several Nations or Tribes of Indians, with whom We are connected, and who live under Our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds;

Area

or pass any Patents for Lands beyond the Bounds of their respective Governments, as described in their Commissions; as also, that no Governor or Commander in Chief in any of Our other Colonies or Plantations in America, do presume, for the present, and until Our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantick Ocean from the West and North-West, or upon any Lands whatever, which, not having been ceded to, or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.

License

and We do hereby strictly forbid, on Pain of Our Displeasure, all Our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without Our especial Leave and Licence for that Purpose first obtained.
And We do further strictly enjoin and require all Persons whatever, who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands, which, not having been ceded to, or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements

Purchase

at any Time, any of the said Indians should be inclined to dispose of the said Lands, that same shall be purchased only for Us, in Our Name, at some publick Meeting or Assembly of the said Indians to be held for that Purpose by the Governor or Commander in Chief of Our Colonies respectively, within which they shall lie: and in case they shall lie within the Limits of any Proprietary Government, they shall be purchased only for the Use and in the Name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for that Purpose:

Monopoly

Tenure in the Const... Of Canada p. 153 2nd. Par.
No private person, society, Corporation, or Colony be capable of acquiring any property in lands belonging to the Indians, either by purchase of or grant, or Conveyance from the said Indians.

Duty of Disallowance of 1875
Order in Council(Canada) of 23 January 1875
Endorsed " approved " and signed by the Governor General of Canada,
the Lord Dufferin, 25 January 1875

the Committee of the Privy Council have under consideration of the report,... submit their concurrence in their views and recommendations set forth in the said report, and a copy be transmitted to the right Honourable H.M.Secretary of State for the colonies and to the Lieut. Governor of British Columbia.

"no surrenders of land in that Province have been obtained from the Indian tribes inhabiting it," [page 11] yet, the undersigned feels it is his duty to assert such legal or equitable claim as may be found to exist on the part of the Indians.
Page 13... such parts of our dominions and territories as, not having been ceded to or purchased by Us, are reserved to them, any of them as their hunting grounds.....
Page 14... or upon any lands whatever, which not having been ceded to or purchased by us, as aforesaid, are reserved to the said Indians, or any of them..
Page 28 that no surrender or cession f their Territorial rights, whether the same be of a legal or equitable nature, has been ever executed by the Indian tribes of the Province: that they allege that the reservations of land made by the government, for their use have been arbitrarily so made and are **totally inadequate to their support and requirements,**
Page 29 and without their assent- that they are not adverse to hostilities in order to enforce rights which it is impossible to deny them,- but expressly prohibits the Indians from enjoying the rights of recording or preempting Lands, except by the consent of the lieutenant Governor,-
The undersigned feels that he cannot do otherwise, then advise that the act [No 2 The BC Public Lands Act] in question is objectionable, as tending to deal with lands which are assumed to be the absolute property of the province, an assumption which completely ignore, -as applicable to the Indians of British Columbia

Page 4 cont…

page 30…, the honour and good faith with which the crown has in all other cases, **since its sovereignty of the territories in North America dealt with their various Indian Tribes.** The undersigned would also refer to the BNA Act sec.109, applicable to BC, which enacts in effect that, all lands belonging to the Province, shall belong to the Province "subject to any trust existing in respect thereof, and to any other interest other than that of the Province in the same"… " Indian title must, of necessity, consist in some species of interest in the lands of BC.
Page 31.. If it is conceded, that they have not a freehold in the soil but have an usufruct,- a right of occupation, or possession of the same for their own use, then it would seem that these lands of page 4
BC are subject, if not to a "trust existing in respect there of," at least to" to an interest other than that of the Province"

SIGNITURES

Page 35… **The undersigned, therefore, feels it incumbent upon him to recommend that this act should be disallowed…[no.2 BC Public Lands Act]**

Signed by <u>Deputy Minister of Justice of Canada</u>
and endorsed " I concur"
and Signed by <u>Minister of Justice</u>

Present Day..

The Judge in the Chilko Court case had this to say
"In acting as though it had constitutional authority over aboriginal lands in B.C., the province has skated on thin ice for over a century. In reality, it appears that the province has been violating aboriginal title in an unconstitutional and therefore illegal fashion ever since it joined Canada in 1871"
If one accepts his current view, then during his four years as the senior civil servant for legal and constitutional matters the province was acting illegally and unconstitutionally as regards to aboriginal people

"popois"
This land was our **"use and benefit"** prior to the B.C. terms of Union. It remains our source of livelihood and indianess.

