

1912-2

The British Columbia Indian Situation

REPORT OF INTERVIEW
HAD WITH THE
GOVERNMENT OF BRITISH
COLUMBIA

at Victoria, on 23rd January,
1912

Prepared by the Members
of the Delegation

PUBLISHED BY THE CONFERENCE OF FRIENDS OF THE INDIANS
OF BRITISH COLUMBIA.

A deputation representing "The Conference of Friends of the Indians of British Columbia" waited upon the Hon. Richard McBride, Premier, the Hon. Price Ellison, Minister of Finance, and the Hon. Dr. Young, Provincial Secretary, at the Parliament Buildings, Victoria, on Tuesday 23rd January, 1912, at 12.30 o'clock. The deputation consisted of Mr. P. D. McTavish of Vancouver, Chairman of the "Friends of the Indians", Rev. Arthur E. O'Meara of Victoria, Mr. F. C. Wade, K. C. of Vancouver and Mr. Arthur Lee of Victoria.

Mr. McTavish: We consider necessary an accurate record of this interview and we ask that notes be taken by the stenographer with whom we have arranged.

Mr. McBride: It is not usual that interviews with the Executive should be so reported and on the present occasion I see no necessity for it.

Mr. McTavish: A stenographer reported previous interviews on this subject, as you know.

Mr. McBride: That is correct, but I do not see fit that notes of this interview should be taken. You must consider that matter as decided. We must assume the responsibility. Of course you are at liberty to make public a statement of what is said so far as you see fit to do so. We cannot prevent that.

Mr. McTavish: If you so decide we have no option in the matter. At the same time a record of the interview is of great importance to us.

Mr. Wade: I suggest, Mr. McBride, that we prepare from memory a statement of the interview and hand it to you for approval.

Mr. McBride: We do not want to take any responsibility about that. It will be quite satisfactory to us if you prepare and hand us a memorandum of what you present and then we will send our answer in writing. We want you now to proceed and say what you have come to say to us. Before you do so, however, I may say to you gentlemen that our position is well known. You yourselves know it and the Secretary of State for the Colonies knows it. When in England I told him plainly the stand we have taken and intend still to take. He said to me, "We do not want to have trouble." I answered that we did not want there should be trouble, and I gave Mr. Harcourt clearly to understand that the policy of the Imperial Government so far as this Indian question is concerned must be one of "hands off British Columbia," and that we are very determined in the view that we take in this matter and intend to stand firmly by that view.

Mr. Wade: If that is the position you take, Mr. McBride, when we come to you in response to the desire expressed by the Imperial Minister, I think what you have just said should be taken as closing this interview and we shall be obliged to withdraw.

Mr. McBride: Oh, no, do not do that. I do not wish to be understood in that way. Notwithstanding our well known position we are ready to hear and consider what you have to say. Mr. McTavish wrote to us requesting an interview and we replied granting that interview and now we are ready to hear what you have to say.

Mr. McTavish: Mr. Premier and honourable gentlemen, *I feel that I would be extremely remiss in my duties were I not to express to you at the outset our very deep appreciation of your courtesy in extending to us so prompt an interview. We want you to know that we appreciate this very much. I also wish it to be distinctly understood that the basis of all our action and of whatever we may have to say is conciliation. I feel that no more can be said on that point.

Before commencing on the subject proper, may I be permitted to point out to you that the convention of the "Friends of the Indians" was held in Vancouver on January 12th, three days before the speech of yourself and Mr. Watson in the House on the question of Indian Reserves. Our plans were therefore completely formulated as a result of a certain despatch from Mr. Harcourt and we were not in the least actuated in these plans or in our method of procedure by anything contained either in your own speech or that of Mr. Watson. I may say, if you will pardon a slight digression on this point, that I was considerably perturbed to note in the paper a remark by Mr. Watson to the effect that "the Indians might as well make up their minds that they have to step aside for the white race. They cannot hope to compete with the white races any more than the weak can run against the strong." My fears in the matter, however, were entirely satisfied when I noticed that in your speech you corrected this misapprehension on the part of Mr. Watson and went on to express your position very frankly and fairly so far as your intentions towards the Indians were concerned.

