

GILBERT MALCOLM SPROAT,
BRITISH COLUMBIA INDIAN RESERVE COMMISSIONER (1876-1880),
AND THE “HUMANITARIAN CIVILIZING” OF INDIGENOUS PEOPLES

by

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Abstract

Gilbert Malcolm Sproat (1834-1913) was one of British Columbia's first post-confederation Indian reserve commissioners. He served two years as the joint commissioner to the Joint Indian Reserve Commission (1876-1878) and then two more years as the sole commissioner of a reconstituted commission (1878-1880). In these capacities, Sproat left thousands of handwritten pages analyzing his decisions allotting Indian reserves and providing his thoughts more generally about Indigenous peoples and their relationship to the new settler society. His legacy remains today most obviously in surveyed Indian reserve boundaries that represent more than just lines on maps: they also represent the ideas, beliefs, and reasoning that generated them. Through a comprehensive review of Sproat's writing and an attention to his "intellectual history," I analyze Sproat's own explanations to elucidate what he believed about Indigenous peoples and why, and how those beliefs affected his reserve-allotment decisions.

I conclude that two fields of 19th-century thought influenced Sproat most strongly: the push for Indigenous "civilization" and humanitarianism. Further, the idea at the core of Sproat's beliefs is that the only way Canada's Indigenous "civilization" program would succeed is if Indigenous people were the primary actors in their own "civilization." By reviewing Sproat's adult life prior to becoming reserve commissioner and his four-year tenure as reserve commissioner with these new insights, one can see his drive for the "humanitarian civilizing" of Indigenous peoples running throughout his decisions. This broader knowledge about Sproat's influences, in turn, provide additional perspectives on the Indian reserve-creation process in British Columbia.

Whereas previous scholars have addressed Sproat as an adjunct to other primary investigations, I begin with Sproat. I approach him from the perspective of a legal historian interested in the intersection of land; Indigenous occupation, rights, and ownership of land; and settler law about land and Indigenous people. I conclude that he was very much a man of his time, not of ours, and he can be best understood in light of his intellectual, legal, social, and cultural context, including as part of the liberal order framework, an emerging paradigm through which to analyze and understand Canadian history.

Lay Summary

This thesis is a study of Gilbert Malcolm Sproat (1834-1913), a British Columbian Indian reserve commissioner, 1876-1880, and his beliefs about Indigenous people, land, and law. It focuses on what Sproat believed and why, and how his beliefs influenced his Indian reserve-allotment decisions as part of the first post-confederation, bi-governmental effort to establish Indian reserves in the province. Contrary to past scholarship that has posited Sproat as embodying ideas from the twentieth century, this thesis concludes that two 19th-century ideas predominantly influenced him: a drive to “civilize” Indigenous people but humanitarianism in carrying out this “civilization” project. In light of this new insight, this thesis re-examines Sproat’s Indian reserve-allotment decisions, the role Indian title played in his decisions, and his support for an 1879 Indigenous self-government initiative, to bring a deeper understanding of how and why some of British Columbia’s Indian reserve boundaries came to be established.

Preface

This thesis is original, unpublished, independent work by the author, Sarah Pike.

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Acknowledgements

In this thesis, I re-assess an aspect of British Columbia history. To the extent I have been successful in doing this, it is due in large part to learning how from professors with whom I had the pleasure of speaking while completing this project. This thesis had three turning points, all arising from such conversations. In the first, University of Manitoba History Professor Dr. Adele Perry used a term I didn't recognize to describe the perspective of another "Sproat scholar." I asked, "what's that?," and, as a result of the ensuing conversation, I gained a new perspective on writing about history and, in particular, *this* history. In the second, Dr. Douglas Harris, my University of British Columbia thesis supervisor, suggested that Victorians believed themselves to be at the pinnacle of civilization; I responded, "did they?" In the third, Dr. Harris referred to liberalism; I again responded, "what's that?" These snippets of these conversations give some idea of the extent to which I have benefitted from discussing the history and ideas I canvas in this thesis with those vastly more knowledgeable and experienced than I. I am indebted to everyone who contributed in this way to this thesis.

One of the greatest experiences of "going back to university" was the privilege of learning from UBC History Professor Dr. Tim Brook. Though our substantive areas of historical interest do not overlap in the slightest, I was lucky enough to get Tim's agreement to sponsor my Directed Research into historiography, and I could not have asked for a better guide. I also benefitted from the discussions I had with and the encouragement I received from Dr. Ronald Stevenson of the federal Department of Justice: he helped me to stay afloat amidst the tsunami of ideas that came at me as I researched and wrote this thesis. But among my most important academic discussions were with University of Victoria Law Professor Emeritus Hamar Foster, Q.C., the author of Gilbert Sproat's entry in the *Dictionary of Canadian Biography* and the second reader of this thesis. I am indebted to Hamar for the time he gave, the thoughts he shared, and the generosity he showed in considering and responding to my many questions.

Others helped me with research and editing: thank you Christina Clemente for the former and Hanako Masutani for the latter. Anne Seymour, another "Sproat scholar," also supported me by, among other things, providing me with transcriptions of some key historical documents that Robin Fisher prepared in the 1970s. I am grateful to both Anne and Robin for their shoulders to stand on. Others propped me up during the past eighteen months. Most notable among these

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Chapter 1: The “imaginative presentment” of Gilbert Malcolm Sproat

I have less faith than many seem to have in the educational value of “history”, there is so much ... outside the records, and it is so difficult even to get men to think of the past at all. A writer, to overcome this indifference, is tempted to give a certain heroic, or at any rate interesting, cast to his presentations. At the same time, as a supposed expositor of the veritable, he is under responsibilities from which the novelists and dramatists, who deal with historic subjects, largely are free. He, more than they, has to realise, actuatively, the ideals of the old time in relation to his characters and their surroundings, putting himself, as far as may be, by an imaginative effort, in the midst of those things, and in the place of those men that are to be described. This is a rare faculty, which, in the degree of its possession, implies sympathy according to the writer’s own bent, but, then, sympathy means an unconscious bias. So, you never can have real history, but only a series of more or less imaginative presentments.¹

Gilbert Malcolm Sproat wrote this passage, around 1900, in a draft “History of British Columbia.” More than one hundred years later, Sproat’s words capture the problem that Sproat, as a subject, poses. Sproat was many things throughout his lifetime, including a British settler and businessman on Vancouver Island, a British Columbian official in London, and a prolific, versatile author. However, this thesis concerns Sproat’s most important role as far as British Columbia is concerned: his four-year tenure, 1876-1880, as an Indian reserve commissioner jointly-appointed by the British Columbia and Dominion governments. In this thesis, I analyze Sproat’s motivations for his reserve-allotment decisions and his beliefs about Indigenous people, trying to refrain from giving Sproat a “heroic cast” and to “realise ... the ideals of the old time in relation to [Sproat] and [his] surroundings.”² Yet, as Sproat himself pointed out, my efforts are inevitably tainted, by the general biases of my time and place, as well as by my own personal biases. I strive, therefore, for the best “imaginative presentment” of Sproat I can give, acknowledging these biases.

¹ Sproat, draft “History of British Columbia” (c. 1900), Victoria, B.C. Archives (Add. MSS 257, file 7 at 35).

² In a not dissimilar way, historian DJ Hall has recently reviewed Canadian “Indian policy,” particularly surrounding the signing of Treaties 6 and 7 in Alberta in the 1870s. He urged the importance of incorporating both Indigenous and settler experiences, cultures, values, beliefs, and worldviews when analyzing past relationships and interactions: D.J. Hall, *From Treaties to Reserves: The Federal Government and Native Peoples in Territorial Alberta, 1870-1905* (Montreal & Kingston: McGill-Queen’s University Press, 2015) at 5-9, 323-326.

1.1 THE JOINT INDIAN RESERVE COMMISSION

British Columbia joined the Canadian confederation in 1871 pursuant to the British Columbia Terms of Union in which the Dominion and the province agreed, in Article 13, that, “tracts of land ... shall from time to time be conveyed by the Local Government to the Dominion Government in trust for the use and benefit of the Indians on application of the Dominion Government.”³ After 1871, as governmental negotiations over the implementation of Article 13 began, then faltered, the Dominion came to understand that the province had a radically different notion of its obligations, particularly with respect to the size of Indian reserves and the need to extinguish Indian title through treaties.⁴

³ British Columbia Terms of Union, RSC 1985, App II, No 10, Art 13.

⁴ For a discussion of the governmental negotiations between 1871, when B.C. joined Confederation, and 1876, when the governments established the Joint Indian Reserve Commission, see Robin Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890*, 2nd ed. (Vancouver: UBC Press, 1992) at 175-188 [Fisher, *Contact and Conflict*]; Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: UBC Press, 2002) at 71-103 [C Harris, *Making Native Space*]; and Robert E. Cail, *Land, Man, and The Law: The Disposal of Crown Lands in British Columbia, 1871-1913* (Vancouver: UBC Press, 1974) at 105-208.

“Indian title” was a term used in the 19th and 20th centuries to describe an Indigenous interest in land recognized by British policy. At the Privy Council in 1888 in the *St. Catherine’s Milling* case, Lord Watson, for the court, described Indian title in Canada as, “a personal and usufructuary right, dependent upon the good will of the Sovereign,” though, despite the “great deal of learned discussion at the Bar with respect to the precise quality of the Indian right, ... their Lordships [did] not consider it necessary to express any opinion upon the point”: *Reference re: British North America Act, 1867, s.109 (Ont.)* (1888), 14 App. Cas. 46 at 54-55 (PC). When the Supreme Court of Canada rendered its own judgment in *St. Catharines Milling and Lumber Co. v. Ontario (Attorney General)* (1887), 13 S.C.R. 577 at 607-608 (from which an appeal was taken to the Privy Council), Justice Strong, in dissent but not on this point, described Indian title in this way:

... we must refer to historical accounts of the policy already adverted to as having been always followed by the crown in dealings with the Indians in respect of their lands.

In the Commentaries of Chancellor Kent and in some decisions of the Supreme Court of the United States we have very full and clear accounts of the policy in question. It may be summarily stated as consisting in the recognition by the crown of a usufructuary title in the Indians to all unsurrendered lands. This title, though not perhaps susceptible of any accurate legal definition in exact legal terms, was one which nevertheless sufficed to protect the Indians in the absolute use and enjoyment of their lands, whilst at the same time they were incapacitated from making any valid alienation otherwise than to the crown itself, in whom the ultimate title was, in accordance with the English law of real property, considered as vested.