Note1.. Statute
A **statute** is a formal written enactment of alegislative authority that governs a country, state, city, or county

Sovereignty is the exclusive right to have control over an area of governance, people, or oneself. A *sovereign* is the supreme lawmaking authority. Enlightenment philosopher Jean-Jacques Rousseau, in Book III, Chapter III of his 1762 treatise *Of the Social Contract*, argued, "the growth of the State giving the trustees of public authority more and means to abuse their power, the more the Government has to have force to contain the people, the more force the Sovereign should have in turn in order to contain the Government," with the understanding that the Sovereign is "a collective being" (Book II, Chapter I) resulting from "the general will" of the people, and that "what any man, whoever he may be, orders on his own, is not a law" (Book II, Chapter VI) – and furthermore predicated on the assumption that the people have an unbiased means by which to ascertain the general will. Thus the legal maxim, "there is no law without a sovereign."

A more formal distinction is whether the law is held to be sovereign, which constitutes a true state of law: the letter of the law (if constitutionally correct) is applicable and enforceable, even when against the political will of the nation, as long as not formally changed following the constitutional procedure. Strictly speaking, any deviation from this principle constitutes a revolution or a coup d'état, regardless of the intentions.

In constitutional and international law, the concept also pertains to a government possessing full control over its own affairs within a territorial or geographical area or limit, and in certain context to various organs possessing legal jurisdiction in their own chief, rather than by mandate or under supervision. Determining whether a specific entity is sovereign is not an exact science, but often a matter of diplomatic dispute.

Sovereignty is absolute, thus indivisible, but not without any limits: it exercises itself only in the public sphere, not in the private sphere. It is perpetual, because it does not expire with its holder (as *auctoritas* does). In other words, sovereignty is no one's property: by essence, it is inalienable.

Sovereignty, or the general will, is inalienable, for the will cannot be transmitted; it is indivisible, since it is essentially general; it is infallible and always right, determined and limited in its power by the common interest; it acts through laws. Law is the decision of the general will in regard to some object of common interest, but though the general will is always right and desires only good, its judgment is not always enlightened, and consequently does not always see wherein the common good lies; hence the necessity of the legislator. But the legislator has, of himself, no authority; he is only a guide who drafts and proposes laws, but the people alone (that is, the sovereign or general will) has authority to make and impose them.

The key element of sovereignty in the legalistic sense is that of **exclusivity** of jurisdiction. Specifically, when a decision is made by a sovereign entity, it cannot generally be overruled by a higher authority. Further, it is generally held that another legal element of sovereignty requires not only the legal right to exercise power, but the actual exercise of such power. ("No *de jure* sovereignty without *de facto* sovereignty.") In other words, neither claiming/being proclaimed Sovereign, *nor* merely exercising the power of a Sovereign is sufficient; sovereignty requires *both* elements.

sovereignty is defined as the legitimate exercise of power and the interpretation of international law by a state. *De jure* sovereignty is the legal right to do so; *de facto* sovereignty is the ability in fact to do so Sovereignty may be recognized even when the sovereign body possesses no territory or its territory is under partial or total occupation by another power.

Tribal sovereignty refers to the right of tribes or of federally recognized Native American nations to exercise limited jurisdiction within and sometimes beyond reservation boundaries.

Estoppel

Restraint; a bar. Estoppel arises where a person has done some act that the policy of the law will not permit him to deny, or where circumstances are such that the law will not permit a certain argument because it would lead to an unjust result. In the context of contract law, for example, one is estopped from denying existence of a binding contract where one has done something intending that another rely on his conduct, and the result of the reliance is detrimental to that other person.