Briefly epitomizing the situation today I may say that on December 14, 1910, a deputation of the "Friends of the Indians" waited upon you and urged that the Government of the Province consent to the reference of the question of Indian Title to the Judicial Committee of the Privy Council. On the 23rd of the same month you replied to these representations by stating that "the Government had determined that there is no issue and therefore no question to be adjudicated upon." On February 20, 1911, the "Friends of the Indians" replied by briefly presenting a history of the Indian claims since 1870. On March 1st, 2nd and 3rd of last year ninety-six Indian chiefs and delegates met in Victoria, and on March 3rd presented to your Government a statement of their claims. Your answer to them was in effect the same as your answer previously given to the "Friends of the Indians," namely, that "the Government had decided that there is no question to submit to the Courts." On April 26th, 1911, at Ottawa, a delegation representing the "Friends of the Indians" and the Moral and Social Reform Council of Canada, waited upon the Prime Minister of Canada, the

Minister of Justice and the Superintendent-General of Indian Affairs and discussed with them the interview just referred to. As a result of this interview a report regarding the claim of the Indians in this Province was sent by the Dominion Government to the Imperial Government. This led in June last to two interviews in London with Mr. Harcourt, the Secretary of State for the Colonies, at one of which on June 21st, you, Mr. McBride, and Sir Wilfrid Laurier were present. At a subsequent interview between Mr. O'Meara and Mr. Harcourt you were not present. As a result of these London interviews Mr. Harcourt, the Secretary of State for the Colonies, has sent a despatch to Earl Grey requesting that he communicate the same to us, the "Friends of the Indians," urging that we again submit this matter to your Government. As this despatch forms the basis of our present action I crave your indulgence while I read it:

"FROM MR. HARCOURT TO LORD GREY

"CANADA, No. 552

"Downing Street,

"6th July, 1911.

"My Lord:

"I have the honour to acknowledge the receipt of your Excellency's despatches, No. 279 of the 10th May, and No. 329 of the 3rd of June, on the subject of Indian lands in the Province of British Columbia.

"2. As your Ministers are aware, this question of the position of the Indian land claim in British Columbia has been for some long time pressed upon the attention of my predecessors and myself, and lately I have been asked to receive a formal deputation on the subject from sympathizers with the Indians in this country but have not done so. I have, however, given two interviews to the Rev. Arthur E. O'Meara, as representing the 'Friends of the Indians' in British Columbia, at the first of which Sir Wilfrid Laurier and Mr. McBride were good enough to be present, and I understand that subsequently they discussed the matter together. At the second interview, at which they were not present, I told

"Mr. O'Meara that he and his friends must again approach the Governments of British Columbia and Canada and that I could hold out no hope of intervention under existing circumstances on the part of the Imperial Government.

"3. I should be glad if you will be so good as to convey the substance of this despatch to Mr. O'Meara and his friends, and to state that it is my wish that they should take this course. Mr. O'Meara's address is 2307 Cadboro Bay Road, Sub-Post Office "No. 1, Victoria, B. C.

"4. At the same time I desire to express my earnest hope that the Provincial Government or the Dominion Government, or both, will find it possible to take early steps to arrive at an equitable solution of this troublesome case.

"I have, etc.,

"(Sgd.) L. HARCOURT."

In view of this request from the Imperial Government that we again present the matter to you, in view of the recent interviews in the Old Country and the kindlier feeling resulting therefrom, in view of the very clear announcement recently made in the House by yourself, regarding the Government's respect for Indian rights and "their desire to assist them in so far as possible to take a superior position in the future," we are earnestly hopeful that you will either take the definite steps looking towards an equitable solution which we are about to propose to you or in the alternative re-consider your decision of December 23rd, 1910, and consent to the submission of this question to the Judicial Committee of the Privy Council. The other details in connection with this matter are in the hands of Mr. O'Meara and Mr. Wade, who will present them.

Mr. O'Meara: Mr. Premier and honourable gentlemen, I desire first to draw special attention to some of the language of the despatch which I have before me. In the early part Mr. Harcourt speaks of "the Indian land claim in British Columbia" and in the closing part he expresses his earnest hope that the Provincial Government will "find it possible to take early steps to arrive at an equitable solution of this troublesome case."