In this thesis, I use the term “Indian title” to reflect the term used and to describe the interest discussed by the historical figures in the time period about which I am writing. For a discussion of the nature of Indian title in the context of the *St. Catherine’s* case (and, in particular, the “significant contribution [Minister of the Interior] Mills made to the legal concept of Indian title” (at 250), see S. Barry Cottam, “Indian Title as a ‘Celestial Institution’: David Mills and the St. Catherine’s Milling Case” in Kerry Abel & Jean Friesen, eds, *Aboriginal Resource Use in Canada: Historical and Legal Aspects*, Manitoba Studies in Native History (Winnipeg, Manitoba: University of Manitoba Press, 1991) 247. Cottam also provides a brief interesting discussion of the

After years of sometimes acrimonious discussion about how to implement Article 13 and address the “Indian Land Question” (as it had become known amongst government officials), the two governments agreed to create a commission to determine the lands the province was to convey to the Dominion for Indian reserves.⁵ The governments established the three-man Joint Indian Reserve Commission (JIRC) in 1876, each appointing one commissioner and jointly-appointing Gilbert Malcolm Sproat. The Orders-in-Council creating the commission did not mention Indian title, and they did not contemplate treaties for its extinguishment, because the province refused to recognize Indian title, as had the former Colony of British Columbia. When the Deputy Superintendent General of Indian Affairs (Deputy Superintendent General), the second-most senior Dominion Indian Affairs official, submitted his annual report for the year ending in June 1876, he described the JIRC’s establishment but noted: “[t]he question of the rights of the Indians in all the lands in British Columbia in which their rights have not been extinguished by treaties between themselves and the Crown is still unsettled.”⁶

After their appointments in the spring and summer of 1876, Sproat and his two fellow commissioners, Alexander Anderson (the Dominion appointee) and Archibald McKinlay (the provincial appointee), travelled together on two circuits: one around the south coast of British Columbia between November 1876 and March 1877, and one through the province’s interior, in the Shuswap and Okanagan valleys, between June and December 1877. They travelled from one Indigenous community to another, meeting with each group, hearing their concerns about settler encroachment in traditional territories and their land claims, meeting separately with “white settlers” and sometimes missionaries, and then making their decisions about which existing Indian reserves to extend and which new ones to allot. The commissioners did not have authority to take away lands that the province or former colony had already vested in settlers,

spelling of “St. Catherine’s” at footnote 1. I have adopted Cottam’s approach to the spelling, using the Privy Council’s and the company’s spelling of “St. Catherine’s” except where citing a judgment below the Privy Council, where the courts used “St. Catharines.”

⁵ PC 1875-1088; British Columbia, “Report of a Committee of the Honorable the Executive Council, approved by His Excellency the Lieutenant Governor on the 6th day of January, 1876” [BC OIC 1876] reproduced in Parliament, “Annual Report of the Department of Interior for year ended 30 June 1875 – Special Appendix” (Ottawa: Parliament, 1876) at 50 [June 1875 Department of Interior Annual Report].

⁶ Canada, Department of Interior, *Annual Report of the Department of the Interior for the year ended 30th June 1876* (Ottawa: Department of Interior, 1877) at xvii. Robert Cail, I think, misattributes this passage to “the Order in Council establishing the Commission”: Cail, *supra* note 4 at 208. I cannot find an Order-in-Council containing this passage.

although they did push settlers to “compromise” if their claimed rights appeared questionable. The commissioners usually left each Indigenous community with a rough sketch map of the newly-allotted reserves.⁷ Afterward, sometimes a year or more later, a survey crew would arrive to confirm and formalize the reserve boundaries. Although the governments probably at least initially intended the commissioners’ allotments to be final, the commissioner who came after Sproat, Peter O’Reilly (who held the position from 1880 to 1898), sometimes adjusted the reserves. And, although the Dominion and provincial governments largely treated the lands as if they were Indian reserves, the province did not transfer the administration and control of the lands to the federal Crown until 1938.⁸

As the commissioner appointed by the Dominion and provincial governments, Sproat viewed himself as the “Chief Commissioner,” though no governmental direction or instruction expressed this status and Sproat never seems to have acted explicitly as such.⁹ Indeed, somewhat surprisingly, the three commissioners always seemed to have arrived at consensus; during the JIRC’s second circuit, Sproat explained that he had found “no difficulty in getting agreement... There have been no protests, and only short lasting differences of view.”¹⁰ Nonetheless, from at least the middle of the second circuit in 1877, Sproat angled to become the sole commissioner of the Indian Reserve Commission, denigrating both of his fellow commissioners in a letter to the

⁷ Although “tribe” is the word used in the historical documents to describe an Indigenous community, I have chosen to use the word, “community,” following Marianne Ignace & Ronald E Ignace in *Secwépemc People, Land and Laws : Yeri7 re Stsq’ey’s-kucw*, McGill-Queen’s Native and Northern Series 90 (Montreal & Kingston: McGill-Queen’s University Press, 2017). I considered several other terms, including, “First Nation,” which seems too modern a term and, based on the University of British Columbia’s “Indigenous Peoples: Language Guidelines,” may reference a reserve-based group, which seems too narrow a word for my context: University of British Columbia, version 1.0 “Indigenous Peoples: Language Guidelines” (2016), online: <http://assets.brand.ubc.ca/downloads/ubc_indigenous_peoples_language_guide.pdf>, accessed 4 October 2017, at 8. Peter Carstens uses the term “confederacy,” which I have not adopted because it seems to imply political relations, and I do not consider myself not familiar enough with the historical political relationships: Peter Carstens, *The Queen’s People: A Study of Hegemony, Coercion, and Accommodation among the Okanagans of Canada* (Toronto: University of Toronto Press, 1991) at 5. At other times, Carstens seems to use the word “band” in place of “confederacy” (see, for example, at 15), though “band” suggests to me an entity described by the *Indian Act*, first passed in 1876.

While not using the term “tribes,” I have chosen to use the term “tribal chiefs,” which the historical actors also used, seemingly as a synonym for “hereditary chiefs”. I prefer the former term, as I am not familiar with the distinctive methods that each community used to select a chief.

⁸ PC 1938-1036.

⁹ Sproat to Minister of Interior, “Confidential” (27 August 1877), Ottawa, Library and Archives Canada [LAC] (RG 10, vol. 3653, f. 8702).

¹⁰ *Ibid.*

Minister of the Interior who, at that time, also was the Superintendent General of Indian Affairs (Superintendent General), the highest Indian Affairs position in the country.¹¹ When the province became unwilling to bear its share of the costs of the three-man commission, the Dominion and the province agreed to appoint Sproat as sole commissioner in March 1878, after the JIRC's second circuit. Sproat then served as the sole Indian reserve commissioner for two years, until his resignation in early 1880.

While the joint commissioner, Sproat complained to the Minister of the Interior about his fellow commissioners, including their public drunkenness. Sproat thought McKinlay lacked "clear perceptions and firmness," and was "not bright and [Sproat could not] recall any idea that he has contributed in aid of the work for the past twelve months." Sproat asserted that Anderson was "very vain and jealous and has a knack of offending people," and, though "intellectually McKinlay's superior," was "deficient in will, and cannot see all round a subject and does not seem able to decide what should be done."¹² Further, Sproat felt:

Neither of the associate commissioners has been of any use in deciding any questions between whites and Indians which had to be regarded from legal and business points of view. In addition to the general responsibilities of the work, I have had to decide these questions entirely by myself, and also to manage as best I could the accounts and correspondence for both governments.¹³

Sproat considered George Blenkinsop, the general assistant and census-taker and a former chief trader with the Hudson's Bay Company, to have "been really my chief adviser, quietly, at times of difficulties with the Indians."¹⁴

Despite these criticisms, Sproat still characterized Anderson and McKinlay as "well disposed towards the Indians and ready to do justice to them."¹⁵ Yet, by the end of Sproat's third circuit as sole commissioner, in September 1879, a number of men, including Anderson and

¹¹ A statute at the time provided that "The Minister of Interior shall be the Superintendent General of Indian affairs, and shall, as such, have the control and management of the lands and property of the Indians of Canada": *An Act to provide for the establishment of "The Department of the Interior"*, SC 1873, c 4, s 3. There is some discrepancy in the archival and governmental records as to whether "Superintendent General" is a hyphenated term; based on this statutory provision, I have not hyphenated it.

¹² All quotes in this paragraph are from Sproat to Minister of Interior, "Confidential" (27 August 1877), *supra* note 9.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

McKinlay, signed a letter to the provincial premier vehemently condemning Sproat's work. Who or what had changed? Sproat? Archibald and McKinlay? The parameters of the Indian reserve commissioner's role? The size or nature of the reserve-allotments?

The reserve-allotments had not changed: Sproat did not allot better land or larger reserves during his four solo circuits than the three-man commission had allotted during their two circuits. After the JIRC's Shuswap-Okanagan circuit in the summer of 1877, settlers had already protested the size and nature of the allotted reserves as too large and containing too much valuable agricultural and grazing land. Instead, the difference was that Sproat had begun to take positions beyond matters related specifically to reserve-allotments that collided with those of the government and most others within the settler society. Most notably, Sproat expressed his views before and after a meeting of about 1,100 Nlha7káp̓mx¹⁶ people in the summer of 1879, when they produced a set of "Rules and Regulations" by which they wished to govern themselves and approval of which they sought, through Sproat, from the Superintendent General.¹⁷ Once Sproat stepped outside his role as a commissioner responsible only for making land-related decisions, no governmental authority or settler publicly supported him.

But this much about Sproat's tenure as reserve commissioner is already known.¹⁸ In this thesis, I consider Sproat's writings during his time as reserve commissioner in an effort to identify the beliefs that motivated his reserve-allotment decisions (especially in his circuits as sole reserve commissioner), animated his support for the Nlha7káp̓mx initiatives, and ultimately led to his resignation in March 1880. This story, too, has been partly told, most notably by Cole Harris in *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia*, where he summarizes Sproat's tenure as reserve commissioner in this way:

Sproat was an enormously hard-working man with a good legal mind and an extraordinary grasp of detail, but he was no politician. By the time he resigned in March 1880, he had annoyed most of the powerful men in British Columbia. But,

¹⁶ This spelling accords with modern orthographic conventions widely adopted for Salish languages of the word that Sproat usually wrote as "Nekla-kap-a-muk." It is also sometimes anglicized today as "Nlaka'pamux" and is pronounced roughly as "nla-kap-muk."

¹⁷ I have reproduced these "Rules and Regulations" in Appendix A and the accompanying "Resolutions" in Appendix B.

¹⁸ See, for example, C Harris, *Making Native Space*, *supra* note 4; Fisher, *supra* note 4; and Douglas Harris, "The Nlha7káp̓mx Meeting at Lytton, 1879, and the Rule of Law" (Winter 1995-96) 108 *BC Studies* 5 [D Harris, "The Nlha7káp̓mx Meeting"].

politician or no, his predicament was obvious. To [former Governor] Douglas's land policies he had added conceptions of Native self-government and of Native schooling that were completely out of tune with the settler mentality of his day. He had come to espouse a comprehensive package of Aboriginal rights and responsibilities that, in many respects, reflected Native thought of the late 1870s but was a century or more out of phase with the assumptions and values of most immigrant British Columbians. Eventually Ottawa, which had to live with British Columbia in Confederation, would not back him. He stands out now as a brave and remarkable failure, a poignant reminder that colonialism speaks with many voices, that Native people were working out their own adaptation to the new world that colonialism had thrust upon them, that a few whites, Sproat the most notable among them, were listening, and that there were alternatives to the dark path we have taken.¹⁹

Although I suggest a somewhat different interpretation of Sproat, no one has captured his distinctiveness so well as Harris. Further, with respect to reserve-allotments, the focus of Sproat's attention, Harris discerns and explains the heart of Sproat's approach:

The essence of the task at hand was compromise. Settlers had already taken up land, and some colonial property rights were now almost twenty years old. Sproat supported such rights scrupulously (where legally obtained), and assumed that other settlers with legitimate demands for property would follow. Therein lay the successful British colony that he, as much as [former Governor] Douglas, anticipated. The challenge was to fit a viable Native presence into an emerging colonial landscape, and this, Sproat held, could only be done on the ground, case by case, in carefully negotiated compromise. As he travelled the valleys of the southern interior in the summer and fall of 1878, the search for such compromise was what he thought he was about. There seemed no alternative when, as he saw it, both settlers and Natives had legitimate claims to land.

Compromise was pursued locally on the ground as Sproat strove to create the spaces for two very different micro-geographies: one associated with successful settlement and colonization, the other with a continuing Native presence reliant on both new and accustomed ways.²⁰

In addition to this distinctive "compromise" approach, Harris also highlights throughout *Making Native Space* Sproat's striking sensitivity toward Indigenous people and his genuine attempt to secure for them the lands they wished to have, despite institutional, cultural, and legal constraints.²¹

¹⁹ C Harris, *Making Native Space*, *supra* note 4 at 137 and also at 165-166.