The rationale behind estoppel is to prevent injustice owing to inconsistency or fraud. There are two general types of estoppel: equitable and legal.
There are several specific types of equitable estoppel. Promissory estoppel is a contract law doctrine. It occurs when a party reasonably relies on the promise of another party, and because of the reliance is injured or damaged. For example, suppose a restaurant agrees to pay a bakery to make fifty pies. The bakery has only two employees. It takes them two days to make the pies, and they are unable to bake or sell anything else during that time. Then, the restaurant decides not to buy the pies, leaving the bakery with many more pies than it can sell and a loss of profit from the time spent baking them. A court will likely apply the promissory estoppel doctrine and require the restaurant to fulfill its promise and pay for the pies.
Equitable estoppel, sometimes known as estoppel in pais, protects a party who relies detrimentally on another's voluntary conduct — action, silence, acquiescence, or concealment of material facts. One example of equitable estoppel due to a party's acquiescence is found in *Lambertini v. Lambertini,* 655 So. 2d 142 (Fla. 3d Dist. Ct. App. 1995). In the late 1950s, Olga, who was married to another man, and Frank Lambertini met and began living together in Argentina. Olga and Frank hired an attorney in Buenos Aires, who purported to divorce Olga from her first husband and marry her to Frank pursuant to Mexican law. The Lambertinis began what they thought was a married life together, and soon produced two children. In 1968, they moved to the United States and became Florida residents.

a bar to alleging or denying a fact because of one's own previous contrary actions or words

Estoppel by acquiescence

Estoppel by acquiescence may arise when one person gives a legal warning to another based on some clearly asserted facts or legal principle, and the other does not respond within "a reasonable period of time". By *acquiescing*, the other person is generally considered to have lost the legal right to assert the contrary.

As an example, suppose that Jill has been storing her car on Jack's land with no contract between them. Jack sends a registered letter to Jill's legal address, stating: "I am no longer willing to allow your car to stay here for free. Please come get your car, or make arrangements to pay me rent for storing it. If you do not do so, within 30 days, I will consider the car abandoned and will claim ownership of it. If you need more time to make arrangements, please contact me within 30 days, and we can work something out." If Jill does not respond, she may be said to have ***relinquished*** her ownership of the car, and *estoppel by acquiescence* may prevent any court from invalidating Jack's actions of registering the car in his name and using it as his own.

In fact, despite the various legal conflicts and questions that have arisen around the language, Congress has done virtually nothing to restrict or narrow 8 U.S.C. sec. 1359, leaving courts to broadly interpret the statute; similarly, some of the broadest interpretations of Section 289 can be found within the related federal regulations.203 Where some courts promptly dispense with the Jay Treaty (and the Treaty of Ghent) on the question of free passage of goods, other courts hedge the language in the Jay Treaty and subsequent law as merely stating a "natural law" sort of concept for free passage of individuals, a right enjoyed by Indians that preceded European arrival to the New World.

It is curious that such a right survives to this day on both the U.S. and Canadian sides of the border. This is especially true given the difficulties each nation has experienced in dealing both with immigration and Indian law. In the U.S. alone, these areas of law have undergone dramatic changes in policy in the approximately 200 years of independence. Immigration and Indian legislation in the United States is especially notable for periods of blatant racism, but through all of this, the policy of free movement of Canadian Indians has survived. The fact that 2% of the Canadian populous is eligible for LPR benefits, without ever having to fill out a U.S. immigration form, is tribute to the expansiveness and curiosity of the American statutory enactment of the Jay Treaty.

However, given the restrictiveness of the Canadian common law treatment of the Jay Treaty free passage right, it is clear that U.S. and Canadian laws will have to be rectified. If tribal sovereignty is to mean anything, it must at least mean that members of the sovereign are empowered to travel within and through their traditional lands with [*PG339]out interference from other sovereigns. The realignment of U.S. and Canadian treatment of the Indian free passage right needs to occur in order to preserve a right not only guaranteed in the post-Revolutionary War Jay Treaty, but also a right, by the Canadian courts' own admission, that is older than European occupation of North America.

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Exclusive Powers of Provincial Legislatures

Subjects of exclusive Provincial Legislation

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

1. Repealed.[48]
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:
    (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
    (b) Lines of Steam Ships between the Province and any British or Foreign Country:
    (c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.

Non-Renewable Natural Resources, Forestry Resources and Electrical Energy

Laws respecting non-renewable natural resources, forestry resources and electrical energy

92A. (1) In each province, the legislature may exclusively make laws in relation to

(a) exploration for non-renewable natural resources in the province;

(b) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and

(c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.