You, Mr. McBride, know of the interviews which led to that despatch and what was said by Mr. Harcourt and I know of his expression of opinion in conversation with myself. On the present occasion, however, I prefer not to speak of the opinions as then expressed but to base my remarks upon the wording of this despatch. I point out that it shows in the clearest way that Mr. Harcourt held the opinion that the claim of the Indians should be dealt with in some equitable manner. He does not say that the reserves should be readjusted or any other particular thing done, but he says that the claim which the Indians are making should be dealt with. This claim has been formally laid before His Majesty and the Colonial Office and has been many times formally laid before the Government of Canada. The claim has also in a formal way been laid before the Government of the Province. It is, therefore, very well known what that claim is and I need say nothing further upon that point. I desire to say something as to the exact present position which has been reached in dealing with that claim. From the year 1875 the Government of Canada has been on record as declaring that the claim of the Indians is well founded. In that year the Department of Justice so reported in unmistakable language and that report was adopted by the Governor-General-in-Council. In the year 1909 and the early part of 1910, the Department of Justice came to the conclusion that this claim of the Indians should be judicially determined by reference to the Judicial Committee of His Majesty's Privy Council.

As you are well aware in the Spring of 1910 the legal advisers of British Columbia, having met the Deputy Minister of Justice at Ottawa and conferred with him on the subject, came to the same conclusion and took part in framing the ten questions, the first three of which related to the general matter of Indian title. We quite recognize that as you, Mr. McBride, mentioned in London the representatives of the Province were, as you stated, not authorized to bind your Government by that action. What we state, however, is simply the fact that they came to that conclusion. The Government of the Province refused to consent to the reference, but did not make any attempt and has never yet made any attempt to refute the claim which the Indians have been making.

One result of all this is that the claim, which the Indians have for many years been making, they are now making with increasing earnestness and more unitedly than ever, and all the more so on account of the very refusal of your Government.

Then when we come to ask what the Imperial Government thinks of the matter we find the Imperial Minister expressing the opinion that the claim of the Indians should be dealt with. The Imperial Minister has followed that expression of opinion by expressing his desire that an equitable solution should be brought about. We are proposing that the Province take two definite steps towards solution. In doing so we do not pretend to judge of the merits of the proposal from the point of view of the Province. That is a matter for your Government to weigh and to decide. We do think that some solution would be greatly in the public interest, and we think that our proposals, if adopted, would open the way for arriving at a solution.

The first step which we propose is that the provisions made by Section 80 of the Land Act for reconveyance be repealed.

Mr. Mc Bride: What is the section to which you refer?

Mr. O'Meara: I will read it to you.

"For the purpose of conveying the same to the Dominion Government in trust for the use and benefit of the Indians, and in trust to reconvey the same to the Provincial Government in case such lands at any time cease to be used by such Indians."

We suggest that all words after the words "benefit of the Indians" should be struck out.

Mr. McBride: In other words that the Government abandon its reversionary rights?

Mr. O'Meara: Yes, that would be the effect of it. We quite recognize that we are asking you to consider what would be a very decided departure from the policy of the Province, which, however, we think would be a very real step in advance. We ask you to consider several reasons, supporting as we think, this proposal.

Our first reason is that the claim of reversionary title to Indian reserves, which this Province makes, has so far as our information extends, no precedent in the whole of North America. Throughout the rest of Canada, and we think also throughout the United States, an Indian reserve is a tract of land which belongs wholly to the Indians. Our second reason is that upon whatever grounds the claim of the Province may be based it cannot be based upon anything found in Article 13 of the Terms of Union, by which it was provided that tracts of land "shall from time to time be conveyed from the local to the Dominion Government in trust for the use and benefit of the Indians." In Article 13 you will not find one word relating to reconveyance. Our third reason is that while undoubtedly there is to be found in the agreement made between the two Governments in 1876 some language upon which the Province has reason to base its claim, the Indian tribes were not parties to and are not bound by that agreement. You recently spoke in the House of your desire to respect the rights of the Indians. Upon that principle we suggest that the fact that the Indians were not parties to the agreement should be considered by you quite material. Our fourth reason is that if you compare the existing reserve system of Canada with that of British Columbia you will find some very marked points of contrast. Let me mention these: Throughout the rest of Canada, with some exceptions in the far Eastern part, the reserves are based upon treaty. In British Columbia treaties have not been made. Throughout the rest of Canada the reserves are held by the Dominion. In British Columbia they are held by the Province. In all other parts of Canada the permanent right has been given to the Indians and it is recognized that all beneficial interest in the reserves belongs to the Indians. In British Columbia all that is recognized is actual occupation. In the matter of the quantity of lands set apart you will find considerable difference. In the Provinces of Alberta and Saskatchewan there has been set apart an average of 180 acres for every man woman and child of the Indian population. In British Columbia the quantity is a little more than twenty acres.