²⁰ *Ibid* at 147.

²¹ *Ibid* at dedication, Introduction and Chapter 6; Fisher, *Contact and Conflict*, *supra* note 4 at 193-198; Robin Fisher, "An exercise in futility: The Joint Commission on Indian land in British Columbia, 1875-1880" (1975) 10:1 *Historical Papers* 79 at 84-91 [Fisher, "The Joint Commission"]; Douglas Harris, *Landing Native*

Although I agree with many of the observations of Harris and the other scholars who have written about Sproat, my reading of the archival record, set in the larger context of Empire and ideas about Indigenous peoples within Empire in the 19th-century, suggests a new interpretation. While I see his pursuit of compromise, his sensitivity toward Indigenous peoples, and his genuine efforts to secure lands for them, I view these actions through a different lens. In particular, I perceive motivations for his actions that others have not highlighted to date. Most fundamentally, I disagree with Harris that Sproat's vision for the "comprehensive package of Aboriginal rights and responsibilities" constituted either "Native thought of the late 1870s" or more importantly, the assumptions and values of immigrant British Columbians from a century or more later (more or less the time period in which I write).²² Sproat's were not pan-Indigenous ideas of the time, and they are not immigrant ideas of the present-day. Instead, although it is clear that some Indigenous people may have subscribed to the views Sproat espoused, Sproat's "package" was a sharply settler-inflected one, indelibly imprinted with Victorian ideas and ideals, in which Indigenous people were to become "civilized" and like the white settlers in every way possible.²³ Their "rights and responsibilities" were those which the settlers chose to allow them, under settler legislation, and according to the settler vision of what Indigenous people should be striving to be.

Sproat fits his time, just not, perhaps, his place. Though no others associated with government in British Columbia expressed his views, his ideas fit within the more general frameworks that describe certain Victorian British settler society views about Indigenous

Fisheries: Indian Reserves and Fishing Rights in British Columbia, 1849-1925 (Vancouver: UBC Press, 2008) at 43-59 [D Harris, *Landing Native Fisheries*].

²² Harris draws this same conclusion elsewhere in *Making Native Space*, including where he concluded that the package of policies Sproat supported in the form of the Nlha7kápmx Rules in the summer of 1879 were "a comprehensive set of Native policies that British Columbia would hardly see again for more than 100 years": C Harris, *Making Native Space*, *supra* note 4 at 160.

²³ For an analysis of how the ideas of protection, civilization, and assimilation informed Canadian "Indian policy" generally, see John L. Tobias, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy," in *As Long as the Sun Shines and Water Flows: A Reader in Canadian Native Studies*, Nakoda Institute Occasional Papers (Vancouver: UBC Press, 1983), 39-55. See also John Leslie and Ron Maguire, eds., "The Historical Development of the Indian Act" (Ottawa, 1978), online: <http://publications.gc.ca/collections/collection_2017/aanc-inac/R32-313-1978-eng.pdf>, accessed 29 November 2017.

peoples.²⁴ Sproat was a man at the juncture between the long-held and the emerging British and Canadian views about Indigenous “civilization,” a concept to which he referred frequently. One can see in his writing not only his thoughts about a largely inexorable Indigenous progress through stages of “civilization,” but also his developing ideas that governments needed to push Indigenous people to become more like white people and assimilate to the settler culture in order to advance and become “civilized.”

Yet the Sproat scholars – Cole Harris, Douglas Harris, and Robin Fisher foremost among them – are correct when they highlight Sproat’s empathetic nature. But his empathy sprang, at least in part, from the influence of humanitarianism, a movement which arose in Britain in the 1810s, grew in the 1820s, and blossomed in the 1830s with the statutory emancipation of slaves and the recommendations in the *Report from the Select Committee on Aborigines (British Settlements)*, after a series of hearings into British settler abuses of Indigenous peoples in the empire, for “humanitarian colonization.”²⁵ In the context of British colonization, humanitarianism attempted to turn “the victims of colonization into its beneficiaries,” through the exercise of humanity where Indigenous people’s interests clashed with those of the colonizers.²⁶

My study of Sproat shows that the two key ideas extant in the British Empire that informed Sproat’s decisions as reserve commissioner were that of “civilizing” Indigenous peoples, but doing so in a way consistent with the mid-19th-century understanding of humanitarian colonialism – call it, perhaps, “humanitarian civilizing.”²⁷ This foundational framing is critical for understanding Sproat’s approach to allotting reserve land: he allotted the land he felt Indigenous people needed, given his beliefs about their anticipated “civilization.” If there is a major point on which I depart from Cole Harris’s analysis of Sproat’s reserve-

²⁴ See, for example, Mark Francis, “The ‘Civilizing’ of Indigenous Peoples in Nineteenth-Century Canada” (1998) 9:1 *Jour World Hist* 51 at 73-85; Paul G. McHugh, *Aboriginal Societies and the Common Law: A History of Sovereignty, Status, and Self-Determination* (Oxford: Oxford University Press, 2005) at 125-126; and Fisher, *Contact and Conflict*, *supra* note 4 at 86-87.

²⁵ McHugh, *supra* note 24 at 121, 123; Alan Lester and Fae Dussart, *Colonization and the Origins of Humanitarian Governance* (Cambridge: Cambridge University Press, 2014) 1. Robin Fisher briefly discusses British Columbian missionaries’ “sympathy” for and refusal to “deny the humanity of the Indians” in Fisher, *Contact and Conflict*, *supra* note 4 at 92-93.

²⁶ Lester & Dussart, *supra* note 25 at 1, 231.

²⁷ At least one other article has used a similar term. In Leslie & Maguire, *supra* note 23 at 73, the authors referred to “the humanitarianism of [Sir John A.] Macdonald[’s] ‘civilization’ program.”

allotments and his more general views about Indigenous peoples, it is this. Harris only grazes these concepts in relation to Sproat,²⁸ yet he provides a clear analysis of them in his chapters on Imperial and British Columbian colonial Indigenous policy.²⁹ Harris canvasses the roots of European Indigenous policy, tracing it from the beginnings of European colonization of the Americas, through John Locke's elaboration in the 17th century on the relationship between property rights and land use, through to British ideas from the 19th century about race, capital, development, and progress. Harris places these latter ideas in opposition to British Columbia and Vancouver Island Governor Douglas's Indigenous land policies, suggesting that after Douglas resigned in 1864, these colonial concepts impelled the demise of Douglas's more generous policies. Harris posits, however, that the brand of humanitarianism advocated by the British Aborigines Protection Society might have acted as a counter to the Imperial movements to impel Indigenous people's "progress"; in this vein, he observes that Sproat's own humanitarian views confronted many of the same problems as the British liberal humanitarian project in the 1830s and 1840s.³⁰ Further, in discussing provincial Indigenous land policy in the early 1870s during the province's negotiations with the Dominion about establishing Indian reserves, Harris shows how British ideas about Indigenous "progress" affected provincial positions³¹ and even how the Dominion wanted the same thing the province wanted: "civilized Natives who would be useful participants in the economy."³² He concludes that the Dominion simply differed from the province as to the best method to achieve this outcome. In other words, Harris identifies and analyzes the intellectual and societal forces operating with respect to Indigenous land policy in the province, but he does not impute or relate those ideas directly to Sproat or even to the post-confederation Joint Indian Reserve Commission. However, these ideas influenced Sproat powerfully in the decade after British Columbia joined Canadian confederation in 1871.

Sproat referred repeatedly to pursuing the "humanitarian civilizing" of Indigenous peoples. Despite his official role as an Indian reserve commissioner responsible for allotting

²⁸ See, for example, C Harris, *Making Native Space*, *supra* note 4 at 101, 108, 137, 154, and 161.

²⁹ *Ibid* at 1-15 and 49-56.

³⁰ *Ibid* at 147.

³¹ *Ibid* at 89-90.

³² *Ibid* at 91 and 94.

Indian reserve land, Sproat came to view himself as having a role in guiding Indigenous peoples on their path to “civilization,” a “progress” he fully supported. He believed that as Indigenous peoples left behind old notions of land ownership and attachment, they would need new methods of land-governance and self-governance, and he did all that he could to assist them in moving along what he viewed as a continuum. One can see Sproat’s views about Indigenous peoples’ “progress” and “civilization” entwined with his passionate humanitarianism in a letter he wrote to the Deputy Minister of the Interior in 1878 protesting the application of Canadian fisheries laws to British Columbian Indigenous peoples:

Everyone connected with Indian affairs here is supposed to be trying to help the Indian people to make progress in civilisation, but, it is only within the last year or so that many of the tribes have had lands, and the great majority as yet have no land assigned to them.

It would not be wise, in a search after uniformity, to expect the Indians all at once to abandon their old ways of life and their still very considerable dependence upon the products of fishing and hunting. They are changing their ways, but people who have not had land, cannot be cultivators.

It is the fault of the Crown, not of the Indians, that they have not had land long ago, and now that the Indian Department is taking steps, laboriously and expensively, to redress old grievances, it would be a pity if this action were cut across and partly neutralised by unnecessary interference with the food supplies of the Indians obtained from the salmon.³³

The most important conclusion I have drawn from my research is that Sproat saw Indigenous peoples themselves as the key to their own “civilization.” This idea animates his writing and his work. Indigenous peoples’ participation in and support for their “progress” toward the settler-determined end were critical; without those elements, Sproat believed that the Indigenous “civilization” project would not succeed. This belief underpinned his reserve-allotment decisions, his equivocal perspective on Indian title, his undermining of tribal chiefs when he felt it necessary, and, most importantly, his support for the Nlha7káp̓mx organization in the summer of 1879. When Sproat looked back on the province’s “Indian policy” some two-and-a-half years after he finished his work as reserve commissioner, he concluded that “the chief defect [of Indian policy], the radix mali [was] the exclusion of the Indian from the work, so to

³³ Sproat to Buckingham, Deputy Minister of Interior (6 November 1878), Ottawa, LAC (RG 10, vol. 3662, f. 9756, pt. 1).

...speak, of working out his own salvation.”³⁴ This assertion, which Sproat only laid out clearly in 1882, is the golden thread running through his thinking, his work as reserve commissioner, and his broader actions concerning Indigenous peoples.

I have arrived at a somewhat different view of Sproat than Cole Harris offers, one that is perhaps less favourable to Sproat from our contemporary perspectives. My claim is not that Sproat was less “good” than Harris and others have portrayed, or that his vision for the future was “darker” than Harris suggests, but I do maintain that Sproat embodied ideas of his time, and they cannot easily be transposed to ours. Similarly, judgements about the inherent morality of Sproat’s ideas cannot easily be transposed to our time. Instead of judging Sproat, I focus on explaining him. In drawing a line between examining the past and judging it, I rest on the sentiments of LP Hartley in the opening sentence to his 1953 novel: “[t]he past is a foreign country: they do things differently there.”³⁵ Jeremy Webber has used this sentence in a legal history context to develop an idea similar to Sproat’s in the epigram at the beginning of this thesis:

Hartley’s phrase reminds us of the need, in writing history, to consider the past in its own terms - to realise that concepts familiar to us may have had a profoundly different colouration in that other time. If we are going to understand what happened then we have to suspend our preconceptions, put ourselves in the shoes of those people, and try to grasp the concepts as they would have grasped them. Good history requires immersion in that other time. It requires that we be willing to subject our own presuppositions to testing and revision. Not incidentally, that willingness is also essential to good comparative work. Hartley’s reminder summarises the discipline that makes historical and comparative work so valuable. That work forces us to probe our beliefs, compare them to the features we encounter elsewhere, and expose our assumptions to scrutiny and evaluation. Historical and comparative work tells us much about the other time and place, but it also tells us much about our own.

