

APPENDIX A

STATEMENT OF THE ALLIED INDIAN TRIBES OF BRITISH
COLUMBIA FOR THE GOVERNMENT OF
BRITISH COLUMBIA

PART I.—GENERAL INTRODUCTORY REMARKS

The Statement prepared by the Committee appointed by the Conference held at Vancouver in June, 1916, and sent to the Government of Canada and the Secretary of State for the Colonies, contained the following:

The Committee concludes this statement by asserting that, while it is believed that all of the Indian tribes of the province will press on to the Judicial Committee, refusing to consider any so-called settlement made up under the McKenna Agreement, the Committee also feels certain that the tribes allied for that purpose will always be ready to consider any really equitable method of settlement out of court which might be proposed by the Governments.

A resolution, passed by the Interior Tribes at a meeting at Spence's Bridge on the 6th December, 1917, contained the following:—

We are sure that the governments and a considerable number of white men have for many years had in their minds a quite wrong idea of the claims which we make, and the settlement which we desire. We do not want anything extravagant, and we do not want anything hurtful to the real interests of the white people. We want that our actual rights be determined and recognized. We want a settlement based upon justice. We want a full opportunity of making a future for ourselves. We want all this done in such a way that in the future we shall be able to live and work with the white people as our brothers and fellow citizens.

Now we have been informed by our Special Agent that the Government of British Columbia desires to have from us a statement further explaining our mind upon the subject of settlement, and in particular stating the grounds upon which we refuse to accept as a settlement the findings of the Royal Commission on Indian Affairs for the Province of British Columbia, and what we regard as necessary conditions of equitable settlement.

In order that our mind regarding this whole subject may be understood, we desire first to make clear what is the actual present position of the Indian land controversy in this Province of British Columbia.

Throughout practically the whole of the rest of Canada, tribal ownership of lands has been fully acknowledged, and all dealings with the various tribes have been based upon the Indian title so acknowledged.

It was long ago conceded by Canada in the most authoritative way possible that the Indian tribes of British Columbia have the same title. This is proved beyond possibility of doubt by the report of the Minister of Justice, which was presented on January 19, 1875, and was approved by the Governor General in Council on January 23, 1875. We set out the following extract from that report:

Considering then these several features of the case, that no surrender or cession of 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 and without their assent—that they are not averse to hostilities in order to enforce rights which it

is impossible to deny them, and that the Act under consideration not only ignores those rights, but expressly prohibits the Indians from enjoying the rights of recording or pre-empting land, except by consent of the Lieutenant-Governor, the undersigned feel that he cannot do otherwise than advise that the 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 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 British North America Act, 1867, section 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 of 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 herein.'

Since the year 1875, however, notwithstanding the report of the Minister of Justice then presented and approved, local governments have been unwilling to recognize the land rights which were then recognized by Canada, and the two governments that entered into the McKenna-McBride Agreement failed to recognize those land rights.

If now the two governments should be willing to accept the report and Order in Council of the year 1875 as deciding the land controversy, they would thereby provide what we regard as the only possible general basis of settlement other than a judgment of the Judicial Committee of His Majesty's Privy Council.

By means of the direct and independent petition of the Nishga Tribe, we now have our case before His Majesty's Privy Council. We claim that we have a right to a hearing, a right which has now been made clear beyond any possibility of doubt. Sir Wilfrid Laurier, when Prime Minister, on behalf of Canada, met the Indian Tribes of Northern British Columbia, and promised without any condition whatever that the land controversy would be brought before the Judicial Committee. Moreover, the Duke of Connaught, acting as His Majesty's representative in Canada, gave positive written assurances that if the Nishga Tribe should not be willing to agree to the findings of the Royal Commission, His Majesty's Privy Council will consider the Nishga petition. In view of Sir Wilfrid Laurier's promise, and the Duke of Connaught's assurances, both of which confirm what we regard as our clear constitutional right, we confidently expect an early hearing of our case.