Mr. McBride: What are those figures?

Mr. O'Meara: One hundred and eighty acres as against twenty acres. These figures are based upon official records. It is, however, only fair to concede that many of the reserves set apart in British Columbia are of considerably greater value per acre than are those set apart in the other Provinces mentioned. Our fifth reason is that while Article 13 makes reference to the old Colonial policy under which tracts of land were set apart, that policy must be taken to have been abandoned, and now the only test that can be applied is what is the practice in Canada, a part of which British Columbia has become. Our sixth reason is that the adoption of our proposal would very greatly simplify the reserve situation from a public point of view. This matter was, in February, 1909, discussed in the House of Commons. Upon that occasion honourable members representing British Columbia pointed out the great importance of opening up many of these reserves to settlement. In reply the then Minister of Indian Affairs made a statement which I quote from Hansard:

"Mr. Oliver: The question my honourable friend mentions has "been under consideration. But preliminary to any action being "taken upon that question it was felt by this Government that it "was necessary, first, to know what the rights of the Indians were, "which rights were the subject of dispute between this Government "and the Government of British Columbia. The Provincial Govern- "ment took the position that the Indians had no right except the "right of occupation. The Government which is the trustee and "guardian of the Indians could not admit that proposition and could "not go into any discussion as to whether the Indians had too much "or too little land until it was decided whether they had any rights "or not. That is the question that it is the desire of this Govern- "ment to have settled by a higher authority. It is something more "than a year ago that the proposition was made by this Government "to British Columbia that there should be a submission of this ques- "tion as to what right or title the Indians had. Up to the present "time the Government of the Province has not agreed to that and "therefore no progress has been made."

Mr. Oliver there says that "no progress has been made." You, Mr. McBride, a few days ago stated in the House that in the efforts made to deal with the Indian reserves not much progress has been made. In our judgment it is impossible that progress should be made until these fundamental matters have been dealt with. It seems to us that there is one underlying question, namely, whether the Indians have any rights. It seems also to us that while it is of great importance from the Indian point of view to have that question in some way determined, it is of equal importance from the white man's point of view to have it determined.

We, today suggest to you that there are two alternative plans by which this question can be determined. You can deal with it by conveying all the reserves to the Dominion Government for the benefit of the Indians or you can deal with it by consenting to the reference which has been so much discussed.

The second step which we ask you to consider is to amend Sections 5 and 34 of the Land Act by which, as they now stand, the Indians are prevented from purchasing land except by securing an Order-in-Council. In other words these men, whose ancestors owned the whole country, cannot take their good money and purchase land from the Crown without first begging for leave to do so. We understand that in not more than five instances has such leave been granted.

Mr. McBride: In my opinion it would be very unwise to give to the Indians such an unrestricted right as you propose.

Mr. O'Meara: Perhaps some safeguards might be found advisable, but we suggest that in some reasonable way this opportunity of advance should be given to the progressive Indians.

It will be well for me, before sitting down, to guard carefully against a possible misunderstanding. We are not for one moment taking upon ourselves to say that if you should decide upon these two steps, that action would settle all matters. On the contrary, a number of other matters would still remain. It would be necessary that these should be the subject of consideration and negotiation.

What we do say is that we hope the taking of these two steps would open the way for a final settlement of all outstanding matters.

Mr. Wade: I agree with what Mr. O'Meara has just said with regard to safeguards in cases where Crown lands are sold to the Indians. In the United States under the Dawes Allotment Act providing for the alienation of lands to Indians, the conveyance was first made in trust for twenty-five years. By subsequent legislation the alienation can be made complete as soon as the competence of the Indian to look after his property is ascertained, and the transfer has been facilitated in many ways.