Now, lawyers who are engaged in writing history are in special need of that discipline. We are so used to employing the past instrumentally - combining references to several cases, often from several centuries, to support whatever argument we want to make today - that we can do very bad history, ignoring context, treating words as though their use in 1905 were the same as their use today, and failing to distinguish how the decisions of the past were often made in profoundly different institutional contexts and with different questions in mind. We have to shake ourselves free from the urge

³⁴ Sproat to Governor General’s Secretary (16 November 1882), Ottawa, LAC (RG 10, vol. 3617, f. 4563); underlining in original.

³⁵ LP Hartley, *The Go-Between* (London: Hamish Hamilton, 1953) at 1.

to draw quick, simplistic lessons if we are to give the past its due and uncover its real lessons - for of course, the past does have things to teach us.³⁶

In the end, Webber urges legal historians to “situate [themselves] squarely within the descriptive mode” – that is, to attempt “to portray as precisely as we can what the law of a particular society is” and “to capture the range of permissible arguments, the relative weight of those arguments in the society in question, and the ways in which conclusions are determined and operationalized.”³⁷ In doing so, legal historians will reveal “the plurality of influences on the law, the range of law’s possibilities at any given moment, and the practical means by which those possibilities have been translated into functioning systems of social regulation. Or, to put it another way, [they] will faithfully reveal that strange foreign country of the law in its various contexts - a strangeness that nevertheless has peculiar relevance for us all.”³⁸ There is critical need for those who can help to incorporate history’s “peculiar relevance” into our society and legal system, but that work must necessarily come after and rest upon that of a legal historian. In this thesis, I focus on “reveal[ing] that strange foreign country” of the past that Sproat inhabited.

1.2 SPROAT AS AN HISTORICAL SUBJECT

Two waves of scholarship have considered Sproat as an historical subject, each approaching him in different ways. Before the 1970s, Canadian historians rarely focused on Indigenous history, people, or perspectives, instead addressing most often what the European settlers had done or their governments had agreed. A prime example is T.A. Rickard’s 1937 twelve-page biographical examination of Sproat in *The British Columbia Historical Quarterly*.³⁹ For all the interesting facts about Sproat, Rickard devoted only one paragraph to Sproat’s time as Indian reserve commissioner. He did recognize that “[t]he dispossession of the natives by the invading

³⁶ Jeremy Webber, “The Past and Foreign Countries” (2006) 10 *Legal History* 1 at 1-2. Jim Phillips has already relied on Webber’s adaptation of Hartley’s aphorism to make a similar point, namely, that studying legal history can liberate us from the past and help us to understand our present power to shape the law: Jim Phillips, “Why Legal History Matters” (2010) 41 *Victoria University of Wellington Law Review* 293 at 305.

³⁷ Webber, *supra* note 36 at 6, 10.

³⁸ *Ibid* at 10.

³⁹ T.A. Rickard, “Gilbert Malcolm Sproat” [1937] 1 *BC Hist Quar* 21.

white men made the delimitation of reserves essential, and Sproat endeavoured to adjust matters so as to cause the least suffering and irritation,”⁴⁰ but that was the extent of his analysis.

In 1945, George Shankel devoted seventeen pages of his doctoral dissertation to the three-man JIRC but less than two pages to Sproat’s two-year tenure as sole commissioner.⁴¹ Even so, Shankel captured many of Sproat’s notable aspects, including his early concern about Indian title and his conflict with British Columbia Visiting Superintendent and Agent for Indian Affairs, Israel W. Powell, the highest Dominion Indian Affairs official in the province.⁴² However, Shankel was at his best when he considered the JIRC more broadly. One of his most important observations was that the Dominion-provincial divide over Indian title represented a fundamental flaw in the reserve commission’s foundation.⁴³

The governments established the JIRC without explicit reference to Indian title. However, before and during the JIRC’s work, until September 1877 and the signing of Treaty 7 in what is now Alberta, the Dominion was negotiating treaties with Indigenous peoples between Ontario and British Columbia to extinguish Indian title.⁴⁴ The Minister of the Interior (and Superintendent General) from October 1876 to October 1878 was David Mills who, as Shankel pointed out, was “known to be sympathetic with the liberal demands of the Indians and opposed to the position [denying Indian title] held by British Columbia.”⁴⁵ In the summer of 1877, Mills sent three critical pieces of correspondence to the JIRC commissioners highlighting the Dominion’s commitment to and recognition of Indian title in British Columbia.⁴⁶ This correspondence folded Indian title into the JIRC’s processes, admittedly in an indirect and

⁴⁰ *Ibid* at 28.

⁴¹ George Shankel, *The Development of Indian Policy in British Columbia* (PhD dissertation, University of Washington, 1945) [unpublished] at 123-140 and 140-141.

⁴² *Ibid* at 131, 138, 140. Although Powell lived in British Columbia full-time, he was nonetheless designated as a Visiting Superintendent, the terminology the Department of the Interior used to designate the senior officials in charge of provincial Superintendencies. See, for example, the many Visiting Superintendents listed in the June 1875 Department of Interior Annual Report, *supra* note 5.

⁴³ *Supra* note 41 at 130-131, 138.

⁴⁴ Tennant briefly discusses the Dominion’s pursuit of the extinguishment of Indian title through treaties during the 1871-1877 period in Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989* (Vancouver: UBC Press, 1990) at 46.

⁴⁵ Shankel, *supra* note 41 at 131.

⁴⁶ These pieces of correspondence are two letters and one telegram, which I discuss further in Chapter 5: Mills to Sproat (3 August 1877), Ottawa, LAC (RG 10, vol. 3597, f. 1353, reel C-10103); Mills to Superintendent Powell, telegram (2 August 1877), and Mills to Superintendent Powell, letter (2 August 1877), both of which are in Ottawa, LAC (RG 10, vol. 3651, f. 8540, reel C-10114).

unofficial way, but in a way that Sproat and probably the other two commissioners considered relevant. Shankel recognized that Indigenous complaints in the Shuswap and Okanagan valleys were “the result of unextinguished title to the land, and reductions in reserves originally granted.”⁴⁷ However, Shankel did not mention Mills’s correspondence about Indian title, and he misinterpreted the provincial premier’s reply to this correspondence as relating to a minimum acreage of reserve land. Shankel was partially correct – the premier did discuss minimums and maximums – but both officials were more concerned with Indian title, and particularly the role that the refusal to extinguish Indian title would play in reserve-allotment decisions.⁴⁸

Robert Cail’s *Land, Man, and The Law: The Disposal of Crown Lands in British Columbia, 1871-1913*, the last of this first wave of “Sproat scholarship,” is an authoritative work of British Columbia land history and an indispensable resource for British Columbia legal historians dealing with land. Yet, Cail devoted only a page to Sproat as sole commissioner.⁴⁹ As with the other first-wave scholars, Cail provided glimpses into factors that may have affected Sproat’s decisions and actions – for example, Cail recognized that the relationship between Prime Minister Sir John A. Macdonald (who was also, in 1880, the Minister of the Interior and the Superintendent General) and B.C. Indian Superintendent Powell probably curtailed Sproat’s tenure as reserve commissioner – but offered little analysis of Sproat’s tenure.⁵⁰

Cail engaged with a long-debated question about what became – or should have become – of Sproat’s and the JIRC’s reserves: were they “final” on allotment or not?⁵¹ He pointed to the province’s 1885 Indian Reserve Return, which lists allotted reserves according to which of the three iterations (by that date) of the Indian Reserve Commission had made the allotments.⁵² The

⁴⁷ Shankel, *supra* note 41 at 130-131, 138.

⁴⁸ *Ibid* at 133-134.

⁴⁹ Cail, *supra* note 4 at 216-217. Cail died in a car accident in 1958; the book was his U.B.C. Master’s thesis in History, completed in 1955 but published posthumously.

⁵⁰ *Ibid* at 217. Fisher concluded similarly that “Sproat resigned under pressure”: Fisher, *Contact and Conflict*, *supra* note 4 at 198.

⁵¹ For the other scholars who have provided explanations, see Fisher, “The Joint Commission”, *supra* note 21 at 91 and Kenneth Brealey, “Travels from Point Ellice: Peter O’Reilly and the Indian Reserve System in British Columbia” (Autumn/Winter 1997-98) 115/116 BC Studies 181 at 193.

⁵² British Columbia, Legislative Assembly, “Return to an Order of the House for a return of all lands set apart for Indians in this Province subsequent to the return made to this House on 13th January, 1873, with the names of the tribes and the number of Indians for whom each reserve has been made; and a return of the reserves which have been made to the Chief Commissioner of Lands and Works, but not assented to by him” in *Sessional Papers* (1885) 48 Vic at 391 [1885 Indian Reserve Return]; Cail, *supra* note 4 at 221-222.

Return shows that the provincial Chief Commissioner of Lands & Works, the official in charge of the province's land alienation and reservation systems, had not approved any of the JIRC's or Sproat's reserves.⁵³ However, if CCLW approval was not needed for the allotments to be final, then the lack of approval was not determinative of anything. There remains debate among scholars on this point, and the matter seems to have been a sore point even in the 1880s: the Department of Indian Affairs' Annual Report for 1886 explained that "the Provincial Government refused to confirm the allotments made by the former Indian Reserve Commissioner [Sproat], on the ground of improvidence."⁵⁴ The Annual Report went on, somewhat cryptically, to observe that "as it was of consequence, if not absolutely requisite, to obtain the approval of that Government of reserve allotments, it was considered advisable, in order to avoid complications, that the Indian Reserve Commissioner [O'Reilly] should revise the work of his predecessor on the coast." Although Commissioner O'Reilly would confirm many of Sproat's reserves, the province nonetheless relied on O'Reilly to review Sproat's work.⁵⁵

The second and more significant wave of Sproat scholarship came with the rise of Indigenous rights consciousness, litigation, and scholarship more generally. These works, published since 1975, have focused on Sproat's role as Indian reserve commissioner, both as part of the three-man commission and on his own. The scholars, collectively, have addressed three general topics: Sproat's reserve-allotment decisions, the role Indian title played in his decisions and in the workings of the JIRC, and Sproat's involvement with Indigenous self-government efforts and his relationship with Indigenous peoples more broadly.

Robin Fisher, Anne Seymour, Cole Harris, and Douglas Harris have all examined Sproat's reserve-allotment decisions. Robin Fisher's 1975 article on the JIRC and his ground-

⁵³ 1885 Indian Reserve Return, *supra* note 52 at 392-402; Cail, *supra* note 4 at 224.

⁵⁴ Canada, Parliament, *Annual Report of the Department of Indian Affairs for the year ended 31st December 1886* (Ottawa: Parliament, 1887).