Before concluding these introductory remarks, we wish to speak of one other matter which we think very important. No settlement would, we are very sure, be real and lasting unless it should be a complete settlement. The so-called settlement which the two governments that entered into the McKenna-McBride Agreement, have made up is very far indeed from being complete. The report of the Royal Commission deals only with lands to be reserved. The reversionary title claimed by the Province is not extinguished, as Special Commissioner McKenna said it would be. Foreshores have not been dealt with. No attempt is made to adjust our general rights, such as fishing rights, hunting rights and water rights. With regard to fishing rights and water rights, the

Commissioners admit that they can make nothing sure. It is clear to us that all our general rights, instead of being taken from us as the McKenna-McBride Agreement attempts to do by describing the so-called settlement thereby arranged as a "final adjustment of all matters relating to Indian affairs in British Columbia" should be preserved and adjusted. Also we think that a complete settlement should deal with the restrictions imposed upon Indians by Provincial Statutes and should include a revision of the Indian Act.

Now, having as we hope made clear the position in which we stand, and from which we look at the whole subject, we proceed to comply with the desire of the government of British Columbia.

PART II—REPORT OF THE ROYAL COMMISSION

Introductory Remarks

The general view held by us with regard to the report of the Royal Commission was correctly stated in the communication sent by the Agents of the Nishga Tribe to the Lord President of His Majesty's Privy Council on 27th May, 1918.

We now have before us the report of the Royal Commission, and are fully informed of its contents, so far as material for the purposes of this statement. The report has been carefully considered by the Allied Tribes, upon occasion of several meetings, and subsequently by the Executive Committee of the Allied Tribes.

Two general features of the report which we consider very unsatisfactory are the following:—

1. The additional lands set aside are to a large extent of inferior quality, and their total value is much smaller than that of the lands which the Commissioners recommend shall be cut off.

2. In recommending that reserves confirmed and additional lands set aside be held for the benefit of bands, the Commissioners proceeded upon a principle which we consider erroneous, as all reserved lands should be held for the benefit of the Tribes.

Grounds of Refusal to Accept

In addition to the grounds shown by our general introductory remarks, we mention the following as the principle grounds upon which we refuse to accept as a settlement the findings of the Royal Commission:—

1. We think it clear that fundamental matters such as tribal ownership of our territories require to be dealt with, either by concession of the governments, or by decision of the Judicial Committee, before subsidiary matters such as the findings of the Royal Commission can be equitably dealt with.

2. We are unwilling to be bound by the McKenna-McBride Agreement, under which the findings of the Royal Commission have been made.

3. The whole work of the Royal Commission has been based upon the assumption that Article 13 of the Terms of Union contains all obligations of the two governments towards the Indian Tribes of British Columbia, which assumption we cannot admit to be correct.

4. The McKenna-McBride Agreement, and the report of the Royal Commission ignore not only our land rights, but also the power conferred by Article 13 upon the Secretary of State for the Colonies.

5. The additional reserved lands recommended by the report of the Royal Commission, we consider to be utterly inadequate for meeting the present and future requirements of the Tribes.

6. The Commissioners have wholly failed to adjust the inequalities between Tribes, in respect of both area and value of reserved lands, which Special Commissioner McKenna, in his report, pointed out and which the report of the Royal Commission has proved to exist.

7. Notwithstanding the assurance contained in the report of Special Commissioner McKenna, that "such further lands as are required will be provided by the Province, in so far as Crown lands are available." The Province, by Act passed in the spring of the year 1916, took back two million acres of land, no part of which, as we understand, was set aside for the Indians by the Commissioners, whose report was soon thereafter presented to the governments.

8. The Commissioners have failed to make any adjustment of water-rights which in the case of lands situated within the Dry Belt, is indispensable.

9. We regard as manifestly unfair and wholly unsatisfactory the provisions of the McKenna-McBride Agreement relating to the cutting-off and reduction of reserved lands, under which one-half of the proceeds of sale of any such lands would go to the Province, and the other half of such proceeds, instead of going into the hands or being held for the benefit of the Tribe, would be held by the Government of Canada for the benefit of all the Indians of British Columbia.