Export from provinces of resources

(2) In each province, the legislature may make laws in relation to the export from the province to another part of Canada of the primary production from non-renewable natural resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for discrimination in prices or in supplies exported to another part of Canada.

Authority of Parliament

(3) Nothing in subsection (2) derogates from the authority of Parliament to enact laws in relation to the matters referred to in that subsection and, where such a law of Parliament and a law of a province conflict, the law of Parliament prevails to the extent of the conflict.

Taxation of resources

shishalh: tl'extl'áx-min.

musk-kate-teew-sagahigan-eno-wuk

THIS IS AN INTRAGRATION OF SOVEREIGN INDIANS EAST AND WEST OF "Kaw-tum smanit"(**Rocky Mountains**)

June 17, 2009

the *Order in Council (Great Britain) of 9 March 1704* in the matter of *Mohegan Indians v. Connecticut* was itself reconfirmed by the Privy Council, the highest court in the British Empire, by subsequent *Order in Council (Great Britain) of 15 January 1773* in the matter of *Mohegan Indians v. Connecticut*.

To be valid the *"Purchase"* must be voluntary and arrived at in consequence of a public meeting of the selling community:
...if at any Time any of the said Indians should be **inclined to dispose** of the said Lands the same shall be **Purchased** only for Us in our Name **at some public Meeting or Assembly of the said Indians to be held for that Purpose**...[emphasis added]

Thus the *Order in Council (Canada) of 23 January 1875* admitted:

It is sufficient for the present purposes, to ascertain the policy of England in relation to the acquisition of the Indian territorial rights, and how entirely that policy has been followed to the present time, except in the instance of British Columbia....the [British Columbia] Act is objectionable, as tending to deal with Lands which are assumed to be the absolute property of the Province, an assumption which completely ignores,-as applicable to the Indians of British Columbia,-the honour and good faith with which the Crown has in all other cases, since its sovereignty of the territories in North America dealt with their various Indian tribes.

The undersigned would also refer to the B.N.A. Act 1867 [the Canadian Constitution] Sec. 109, applicable to British Columbia, which enacts in effect that, all lands belonging to the Province, shall belong to the Province **"subject to any trust existing in respect thereof, and to any interest other than that of the Province in the same."**

That which has been ordinarily spoken of as the "Indian Title" must, of necessity, consist in some species of interest in the lands of British Columbia. If it is conceded, that they have not a freehold in the soil but that they have an usufruct,**-a right of occupation, or possession of the same for their own use, then it would seem that these Lands of British Columbia are subject, if not to a "trust existing in respect thereof," at least to "an Interest other than that of the Province alone."**

The undersigned, therefore, feels it incumbent upon him to recommend that this Act be disallowed,...[Endorsed by the Minister of Justice, Deputy Minister of Justice and the Governor General of Canada and adopted by the Cabinet.]

The Claimed Lands[Claim of Right, Legal Public Notice] of each of the Tribal Nations speaking collectively and in solidarity by means of these reasons for judgment remain unceded
So far as known to the oral history and personal knowledge, which together define our legal experience and understanding, there has been no purchase.

[Legal Public Notice is notarized and a certificate of Non Response is possession of the Shishalh. All Provincial legislation by all the Agents and Departments are null void].

Canada Revenue Agency | Agence du revenu du Canada

COPY

Mr. David Quinn
Box 2326
Sechelt, British Columbia
N0N 3A0

Your file Votre référence

Our file Notre référence

2008-026914
L. Zannese
(613) 957-2747

March 28, 2008

Dear Mr. Quinn:

Re: Request for a Ruling that Certain Lands are a Reserve Lands.

This is in response to your letter of February 21, 2008 requesting a Ruling that certain parcels of land situated in British Columbia are reserve lands.

The Canada Revenue Agency does not have authority to make the determination of whether land is a reserve as defined in the *Indian Act*. This authority lies with Indian and Northern Affairs Canada. As such, I am referring your inquiry on to this Department and requesting that the Department respond directly to you.

Yours truly,

Robin Maley
Manager
Non-Profit Organizations and
Aboriginal Issues
Financial Sector and Exempt Entities Division
Income Tax Rulings Directorate
Legislative Policy and Regulatory Affairs Branch

CC: Mr. Tomo Adachi, CA, MBA
Senior Fiscal and Policy Advisor
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Self-Government Branch
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