⁵⁵ Kenneth Brealey has concluded that the Dominion authorized O'Reilly to "adjust" Sproat's reserve-allotments. I do not see this authority in O'Reilly's instructions, though it is possible that subsequent correspondence provided it. (Brealey determines that Superintendent General Macdonald sent O'Reilly's instructions; I believe them to be from Deputy Superintendent General Vankoughnet, though the citation is the same as Brealey's: Vankoughnet to O'Reilly (9 August 1880), Ottawa, LAC (RG 10, vol. 3716, f. 22195, reel C-10125).) As I understand Brealey's analysis, although O'Reilly cancelled all of Sproat's temporary reserves and some of his "provisional" reserves, he either confirmed or enlarged Sproat's "absolute" allotments but did not reduce any: see Brealey, *supra* note 51 at 192, 193, 197, 198, 199, 208, and 209. The terms "provisional" and "absolute" are Brealey's: Brealey, *supra* note 51 at 197.

breaking book in 1977 on the history of Indigenous-settler relations in British Columbia, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890*, provide the first account of Sproat's beliefs and actions as an Indian reserve commissioner.⁵⁶ Fisher's book is a detailed and largely factual review of Sproat's tenure, highlighting the Indigenous and settler response to the JIRC and to Sproat, as well as Sproat's increasing sympathy towards Indigenous people and frustration with the provincial government. Fisher does not discuss Sproat's particular reserve-allotments in detail, but I agree with Fisher's conclusion that Sproat became "more and more sympathetic with the predicament of the Indians and correspondingly critical of the provincial government's dealings with them."⁵⁷

Anne Seymour's 1995 Master's thesis also addresses Sproat's reserve-allotment decisions and provides a good summary of what Cole Harris later called the "Sproat system," although she differs from Harris in describing that "system". Seymour concludes:

Aware of imperialist initiatives to secure a land base for Natives and assimilate them into European society, he attempted to use innovative measures, such as creating temporary reserves, and encouraging what he perceived to be progressive principles amongst Native groups. ... Supportive of the Victorian agricultural agenda, Sproat sought to secure an agrarian land base, while at the same time securing the traditional "old places of fun" identified by the Natives.⁵⁸

Seymour is critical of other "Sproat scholars," asserting that "from his writings ... some academics derive the belief that Sproat was a more progressive individual and a stronger advocate of Indian rights than he really was. Depicting Sproat in this manner makes him appear a mercurial, enigmatic figure. ... Only by remembering that Sproat was a typical Victorian do his sometimes contradictory opinions become more understandable."⁵⁹ According to Seymour:

[Sproat] believed firmly in the Victorian principles of British superiority and progress as well as the need for acculturation and assimilation of Natives. He believed that he, and other Europeans, had the right to intrude upon Native land for the purpose of development. He fully affirmed the Imperial principle that lands not "used" by

⁵⁶ Fisher, "The Joint Commission", *supra* note 21; Fisher, *Contact and Conflict*, *supra* note 4. Fisher's book (at 175-199) contains virtually all of his earlier article; hereafter, I cite only to his book.

⁵⁷ Fisher, *Contact and Conflict*, *supra* note 4 at 189.

⁵⁸ Anne Seymour, *Natives and Reserve Establishment in Nineteenth Century British Columbia* (MA thesis, University of British Columbia, 1995) [unpublished] at 36-37. Cole Harris coined the term, the "Sproat system," in C Harris, *Making Native Space*, *supra* note 4 at 160-161.

⁵⁹ Seymour, *supra* note 58 at 30.

Natives should be made available to settlers, while at the same time acknowledging the Natives' rights to a land base to sustain themselves. Like many Victorians he envisaged a hierarchy of Natives which was primarily based upon physical appearance. Those whose looks appealed to Victorian sensibilities were deemed to be more advanced than those whose looks were unappealing. But, under the guiding hand of non-Native tutelage, in time, all Natives could be "civilized". The means to accomplishing this end was for Natives to realize that they had to adjust their traditional ways and integrate themselves into European society. Altering their forms of worship and adopting an agrarian lifestyle were two signs of advancement in Sproat's opinion. He had no hesitation in informing Natives of the coming new order.⁶⁰

Seymour does not expand her argument or provide detailed examples, but I think her emphasis on Sproat's "Victorian sensibilities" and their impact on his work as reserve commissioner is largely correct.

The most important analysis of Sproat's work as an Indian reserve commissioner is Cole Harris's *Making Native Space*.⁶¹ Harris devotes one chapter to the three-man JIRC and another to Sproat's solo term as Commissioner. While I agree with much of what Harris describes as the "Sproat system," Harris gives Sproat a more "heroic cast" – to use Sproat's words from the opening epigram of this chapter – than my analysis reveals.⁶² In so doing, he veers towards deifying Sproat, rendering him a somewhat anachronistic character, as Seymour suggests earlier scholars had done.

In his analysis of Sproat's reserve-allotments, Harris discusses the one that I consider to be Sproat's most important: that for Chillihetsa, the most prominent Syilx⁶³ (Okanagan) chief in the province's southern interior.⁶⁴ Harris concludes that Sproat's refusal to allot Chillihetsa a

⁶⁰ *Ibid* at 30-31, footnotes omitted.

⁶¹ C Harris, *Making Native Space*, *supra* note 4.

⁶² Cole Harris presents his perspective on the "Sproat system" in *ibid* at 160-161. I differ somewhat from Harris's views, as I discuss in more detail in this thesis, particularly in Chapter 6.

⁶³ Although "Okanagan" is a more widely-recognized name, and there appears to be some variability in usage between "Okanagan," "Syilx," and "Sqilxw," I have used the name "Syilx" as the name by which I understand the people call themselves. For a discussion of the variants, see, for example, William A. Cohen, *School failed coyote so fox made a new school: Indigenous Okanagan knowledge transforms educational pedagogy* (PhD dissertation, University of British Columbia, 2010) [unpublished] at xiv, online: <<https://open.library.ubc.ca/cIRcle/collections/24/items/1.0071499>>, accessed 21 September 2017; and Michelle K. S7imla7xw Johnson, *n'!''qwcin (clear speech): 1,000 hours to mid-intermediate N'syilxcn proficiency (Indigenous language, Syilx, Okanagan-Colville, n'qilxwcn, Interior Salish)* (PhD dissertation, University of British Columbia, 2013) [unpublished] at xviii-xix, online: <<https://open.library.ubc.ca/cIRcle/collections/ubctheses/24/items/1.0074314>>, accessed 21 September 2017.

⁶⁴ I discuss Chillihetsa and Sproat's reserve-allotments for him in Chapter 6.

reserve to secure his home, and Sproat's response to a conflict between Chilliheetsa and the settler who occupied that land, represented, simply, the "limits to what even Sproat's authoritarian spatial management could sort out."⁶⁵ I disagree. Sproat's decisions about Chilliheetsa's land exemplify his Victorian beliefs, and they reveal his broader views about Indigenous peoples and the project of "civilizing" them. Understanding this reserve-allotment decision is the key to understanding Sproat's work.⁶⁶

More recently, Douglas Harris has canvassed the JIRC's and Sproat's reserve-allotments in *Landing Native Fisheries: Indian Reserves and Fishing Rights in British Columbia, 1849-1925*.⁶⁷ In a chapter entitled, "Land Follows Fish," Harris provides the most detailed examination to date of those reserve-allotments, drawing two main conclusions: Sproat "sought compromise, workable solutions, and 'the least inconvenience to all parties'"; and "the reserves were allotted to secure Native peoples their fisheries."⁶⁸ I agree with Harris's first point but consider his second too broad.

While the reserve commissioners undoubtedly allotted many if not most of the Indian reserves on the coast and along the Fraser and Thompson Rivers to secure Indigenous fisheries, the same cannot be said for the inland areas such as the Okanagan, Shuswap, and Nicola valleys. There, arable and grazing land assumed as much or more importance than land around traditional fishing sites. For example, in his year-end report to the Dominion government after their first interior circuit, Sproat described the commissioners' approach to reserve-allotment in this way:

[The commissioners] specially secured to the Indians their old homes or settlements and fishing places and, then, as regarded the principal area of their reserves they decided on that, after considering the number of the people, their stock, as well as their numerical and industrial prospects in the not distant future, together with the

⁶⁵ C Harris, *Making Native Space*, *supra* note 4 at 148-150.

⁶⁶ I canvas Chilliheetsa's role in the JIRC's reserve-allotment processes in the Shuswap and Okanagan valleys in Chapter 4, and I devote part of Chapter 6 to a study of Sproat's reserve-allotments for Chilliheetsa.

⁶⁷ D Harris, *Landing Native Fisheries*, *supra* note 21 at 35-59.

⁶⁸ *Ibid* at 51, 58. Harris also makes the latter point elsewhere in the chapter: see page 39, "the land policy was built around access to the fisheries"; and page 56, "he developed a system of reserve allotments with access to fisheries at its core," and "the fisheries, particularly salmon, were central." Indeed, this point is the fundamental premise of Harris's book.

nature of the land and the usefulness of portions of it for tillage, by irrigation, also for summer and for winter pasture.⁶⁹

In the interior areas, the commissioners reserved the most important fishing sites as an obvious first step in accordance with their governmental instructions, but those locations may or may not have included the principal reserve. Further, the commissioners did not reserve all small, outlying fishing stations, as Sproat explained in his year-end report to the provincial government after the Shuswap/Okanagan 1877 circuit: “the question of fishing places proved to be a difficult one, for all of these obviously could not be included within the area of the general reserves.”⁷⁰ Sproat continued:

The principal salmon fishing places of the tribes on the Thompson which we dealt with, are within the reserves, as the Indian villages were naturally placed, long ago, where the people could conveniently catch these fish. Additionally, however, at different times in the year, when the Indians were not laying in their supplies of salmon, they have been in the habit of catching small fish at certain places in streams. These small fish are part of their accustomed food, and are a commodity in intertribal traffic. The Indians take their horses with them, and then camp at the fishing place. The number of these fishing places claimed by the Indians was great.⁷¹

Many of these “small fish” fishing sites were now within the boundaries of occupied pre-emptions. While most of the settlers had not interfered with Indigenous people coming to fish for a few weeks a year, the commissioners foresaw that “obviously as cultivation increased, the presence of the Indians with horses was likely to be inconvenient, particularly as they pull down

⁶⁹ Sproat to Superintendent General, “Second Condensed Report by the Joint Commissioner appointed by the Governments of Canada and British Columbia” (1 December 1877), Ottawa, LAC (RG 10, vol. 3612, f. 3756-16), also reproduced in Parliament, “Special Appendix E” in *Sessional Papers*, No. 10 (1878).

⁷⁰ Sproat and McKinlay to Provincial Secretary (6 February 1878), enclosing “Second Condensed Report of the commissioners acting for the Province” (1 January 1878), Victoria, B.C. Archives (GR-494 at 488-549) at 527 [Sproat’s Provincial Report (January 1878)]. Though McKinlay is listed as an author of this report, the style of writing and the extent to which it mirrors Sproat’s earlier report to the Dominion suggest that Sproat likely was the sole author. Further, in 1880, Sproat said this about the provincial report (see Sproat to Superintendent General (30 January 1880), Ottawa, LAC (RG 10, vol. 3707, f. 19,307):

In reporting to the Provincial Government on the work of the Commission during their first season in the Interior, I stated fully the general principles on which they had proceeded with respect, more particularly, to grazing lands in the district of Yale.

Mr Archibald McKinlay, the Provincial Commissioner, himself a stockowner in the Interior, approved of this Report and signed it.

⁷¹ Sproat’s Provincial Report (January 1878), *supra* note 70 at 528.

fences for access to their stream, and do not put them up again.”⁷² The commissioners therefore found it necessary to determine the respective rights of the settlers and the Indigenous fishers. After placing Indigenous rights to fish at places “immemorially visited and occupied” against the claim that “these places were so numerous that the assignment of them to the Indians would seriously check white settlement, and thus be contrary to good policy, and also that the Indians really did not require these small fish, having plenty of salmon, and using, now, largely the common food of civilized men,” the commissioners reached “a settlement on the spot with the Indians as regards these fishing places,” by which “[t]he Indians gave up claims to all the fishing places that were within white men’s lands, except in one case, and they afterwards were satisfied with a few of the many places on unoccupied Crown lands, which they had asked for.”⁷³ Thus, the commissioners’ prioritizing of arable and grazing land in the interior valleys (apparently on the request of the Indigenous people themselves), combined with the seeming lesser importance of the inland fisheries as compared to the salmon fisheries, compels me to disagree with Harris that, in these areas, “the reserves were allotted to secure Native peoples their fisheries.” While fisheries may have been the “core” of the allotments, as Harris puts it, they were not the primary foundation on which the commissioners based their allotments of the “general reserves” in much of the interior.