PART III.—NECESSARY CONDITIONS OF EQUITABLE SETTLEMENT

Introductory Remarks

1. In the year 1915, the Nishga Tribe and the Interior Tribes allied with them, made proposals regarding settlement, suggesting that the matter of lands to be reserved be finally dealt with by the Secretary of State for the Colonies, and that all other matters requiring to be adjusted, including compensation for lands to be surrendered, be dealt with by the Parliament of Canada. Those proposals the Government of Canada rejected by Order in Council, passed in June, 1915, mainly upon the ground that the Government was precluded by the McKenna-McBride Agreement from accepting them. For particulars we refer to "Record of Interviews," published in July, 1915, at pages 21 and 105. It will be found that to some extent these proposals are incorporated in this statement.

2. Some facts and considerations which, in considering the matter of additional lands, it is, we think, specially important to take into account, are the following:—

(1) In the three States of Washington, Idaho and Montana, all adjoining British Columbia, Indian title has been recognized, and treaties have been made with the Indian tribes of those States. Under those treaties, very large areas of land have been set aside. The total lands set aside in those three States considerably exceeds 10,000,000 acres, and the per capita area varies from about 200 acres to about 600 acres.

(2) Portions of the tribal territories of four tribes of the Interior of British Columbia extend into the States above-mentioned, and thus portions of those tribes hold lands in the Colville Reservation, situated in the State of Washington, and the Flathead Reservation, situated in the State of Montana.

(3) By treaties made with the Indian Tribes of the Provinces of Saskatchewan and Alberta, there has been set aside an average per capita area of about 180 acres.

(4) For the five Tribes of Alberta that entered into Treaty No. 7, whose tribal territories all adjoin British Columbia having now a total Indian population of about 3,500, there was set aside a total area of about 762,000 acres, giving a per capita area of 212 acres.

(5) The facts regarding the Indian Tribes inhabiting that part of Northern British Columbia lying to the East of the Rocky Mountains shown in Interim Report No. 91 of the Royal Commission at pages 126, 127 and 128 of the Report show that the Royal Commission approved and adopted as a standard for the Indians of that part of the Province occupying Provincial lands the per capita area of 160 acres of agricultural land per individual, or 640 acres per family of five, set aside under Treaty No. 8.

(6) As shown by the facts above stated, all the Tribes that are close neighbours of the British Columbia Indians on the South and East have had large areas per capita set aside for their use and benefit, and the Indians inhabiting the Northeastern portion of British Columbia have also been fairly treated in the matter of agricultural lands reserved for them. Notwithstanding that state of affairs, the areas set aside for all the other British Columbia Tribes average only thirty acres per capita, or from one-fifth to one-twentieth of the acreage of Reserves set aside for their neighbours.

(7) It may also be pointed out that at one time even this small amount of land was considered excessive for the needs of the Indian Tribes of British Columbia, as is shown by the controversy which in the year 1873 arose between the two Governments on the subject of acreage of lands to be reserved for the Indians of British Columbia. (See Report of Royal Commission at pages 16 and 17.) At that time the Dominion Government contended for a basis of 80 acres per family or 16 acres per capita, and the British Columbia Government contended for a basis of 20 acres per family or 4 acres per capita.

(8) It may further be pointed out that at that very time, while the Governments were discussing the question whether each individual Indian required 16 acres or 4 acres, the Provincial Government was allowing individual white men each to acquire by pre-emption 160 acres West of the Cascades and 320 acres East of that Range, each pre-emptor choosing his land how and where he desired.

(9) All the facts which we have above stated when taken together prove conclusively, as we think, that the per capita area of 30 acres recommended by the Royal Commission is utterly inadequate, and that a per capita area of 160 acres would be an entirely reasonable standard. That conclusion is completely confirmed by our knowledge of the actual land requirements of our Tribes.

(10) At the same time it is clear to us that, in applying that standard, the widely differing conditions and requirements of various sections of the Province should be taken into consideration.

(11) We proceed to state what are the conditions and requirements of each of the sections to which we have referred.

(12) For that purpose we divide the Province into five sections as follows:

- I. Southern Coast.
- II. Northern Coast, together with the West Coast of Vancouver Island.
- III. Southern Interior.
- IV. Central Interior.
- V. Northern Interior.

In the case of Section I all conditions are favourable for agriculture, and the Indians require much more agricultural land.

In the case of Section II the conditions are such that the country is not to any great extent agricultural. The Indians require some additional agricultural land together with timber lands.