There are two ways of approaching this Indian question. One is:—

1. To tell the Indian who desires to ascertain what title he has to lands in British Columbia under the proclamation of George III, that he has no title, and that there is, therefore, no issue for the Courts to try.
2. To refuse to carry out the requirements of Section 13 of the Terms of Union of British Columbia with the rest of Canada which required that all Indian reserves be conveyed to the Dominion Government in trust for the Indians.
3. To give the Indian in British Columbia no permanent right in his reserves such as he possesses in all other parts of Canada, but occupation only.
4. To insist upon a reversionary right of the Province in the reserves, with power to cancel them altogether under certain circumstances.

The first is not calculated to arouse in the Indian admiration for our candor or courage. The second, the violation of our solemn agreement under the Terms of Union, can only shock his sense of right and wrong. The third forces him to remain a nomad on the face of the earth instead of becoming permanently settled as an industrious citizen. The fourth by taking away all security of title reduces his condition still lower.

Constructive statesmanship will hardly be satisfied by the policy which I have just outlined, and it is agreeable to turn from it to a totally different policy which would include:—

1. The reference of the question of Indian title to the Judicial Committee, as asked for by the Indian tribes, as urged by the Dominion Government, and as approved by the distinguished Counsel of the Province at their conference with the Deputy Minister of Justice.

2. The honourable observance of Section 13 of the Terms of Union by the conveyance of the reserves to the Dominion so that they can be properly administered for these wards of the nation.

3. The substitution of permanent ownership of the reserves by the Indians, as in all other parts of Canada instead of mere occupation, which is totally useless for the development of industry, character or any of the other attributes of good citizenship.

4. The abandonment of the claim for a reversionary right in the Province, which exists nowhere else, was never recognized by the Indians, and can serve only to destroy all certainty of title.

There can be no question as to which of the policies outlined is the better one for the Indians as well as the community at large. At times it has been supposed that the Indian is dying out or at any rate degenerating. Improved administration of Indian affairs in the United States has served to correct these false impressions. In Canada, according to the report on Indian affairs just issued, the Indian is improving his condition very rapidly. The total Indian population is 103,361; in British Columbia there are 24,581. The birthrate exceeds the deathrate considerably. As farmers they are proving a distinct success. Last year the Indians had 58,550 acres under crop and raised 1,494,452 bushels of grain and roots, and cut 123,198 tons of hay. Their production for the year was as follows:

Agricultural products	\$1,460,462
Wages	1,540,000
Fishing	691,629
Hunting	819,424
Other pursuits	852,944

The increased birthrate and all these figures, proving as they do beyond dispute the ever-increasing industry of the Indian and his adaptability to civilized pursuits, should powerfully appeal to a mind inclined towards constructive statesmanship. Every effort that government is capable of should be promptly made to help the Indian in his forward progress, and as we have more Indians in this Province than any other Province of Canada,—and these of a more intelligent class than almost any other tribes,—the duty devolving upon your Government is just so much the more serious.

Mr. McBride: These suggestions are very interesting, Mr. Wade, but are they not matters to be dealt with by the Dominion Government?

Mr. Wade: No doubt they are to a great extent if the reserves are conveyed to the Dominion Government in accordance with Section 13 of the Terms of Union. But you cannot withhold all title to reserves from the Dominion and at the same time look to that Government to administer them. That is impossible.

I would strongly urge that the helping hand be extended to our 24,000 Indians at once. The reserve system at best is unsatisfactory, as in agricultural pursuits particularly the stimulus of private ownership is absolutely indispensable. The reserve system should be succeeded by the allotment system and this step in advance should be followed by further developments towards real citizenship. This has been already accomplished in the United States with most satisfactory results.

While I have digressed to such an extent in order to indicate some of the features of a beneficial Indian policy which might and should be adopted, I again urge that we first show the Indians our courage and honesty by consenting that the question of their title under the proclamation of George III or otherwise be submitted to the highest Tribunal in the Empire.

Mr. McBride: Now, gentlemen, as stated at the outset, I wish to say that if you will prepare a memorandum embodying the various points which you have orally placed before us and send the same to us, the Government will be pleased to consider it and in due course to send a reply. I wish further to say that if at any future time you have anything in this connection to bring before the Government we shall be pleased to have you come back for the purpose of presenting it.