The second focus of scholarly analysis is the role Indian title played in the decisions of the three-man JIRC and sole commissioner Sproat. On this point, Hamar Foster and Cole Harris conclude, more or less, that the meteorite of Indian title flamed briefly across the commissioners’ field of vision but otherwise did not affect their work. In *Letting Go The Bone: The Idea of Indian Title in British Columbia, 1849-1927*, Foster considers Sproat’s role in relation to the history of Indian title in British Columbia to be “both significant and perplexing”: significant, because of the documents he left and because “his views on Indian title reveal much about why the idea stopped east of the Rockies”; perplexing, I think, because for a man who saw law as an “important safeguard” for Indigenous people, Sproat was content not to push the idea of Indigenous rights based on Indian title.⁷⁴ He concludes – and I agree – that Sproat “was neither

⁷² *Ibid* at 528-529.

⁷³ *Ibid* at 527-531.

⁷⁴ Hamar Foster, “Letting Go the Bone: The Idea of Indian Title in British Columbia, 1849-1927” in Hamar Foster and John McLaren, eds., *Essays in the History of Canadian Law, Volume VI: British Columbia and the*

an advocate, nor really a determined opponent, of the doctrine that Indians possessed a title to the soil that had to be extinguished.”⁷⁵

Foster also summarizes the JIRC’s operation by stating that Sproat “and his contemporaries had established a process that operated without reference to the idea of Indian title.”⁷⁶ Based on my reading of the archival record, the JIRC – and Sproat in particular – did not operate “without reference” to Indian title.⁷⁷ Certainly, the governmental agreements establishing the JIRC did not refer to Indian title. However, there is a flurry of governmental correspondence about Indian title in British Columbia in the summer of 1877, and Foster does not discuss all of it.⁷⁸ The reserve commissioners – and Sproat most specifically – did operate *with reference* to the idea of Indian title, as is evident by Sproat’s continuing references to Indian title until the end of his tenure in 1880.

Cole Harris concludes, as does Foster, that the pivotal correspondence from the Minister of the Interior in the summer of 1877 about Indian title – essentially telling the three commissioners that they must allot sufficiently large Indian reserves so as to appease the Indigenous peoples of the Shuswap and Okanagan valleys, or else the Dominion would assert Indigenous rights through Indian title against the province – did not much affect Sproat:

Sproat responded cautiously to this missile lobbed in from Ottawa. He had been over the legal ground before, knew what the provincial reaction would be, and was engaged in negotiations with chiefs most of whom were not raising the question of title. His reply was uncharacteristically brief: he understood the Dominion’s views, the commissioners were endeavouring to satisfy the Indians by assigning ample reserves, and he was forwarding Mills’s letter to the provincial government. He then wrote to the lieutenant governor, reminding him that title was not mentioned in the commission’s instructions from either government, and saying that he did not consider the minister’s letter as “an amended instruction, but as an intimation of his opinion on a matter of great magnitude and important in case events should bring it to the front.” It was well that he did, otherwise the provincial government would have walked away from the Joint Indian Reserve Commission, and the impasse between Ottawa and Victoria would have been more profound than ever. As it was, the provincial attorney

Yukon (Toronto: University of Toronto Press for The Osgoode Society for Canadian Legal History, 1995) 28 at 32, 65.

⁷⁵ *Ibid* at 32.

⁷⁶ *Ibid* at 34.

⁷⁷ *Ibid* at 32, 61-64.

⁷⁸ Foster mentions two pieces of correspondence from Minister of the Interior David Mills in the summer of 1877 and a letter from Sproat in 1878; however, there was more relevant correspondence from Mills, Sproat, and others, as I discuss in Chapters 4 and 5: *ibid* at 64-65.

general reacted angrily enough, accusing a distant Ottawa of ignorance, of creating the discontent for which it blamed the province, and of seeking to change the agreed terms of the commission. For the commissioners in the field, however, nothing changed, except that, in the midst of their own intricate land dance, they had some exogenous prompting to adopt a reserve policy much like Douglas's in his later years.⁷⁹

I disagree with Harris that Mills's correspondence did not change the context within which the reserve commissioners operated. Mills put Indian title front and centre for both the JIRC and for Sproat as the sole commissioner, and Sproat wrestled with the role of Indian title in his task of allotting Indian reserves until the end of his tenure. There is an important and complex relationship between the reserve commissioners' decisions and Indian title.

The final topic emerging from Sproat's tenure as reserve commissioner, and one which most Sproat scholars mention but only two have analyzed, is his role in what may be described as Indigenous self-government initiatives.⁸⁰ In 1995, Douglas Harris published an article devoted to the most important of these initiatives: a meeting of the Nlha7káp̓mx people in July 1879 that Sproat, as sole commissioner, attended towards the end of his tenure.⁸¹ At this meeting, the Nlha7káp̓mx produced a set of twenty-two "Rules and Regulations" by which they wished to govern themselves and of which they asked Sproat to seek approval from the Superintendent General. Harris examines the meeting from a legal perspective, concluding that:

This meeting was the outcome of a Native attempt to impose the Queen's law on White British Columbian society. At it the Nlha7káp̓mx (Thompson) elected a head chief and council with the power to make and enforce rules and regulations by which they would live. Their intent was to demonstrate that they were good, law-abiding subjects of the Queen. Their hope was that this display of good faith and loyalty would ensure the predictable and uniform application of the law to all the Queen's subjects. Essentially, the Nlha7káp̓mx gathered in Lytton attempted to use the legal structure of the emerging nation state of Canada to counter White dominance. They were manoeuvring, through the rules imposed by Whites, to secure predictable and

⁷⁹ C Harris, *Making Native Space*, *supra* note 4 at 123-124.

⁸⁰ Fisher discusses the meeting in *Contact and Conflict*, and Paul Tennant discusses it briefly in *Aboriginal Peoples and Politics*: see Fisher, *Contact and Conflict*, *supra* note 4 at 178-180; and Tennant, *supra* note 44 at 54-55. See also Seymour, *supra* note 58 at 37. Cole Harris also discussed it briefly in a 1992 article, in which he came to a similar conclusion as Douglas Harris, that the meeting "seems to reflect a people trying, with assistance, to find a legal means, within the terms of white law, of gaining some control over new circumstances": Cole Harris, "The Fraser Canyon Encountered," in Cole Harris, *The Resettlement of British Columbia: Essays on Colonialism and Geographical Change* (Vancouver: UBC Press, 1997) at 103, originally published as Cole Harris, "The Fraser Canyon Encountered" (Summer 1992) 94 BC Studies 5.

⁸¹ D Harris, "The Nlha7káp̓mx Meeting", *supra* note 18.

fair treatment from the provincial government. The tool they used was the law, and the relationship they sought to create was to be based on the rule of law: White governments would be required to deal with Native peoples in a principled, rule-based manner, and not, as had become the norm in British Columbia, through the arbitrary exercise of power.⁸²

Harris, reacting to Paul Tennant's earlier view that the meeting largely was Sproat's creation, views the meeting as "a Nlha7káp̓mx initiative," albeit one advocating a "social organization ... radically different from any they could have known prior to the arrival of Whites."⁸³ He concludes that, "[t]he meeting in Lytton in 1879 was not imposed on the Nlha7káp̓mx; it was their meeting. Sproat was an important participant, there to assist, and [Reverend] Good was in the background; but they were not the directing minds. The radical departure from traditional Nlha7káp̓mx ways that was contemplated in the proposed resolutions was self-imposed; it was the Nlha7káp̓mx response to the seriousness of their situation."⁸⁴

Cole Harris has also analyzed the Lytton meeting more recently, appearing to neither reject nor fully endorse Douglas Harris's legal perspective on the Nlha7káp̓mx motivations for the meeting; he views the meeting more as a Nlha7káp̓mx effort to find a space for their own jurisdiction within the settler legal regimes.⁸⁵ I agree with Cole Harris on this point, although I part from him in terms of how much jurisdiction the Nlha7káp̓mx actually had and, more importantly, how much ability they had to freely exercise that jurisdiction.⁸⁶ The Nlha7káp̓mx Rules, admittedly a form of Indigenous self-government, comported completely with Sproat's views about the appropriate nature, pace, and trajectory of Indigenous "civilization." They incorporated his ideas more than anyone else's.

Brett Christophers has studied this meeting from the perspective of Reverend John Booth Good, the Christian missionary to the Nlha7káp̓mx who lived in Lytton from 1867 to the spring

⁸² *Ibid* at 6. Keith Carlson, in reliance in part on Douglas Harris's article, comes to a similar conclusion in Keith Thor Carlson, *The Power of Place, the Problem of Time: Aboriginal Identity and Historical Consciousness in the Cauldron of Colonialism* (Toronto: University of Toronto Press, 2010) at 248-254. Carlson, however, provides a more in-depth review of the decisions the Nlha7káp̓mx made at the meeting, and the rules they passed.

⁸³ D Harris, "The Nlha7káp̓mx Meeting", *supra* note 18 at 10. Paul Tennant expressed his view, briefly, in Tennant, *supra* note 44 at 54-55.

⁸⁴ D Harris, "The Nlha7káp̓mx Meeting", *supra* note 18 at 24.

⁸⁵ C Harris, *Making Native Space*, *supra* note 4 at 155.

⁸⁶ See, for example, Cole Harris's discussion in *ibid* at 158-159.

of 1879, when he moved to nearby Yale.⁸⁷ Christophers notes that, by 1877, some 450 Nlha7káp̄mx had been baptized, and concludes, based on earlier work by both Douglas Harris and Cole Harris, that:

The content of these resolutions [passed by the Nlha7káp̄mx at the 1879 meeting] leads Cole Harris to suggest that they bear Good's hand, and in one sense he is surely right. It is hard to imagine that the Nlha7káp̄mx agenda, loaded with moral resolve, was not influenced by a decade of Anglican instruction on precisely such matters. If the Nlha7káp̄mx wanted to demonstrate that they were law abiding (as Douglas Harris maintains), I would argue that they were also offering the government evidence of their civility. There can be no doubt that Good's teachings informed these moral resolutions.⁸⁸

If, by "civility," Christophers means their "degree of civilization" (as I think he does), then I agree.⁸⁹ Perhaps the Rules were the product of a younger generation of Indigenous men trying to plan for their future, but it was a future circumscribed by a generation of missionary influence; by the settler governments' oppression of the "tribal system" and tribal chiefs; by an *Indian Act* that specifically prescribed the types of "rules and regulations" Indigenous peoples could make for themselves; and by a people who knew they had insufficient land on which to survive or to make a living.

Yet, unlike Douglas Harris and Christophers, my focus is not on why the Nlha7káp̄mx agreed to the Rules they passed but, instead, why Sproat supported them. Among the twenty-two Rules were ones banning the potlatch, an Indigenous gift-giving feast⁹⁰; requiring villages to be tidy, houses to be clean, and fences to be strong; and prohibiting certain methods of fishing and outlawing hunting of various mammals and birds for over half the year.⁹¹ One may well ask why

⁸⁷ Brett Christophers, *Positioning the Missionary: John Booth Good and the Confluence of Cultures in Nineteenth-Century British Columbia* (Vancouver: UBC Press, 1998) at 82, 140.

⁸⁸ *Ibid* at 93, 149.

⁸⁹ Christophers appears to use the term "civility" as a synonym for "civilization" and as a counterpoint to "savagery": see, for example, *ibid* at 41, 48, and 60.