In the case of Section III the conditions are more favourable to stock raising than to agriculture. Throughout the Dry Belt irrigation is an absolute necessity for agriculture. The Indians require large additional areas of pasture land.

In the case of Section IV there is abundance of good agricultural land, but the climatic conditions are not favourable for stock raising and fruit growing. The Indians require additional areas of agricultural land.

In the case of Section V the conditions are wholly unfavourable to both agriculture and stock raising. The main requirement of the Indians is that, either by setting aside large hunting and trapping areas for their exclusive use or otherwise, hunting and trapping the main industry upon which of necessity they rely, should be fully preserved for them.

3. It is quite clear to us that these conditions of settlement require to be considered by the Government of Canada as well as the Government of British Columbia.

Conditions Proposed as Basis of Settlement

We beg to present for consideration of the two Governments the following which we regard as necessary conditions of equitable settlement:

1. That the Proclamation issued by King George III in the year 1763 and the Report presented by the Minister of Justice in the year 1875 be accepted by the two Governments and established as the main basis of all dealings and all adjustments of Indian land rights and other rights which shall be made.

2. That it be conceded that each Tribe for whose use and benefit land is set aside (under Article 13 of the "Terms of Union") acquires thereby a full, permanent and beneficial title to the land so set aside together with all natural resources pertaining thereto; and that Section 127 of the Land Act of British Columbia be amended accordingly.

3. That all existing reserves not now as parts of the Railway Belt or otherwise held by Canada be conveyed to Canada for the use and benefit of the various Tribes.

4. That all foreshores whether tidal or inland be included in the reserves with which they are connected, so that the various Tribes shall have full permanent and beneficial title to such foreshores.

5. That adequate additional lands be set aside and that to this end a per capita standard of 160 acres of average agricultural land having in case of lands situated within the dry belt a supply of water sufficient for irrigation be established. By the word "standard" we mean not a hard and fast rule, but a general estimate to be used as a guide, and to be applied in a reasonable way to the actual requirements of each tribe.

6. That in sections of the Province in case of which the character of available land and the conditions prevailing make it impossible or undesirable to carry out fully or at all that standard the Indian Tribes concerned be compensated for such deficiency by grazing lands, by timber lands, by hunting lands or otherwise, as the particular character and conditions of each such section may require.

7. That all existing inequalities in respect of both acreage and value between lands set aside for the various Tribes be adjusted.

8. That for the purpose of enabling the two Governments to set aside adequate additional lands and adjust all inequalities there be established a system of obtaining lands including compulsory purchase, similar to that which is being carried out by the Land Settlement Board of British Columbia.

9. That if the Governments and the Allied Tribes should not be able to agree upon a standard of lands to be reserved that matter and all other matters relating to lands to be reserved which cannot be adjusted in pursuance of the preceding conditions and by conference between the two governments and the Allied Tribes be referred to the Secretary of State for the Colonies to be finally decided by that Minister in view of our land rights conceded by the two Governments in accordance with our first condition and in pursuance of the provisions of Article 13 of the "Terms of Union" by such method of procedure as shall be decided by the Parliament of Canada.

10. That the beneficial ownership of all reserves shall belong to the Tribe for whose use and benefit they are set aside.

11. That a system of individual title to occupation of particular parts of reserved lands be established and brought into operation and administered by each Tribe.

12. That all sales, leases and other dispositions of land or timber or other natural resources be made by the Government of Canada as trustee for the Tribe with the consent of the Tribe and that of all who may have rights of occupation affected, and that the proceeds be disposed of in such way and

used from time to time for such particular purposes as shall be agreed upon between the Government of Canada and the Tribe together with all those having rights of occupation.

13. That the fishing rights, hunting rights, and water rights of the Indian Tribes be fully adjusted. Our land rights having first been established by concession or decision we are willing that our general rights shall after full conference between the two Governments and the Tribes be adjusted by enactment of the Parliament of Canada.