⁹⁰ Keith Carlson suggests, based on information from a contemporary Indigenous family leader, that the Nlha7káp̄mx may have agreed to ban the potlatch because it was a relatively recent practice among them, having been adopted from coastal peoples "around the time of the fur trade" – so, perhaps some fifty years previously (Fort Langley had been established in 1827): Carlson, *supra* note 82 at 250.

⁹¹ "Rules and Regulations framed by the Nekla-kap-a-muk Council, sitting in Lytton, British Columbia the 17th July 1879 for their own people" [Nlha7káp̄mx Rules] enclosed with Sproat to Superintendent General (26 July 1879), Ottawa, LAC (RG 10, vol. 3696, f. 15,316) [Sproat, "Letter to SGIA enclosing Rules & Regulations" (26 July 1879)]. I have reproduced these Rules in Appendix A.

the Nlha7káp̓mx agreed to such Rules, but one can learn a great deal about Sproat by understanding why he supported them. These Rules, as Christophers suggests, represented to Sproat the Nlha7káp̓mx's growing "civilization": he supported them because they represented to him appropriate and desired Indigenous "progress." But even more important for Sproat, the Rules were an example of Indigenous people's participation in their own "progress," something he thought indispensable to the "civilizing" project.

In this thesis, I attempt to reconcile the Sproat we know – Cole Harris's "brave" man who "listened to the Native voices he encountered in many parts of the province, and took them seriously" and "struggled to come to terms with the colonial dispossession of which he, himself, was a part"⁹² – with the Sproat that is lesser known, the man who said "the longer the civilized man lives near uncivilized men – the better he knows them – the more he is repelled from them."⁹³ I seek to explain the man who, in speaking of the Nlha7káp̓mx the summer before their 1879 Lytton meeting, emphasized the importance of the "local management and administration" of them, "for the most clear minded and experienced man cannot say what will be found possible in such a complex work as the civilising of a people just emerging from barbarism by means that will give value for the money expended."⁹⁴ I seek also to explain the man who, when asked by the Nlha7káp̓mx at their July 1879 meeting whether they should terminate the potlatch practice, "brought [his] hand down on the table, and said the 'Patlach must die.'⁹⁵ Their answer through the interpreter was that the 'Patlach' was dead, and they presented a book in which [Sproat] wrote their decision which the Head Chief signed."⁹⁶ As well, I seek to explain the man who assured the Chief Commissioner of Lands & Works that he had not allotted as Indian reserves lands legally held by settlers and that, "fully one half of the whole time of the commission is

⁹² C Harris, *Making Native Space*, *supra* note 4 at xxxi.

⁹³ Sproat to Governor General's Secretary (16 November 1882), *supra* note 34.

⁹⁴ Sproat to Superintendent General (17 August 1878), Ottawa, LAC (RG 10, vol. 3611, f. 3755).

⁹⁵ The word, "potlatch," is a Chinook word, probably originating from the Nuu-chah-nulth language. It has been anglicized with an "o" as its first vowel, through Sproat spelled it with an "a" as its first vowel. Although I use the former, contemporary spelling, I have not indicated Sproat's as a misspelling of this word (eg. with "[sic]"), as it is simply an anglicization of a Chinook jargon word from an Indigenous language. See George Gibbs, *Dictionary of the Chinook Jargon, or, Trade Language of Oregon* (New York: Cramoisy, 1863), and Michael E. Harkin, "Potlatch in Anthropology" in *International Encyclopedia of the Social and Behavioral Sciences*, by Neil J. Smelser and Paul B. Baltes, eds. (Oxford: Pergamon Press, 2001) vol 17 at 11885-11889.

⁹⁶ "Explanatory Notes on the foregoing 10 pages - Nekla-kap-a-muk organization" (undated), enclosed with Sproat, "Letter to SGIA enclosing Rules & Regulations" (26 July 1879), *supra* note 91.

spent in examining and protecting not only the rights of white settlers, but [also] the customary advantages and fair expectations of their positions as settlers.”⁹⁷ In a similar vein, Sproat told the Lieutenant Governor, the Dominion’s representative in the province⁹⁸, that:

it is manifest that the Provincial Government have also a duty, and a pressing duty, to perform towards the white settlers, who constitute the strength and backbone of the community, and by whose industry and example, the Indians are constantly profiting. It would be impolitic and destructive to the interests of both governments, if, for any humanitarian or unbusinesslike reasons, the presumed interests of the Indians were placed on too high a level, and especially if the public lands were unnecessarily locked up by too large assignments for the Indians.⁹⁹

And I seek to explain the man who, in speaking of reserves he had already allotted, complained that he had “been surprised to find that the action of the Reserve Commission has not been followed up by a suitable effort to make the Indians cultivate their lands,” since he feared that the lack of cultivation would reflect badly on his reserve-allotment decisions, that he had premised on cultivable lands:

The Provincial Government will point, and are pointing to such reserves, and may say that they are too large, though really they are small. The Indians should be visited and urged and warned, and in short should be compelled to use the land, and it should be sub divided and then the industrious would get their reward, and lazy ones who roamed about “Patlaching” would be known. ...

I am directly concerned in complaining of this inaction, having committed myself to the decision that these reserves were suitable. If the Indians are not made to use them (and I know this merely requires energy and judgment) the Provincial Government will say that the Reserves are unsuitable.

I mention these matters because my decisions as reserve commissioner are based, and are being based, in part, on a reasonable view and hope, as regards the requirements of the Indians, when not left entirely to themselves.

It is necessary, that I should look a little into the future, and assume that the Indians will be encouraged in a wholesome way, and also directed, in working towards a better condition than they now are in.¹⁰⁰

⁹⁷ Sproat to CCLW (19 February 1879), Vancouver, Indigenous & Northern Affairs Canada (Specific Claims West) (Prov. Coll., vol. 3, Correspondence no. 199/79).

⁹⁸ The Lieutenant Governor is the Queen’s representative in a province, appointed by the Dominion: *Constitution Act, 1867* (UK), 30 & 31 Vict c 3, ss 58-67, reprinted in RSC 1985, Appendix II, No. 5.

⁹⁹ Sproat to Lieutenant Governor (12 January 1878), Victoria, B.C. Archives (GR-494 at 384).

¹⁰⁰ Sproat to Superintendent General (11 November 1879), Ottawa, LAC (RG 10, vol. 3699, f. 16,665).

In his effort to portray Sproat, to explain why he remains important to try to understand, and to justify his dedication of *Making Native Space* to the memory of Gilbert Sproat as “a colonizer who eventually listened” (despite displays of “blustering colonialism”), Cole Harris says this:

More than any other British Columbian of his day, Sproat struggled to come to terms with the colonial dispossession of which he, himself, was a part. More than any other, he listened to the Native voices he encountered in many parts of the province, and took them seriously. He knew that Native people required access to more land and resources than they had been allocated, and assumed that many Native groups could manage their own local affairs (including education, medicine, and civil law) far better than any whites assigned to the task. He struggled mightily to find some compromise between what he considered to be these legitimate Native requirements and those of an incoming settler society. That he did not succeed does not diminish his effort: in his day, British Columbians were not prepared for the solutions he offered. But Sproat was right, I think, that there was no alternative to compromise, and right, too, that the compromise represented by the reserve system as he encountered it was unsatisfactory. He made a heroic effort to find another.¹⁰¹

Cole Harris’s dedication and his explanation for it capture well why Sproat is such an interesting and important historical subject: to us, he can seem at once foreign and familiar, dated and visionary. He is an endlessly intriguing character, both for the writer and the reader. But Sproat is worth studying, as well, because some surveyed Indian reserve boundaries in British Columbia are those that Sproat established. If we understand the thinking and beliefs underlying those reserve boundaries, we understand better how and why they came to be, knowledge that is undoubtedly useful in understanding this province’s remaining “Indigenous Land Questions.” Moreover, Sproat’s legacy is important because Indigenous peoples remembered his tact and sensitivity long after he ceased to be the Indian reserve commissioner. For example, in 1927, over forty-five years after Sproat made his last reserve-allotment decision, Chief Chillihitzia – an elderly man who was a son of Chilliheetsa, the most prominent Indigenous chief with whom Sproat negotiated – still recalled Sproat’s promises.¹⁰² In 1929, over fifty years after Sproat first dealt with Chilliheetsa’s reserves, his son remembered: “I

¹⁰¹ C Harris, *Making Native Space*, *supra* note 4 at dedication page, xxxi.

¹⁰² House of Commons, Special Committees of the Senate and House of Commons meeting in Joint Session to inquire into the claims of the Allied Tribes of British Columbia, as set forth in their petition submitted to Parliament in June 1926, *Proceedings, Reports and the Evidence* (1927) at 142. I discuss Chief Chillihitzia’s recollections in Chapter 8.

spoke of it to a Mr. Sproat. The one that gave the Indians their reserves. My father spoke to Mr. Sproat, and he says nobody is going to interfere with these lakes now, but later on there will be help for you to get a place on these lakes for your fishing camps.”¹⁰³

In this thesis, I build on the work of the other “Sproat scholars” in an effort to understand more fully what Sproat believed and why. I have done this by analyzing Sproat’s writings and, among other things, placing them in the context of mid-19th-century British settler society ideas about Indigenous rights to land and Indigenous peoples themselves. In doing so, I have come to an understanding of Sproat that diminishes the faintly heroic aura I perceive around him and roots him firmly in his time. In essence, where previous scholars have addressed Sproat as an adjunct to their primary focus on the trajectory of British Columbia’s land history (Fisher, Seymour, Cole Harris, and Douglas Harris), or on settler law and policy concerning Indigenous property interests (Seymour, Foster, Cole Harris, and Douglas Harris), or on settler-Indigenous relationships (Douglas Harris, Cole Harris, and Christophers), I begin with Sproat, and I work out from there. I approach Sproat from the perspective of a legal historian interested in the intersection of land; Indigenous occupation, rights, and ownership of land; and settler law about land and Indigenous peoples. In this thesis, I show what Sproat thought about Indigenous peoples and Indigenous land under the settler legal system and explain the decisions he made because of those beliefs.

1.3 METHODOLOGY AND STRUCTURE OF THIS THESIS

This thesis is a study in micro-intellectual history, a term which implies “paying closer attention to the lives of influential figures in the history of ideas and examining the interplay between the development of their thought and their circumstances.”¹⁰⁴ Generally speaking, microhistorians:

direct their efforts to specificity, to the verifiable and concrete actions and beliefs of individuals or small groups which reveal the social and cultural systems in which they act. ... Questions of ‘typicality’ have no place in their projects: the point is to locate

¹⁰³ Testimony of Chief Chillihitzia in a hearing before M.E. Fisher, Government Land Agent, Kamloops, at the Merritt Courthouse re: Pennask Lake land dispute (14 November 1929), Ottawa, LAC (RG 10, vol. 11002, file 976/30 at 13), quoted in J Michael Thoms, “A Place Called Pennask: Fly-fishing and Colonialism at a British Columbia Lake” (Spring 2002) 133 *BC Studies* 69 at 75.