14. That in connection with the adjustment of our fishing rights the matter of the international treaty recently entered into which very seriously conflicts with those rights be adjusted. We do not at present discuss the matter of fishing for commercial purposes. However, that matter may stand. We claim that we have a clear aboriginal right to take salmon for food. That right the Indian Tribes have continuously exercised from time immemorial. Long before the Dominion of Canada came into existence that right was guaranteed by Imperial enactment, the Royal Proclamation issued in the year 1763. We claim that under that Proclamation and another Imperial enactment, Section 109 of the British North America Act, the meaning and effect of which were explained by the Minister of Justice in the words set out above, all power held by the Parliament of Canada for regulating the fisheries of British Columbia is subject to our right of fishing. We therefore claim that the regulations contained in the treaty cannot be made applicable to the Indian Tribes, and that any attempt to enforce those regulations against the Indian Tribes is unlawful, being a breach of the two Imperial enactments mentioned.

15. That compensation be made in respect of the following particular matters:

(1) Inequalities of acreage or value or both that may be agreed to by any Tribe.

(2) Inferior quality of reserved lands that may be agreed to by any Tribe.

(3) Location of reserved lands other than that required agreed to by any Tribe.

(4) Damages caused to the timber or other natural resources of any reserved lands as for example by mining or smelting operations.

(5) All moneys expended by any Tribe in any way in connection with the Indian land controversy and the adjustment of all matters outstanding.

16. That general compensation for lands to be surrendered be made.

(1) By establishing and maintaining an adequate system of education, including both day schools and residential industrial schools, etc.

(2) By establishing and maintaining an adequate system of medical aid and hospitals.

17. That all compensations provided for by the two preceding paragraphs and all other compensation claimed by any Tribe so far as may be found necessary be dealt with by enactment of the Parliament of Canada and be determined and administered in accordance with such enactment.

18. That all restrictions contained in the Land Act and other Statutes of the Province be removed.

19. That the Indian Act be revised and that all amendments of that Act required for carrying into full effect these conditions of settlement, dealing with the matter of citizenship, and adjusting all outstanding matters relating to the administration of Indian affairs in British Columbia be made.

20. That all moneys already expended and to be expended by the Allied Tribes in connection with the Indian land controversy and the adjustment of all matters outstanding be provided by the Governments.

PART IV.—CONCLUDING REMARKS

In conclusion we may remark that we have been fully informed on all matters material to the preparation of this Statement, and have been advised on all matters which we considered required advice. We have conducted a full discussion of all points contained in the Statement, and have been careful to obtain the mind of all the principal Allied Tribes on all the principal points. These discussions have taken place at various large inter-tribal meetings held in different parts of the Province, together with a meeting of the Executive Committee. As result, we think we thoroughly understand the matters which have been under consideration. Having discussed all very fully, we now declare this Statement to be the well-settled mind of the Allied Tribes.

We have carefully limited our Statement of what we think should be conditions of settlement to those we think are really necessary. We are not pressing these conditions of settlement upon the Governments. If the Governments accept our basis and desire to enter into negotiations with us, we will be ready to meet them at any time. In this connection, however, we desire to make two things clear. Firstly, we are willing to accept any adjustment which may be arranged in a really equitable way, but we are not prepared to accept a settlement which will be a mere compromise. Secondly, we intend to continue pressing our case in the Privy Council until such time as we shall obtain a judgment, or until such time as the Governments shall have arrived at a basis of settlement with us.

To what we have already said we may add that we are ready at any time to give whatever additional information and explanation may be desired by the Governments for the further elucidation of all matters embraced in our Statement.

We may further add that the Allied Tribes as a whole and the Executive Committee are not professing to have the right and power to speak the complete mind of every one of the Allied Tribes on all matters, particularly those matters which specially affect them as Individual Tribes. Therefore, if the Governments should see fit to enter into negotiations with us, it might become necessary also to enter into negotiations regarding some matters with individual tribes.

We certify that the Statement above set out was adopted at a full meeting of the Executive Committee of the Allied Tribes of British Columbia held at Vancouver on the 12th day of November, 1919, and by the Sub-Committee of the Executive Committee on the 9th day of December in the same year.

PETER R. KELLY,

*Chairman of Executive Committee and
member of Sub-Committee.*

J. A. TEIT,

*Secretary of Executive Committee and
member of Sub-Committee.*