¹⁰⁴ Andrew Fitzmaurice, The University of Sydney Faculty of Arts and Social Sciences webpage, online: <<http://sydney.edu.au/arts/staff/profiles/andrew.fitzmaurice.php>>, accessed 12 August 2017.

individual cases as versions, at once extraordinary and normative, of larger social groups and cultural worlds, but which are neither ‘represented’ nor ‘typified’ by them. Refusing to compel their subjects to act according to theoretical or general principles, microhistorians tend to set aside many of the traditional concerns of social and cultural historians, such as causality and questions of change over long periods of time.¹⁰⁵

Following this method, I focus on Sproat’s intellectual history: I examine what Sproat believed, why he believed it, and how he acted on his beliefs. My intent is to nest Sproat within the ideas of his time, but not to “compel” him “to act according to theoretical or general principles.” This approach enables a more nuanced understanding of Sproat’s reserve-allotment decisions and also illuminates his broader ideas about Indigenous people and their lands, ideas that Cole Harris called Sproat’s “alternatives to the dark path we have taken.”¹⁰⁶ I do this by re-examining the three main topics other scholars have examined: Sproat’s reserve-allotment decisions, the role of Indian title in his and the JIRC’s decisions, and Sproat’s involvement with Indigenous self-government efforts and his relationship with Indigenous peoples generally. Whether or not Sproat’s alternatives represent a “darker” or a “lighter” path, though, I will leave for others to judge. Sproat’s envisioned path was for Indigenous people. To assess the value, morality, or legality of that path would require standards against which to assess it. In large part, those standards would depend on the Indigenous peoples who were to follow this path: Did the path represent what they wanted? Was it somehow “better” for them? These are questions I cannot answer.

I distrust the documentary “evidence” we now possess of what Indigenous peoples wanted or believed in the 1870s. There are problems of translation from Indigenous languages and cultures, problems with interpretation of the sentiments expressed, and problems in knowing how much was not expressed or not recorded. The transcription from the JIRC Journal of a key meeting between Chilliheetsa and the commissioners provides a small example of some of these issues.¹⁰⁷ The transcription is in English, although Chilliheetsa likely was not fluent in English. He probably spoke in Syilx at the meeting, and the commission’s interpreter translated his words

¹⁰⁵ Peter Sahlins, review of *Microhistory and the Lost Peoples of Europe*, by Edward Muir and Guido Ruggiero, eds., (1993) 23:4 *Journal Interdiscipl Hist* 768.

¹⁰⁶ C Harris, *Making Native Space*, *supra* note 4 at 137.

¹⁰⁷ See *infra* at page 121.

into French or even Chinook.¹⁰⁸ Anderson or McKinlay, or both, may have had some fluency in Syilx, although probably not sufficient to understand Chilliheetsa's speech without an interpreter. It is possible, also, since Chilliheetsa apparently had his own interpreter, that his interpreter translated his speech into English, French or Chinook.¹⁰⁹ If Chilliheetsa's words were translated into French or Chinook, I do not know if anyone translated those words into English, or if all of the commissioners spoke French or Chinook.

As another example, the Nlha7káp̓mx Rules exist today only in English, although by 1879, Reverend Good (who was not present at the Nlha7káp̓mx meeting) had translated other documents into a written version of the Nlha7káp̓mx language.¹¹⁰ There is no indication that anyone at the 1879 Nlha7káp̓mx meeting could write in English other than Sproat, and it seems that few Nlha7káp̓mx could speak English fluently. These circumstances raise significant issues of translation and interpretation, all of which would have to be addressed in a fuller effort to discern Indigenous sentiments based on documentary records in English. Of course, other kinds of records or oral history may shed light on historical Indigenous intentions and desires.

In this thesis, I focus on one man's beliefs and the actions those beliefs engendered, largely by analyzing his writings. Although translation and interpretation issues remain – across the centuries and the social, legal, and cultural divides – it is easier to discern Sproat's intentions and desires from his writings than it is to discern Indigenous beliefs. In collecting the Sproat archive on which I have built this thesis, I conducted most of my research in the records of the B.C. Archives and of Library and Archives Canada. I visited the B.C. Archives in Victoria three times for the purpose of researching and copying primary source documents. I conducted

¹⁰⁸ Anderson's notes of 22 August 1877 indicate that he was recording, in English, what Antoine Gregoire, the commission's interpreter, had told him in French. These notes also suggest that Gregoire translated between the Secwépemc and Syilx languages and French: Anderson, notes from Spallumcheen (22 August 1877), Ottawa, LAC (RG 10, vol. 3641, f. 7571). Gregoire was part French-Canadian, part Secwépemc; he likely had a French-Canadian father (associated with the Hudson's Bay Company) and a Secwépemc mother. He was married to a Secwépemc woman and lived with the Secwépemc. For Sproat's brief description of Gregoire, see Sproat to Superintendent General (10 December 1877), Ottawa, LAC (RG 6, G 1, vol. 667, f. 1878(3)).

¹⁰⁹ Mohun to Sproat (28 July 1879), Ottawa, LAC (RG 10, vol. 3670, f. 10,768).

¹¹⁰ See, for example, Reverend John Booth Good, *The Morning and Evening Prayer, And the Litany, with Prayers and Thanksgivings translated into the Neklakapamuk Tongue, for the use of the Indians of the St. Paul's Mission, Lytton, British Columbia* (Victoria, B.C.: St. Paul's Mission Press, 1878); and Reverend John Booth Good, *A Vocabulary and Outlines of Grammar of the Ntlakapamuk or Thompson Tongue, the Indian language spoken between Yale, Lillooet, Cache Creek and Nicola Lake, together with a Phonetic Chinook Dictionary* (Victoria, B.C.: St. Paul's Mission Press, 1880). See also Christophers, *supra* note 87 at 102, where Christophers discusses Good's command of the Nlha7káp̓mx language.

research in the RG-10 series (the Indian Affairs Record Group) of Library and Archives Canada records through microfilm review at the University of British Columbia and online searches (since some parts of RG-10 have been digitized). I also researched the Federal and Provincial Collections of the JIRC's Minutes of Decisions and other records held by Indigenous and Northern Affairs Canada ("INAC") in the Specific Claims office in Vancouver and available in digital form through the Union of B.C. Indian Chiefs' website. In addition, Anne Seymour, one of the "Sproat scholars" and an INAC employee, gave me digital copies of 275 typewritten primary source documents from the RG-10 collection, transcribed in the 1970s by Robin Fisher, another of the "Sproat scholars." Although I ran across many of these in my research, having the transcriptions (searchable by my software) eliminated considerable work for me. I created electronic copies of the approximately 3,000 primary source documents I collected – mostly handwritten records Sproat authored and either handwrote himself or had his assistant and census-taker, George Blenkinsop, write – and I used information management software to organize them. I then transcribed all of these documents so that they were searchable, and I employed various other information management techniques to assist my review and synthesis of these documents.

Turning to the thesis, it runs in chronological order, focusing on Sproat from age 26, when he arrived on Vancouver Island, to age 46, when he concluded his work as reserve commissioner. In Chapter 2, I review Sproat's activities and the development of his thinking in the fifteen years before he became an Indian reserve commissioner. As I demonstrate in later chapters, his work and experience in this period – as a businessman, an ethnographer, and a representative of the colony in London – shaped his work as reserve commissioner.

In Chapter 3, I focus on the JIRC's formation, Sproat's appointment to it, and the JIRC's work on the first circuit. I pay particular attention to the instructions, replicated in the Appendices to this thesis, that the two governments gave to Sproat and the other commissioners. As well, I discuss Sproat's analysis of Indian title and his beliefs about the "humanitarian civilizing" of British Columbia's Indigenous peoples, which he set out in a memorandum to the Minister of the Interior after his appointment but before commencing any circuits as reserve commissioner. Finally, I provide a brief overview of the JIRC's first circuit around the south coast of British Columbia. I devote Chapter 4 to the JIRC's important second circuit in the interior of British Columbia in the summer of 1877. In Sproat's correspondence and

justifications for the JIRC's decisions, one can see the development of his reserve-allotment principles and his thoughts about the "humanitarian civilizing" of the Secwépemc (Shuswap) and Syilx peoples of the Shuswap and Okanagan valleys.

In the next three chapters, I re-examine the topics that other Sproat scholars have addressed, but with more attention to Sproat and his beliefs. In Chapter 5, I analyze the important role that Indian title played in Sproat's decisions from the summer of 1877 through his tenure as sole commissioner, 1878-1880. In August 1877, Sproat received the Minister of the Interior's correspondence about Indian title that caused him to ponder the role of Indian title in the work of the JIRC. In January 1878, he received a legal opinion that Indian title did not provide a "legal" restraint on the province and its actions in respect of land over which the Indian title had not been extinguished, but it did suggest a "moral" basis to question the province's approach that continued to weigh on Sproat throughout his tenure as reserve commissioner.

In Chapter 6, which provides a general analysis of Sproat's reserve-allotments, I review Sproat's first circuit as the sole Indian reserve commissioner in 1878. I discuss his actions and decisions during this circuit in which he primarily allotted reserves for the Nlha7kápmx people, but I also address his allotments of reserves for the Syilx chief, Chilliheetsa. The latter allotments, in particular, disclose much about Sproat's beliefs about the appropriate "civilization" and "progress" of Indigenous people.

In Chapter 7, I examine Sproat's support for the form of Indigenous self-government that emerged out of the Nlha7kápmx meeting at Lytton in 1879. I analyze what Sproat's support for this meeting and the resulting Nlha7kápmx Rules reveals about his beliefs about Indigenous people and Indigenous lands. In this chapter, I also discuss Sproat's resignation as reserve commissioner in March 1880.

Finally, in my concluding chapter, Chapter 8, I rely on a letter Sproat wrote to the Governor General of Canada in 1882, some two-and-a-half years after resigning as reserve commissioner, to illuminate his beliefs more fully. In light of the advice he gave the Governor General about "Indian policy," a fuller picture emerges of the beliefs underlying Sproat's decisions and places him comfortably within ideas extant in Canadian settler governments at the time about "civilizing" Indigenous people. Despite these 19th-century views, though, Sproat had what might be unique perspectives on the best way to achieve Indigenous "civilization," especially that Indigenous participation in the "civilizing project" was the only way that project

would succeed. These views underpinned his support of the Nlha7káp̓mx self-government initiative in 1879. However, by assessing the notable lack of success of a comparable initiative that the Dominion pursued through the *Indian Advancement Act*, 1884¹¹¹, I challenge the perspective of other “Sproat scholars” that British Columbian society lost an important opportunity in Indigenous/non-Indigenous relations when the Dominion turned down the Nlha7káp̓mx Rules that were the foundation of that initiative. In Chapter 8, as well, I review two other integral components of Sproat’s beliefs about the “humanitarian civilizing” of Indigenous peoples: his understanding of the role of “the law” in his decisions and in the lives of Indigenous peoples, and his belief in the power of 19th-century liberalism. Finally, I offer some concluding remarks on the difficulties of describing a “notable man,” difficulties that Sproat himself expressed when writing, near the end of his life, about Sir James Douglas, the second Governor of the Colony of Vancouver Island, the first Governor of the Colony of British Columbia, and someone whom Sproat much admired. I close this thesis with the observation that Sproat was but one player in the reserve-creation process and that the recorded histories of this process are almost devoid of Indigenous perspectives. A history of Sproat’s involvement in the British Columbia reserve-creation process using the record of Indigenous peoples might well be told very differently than the one this thesis presents.

¹¹¹ *The Indian Advancement Act*, 1884, SC 1884, c 28.

Chapter 2: Sproat and the settler experience, 1860-1876

By the time Gilbert Malcolm Sproat became the jointly-appointed Commissioner to the Joint Indian Reserve Commission (JIRC) in 1876, he had long experience with settlers in British Columbia and the importance they attached to acquiring land. He had been a businessman in an outpost of a new British colony, a member of the colony's social and political elite, and later a London agent for a new Canadian province. He knew that access to land was what drew investors and settlers to British Columbia and the primary reason they stayed. His later reluctance as reserve commissioner to interfere with settlers' vested land rights is rooted in his experiences during the fifteen years before he became a reserve commissioner, when his predominant concerns included acquiring land for his English company and then, as a government official, encouraging settlement. During this period, Sproat was a settler and a promoter of settlement, but he also had his first, formative encounters with Indigenous people. His experiences with the Nuu-chah-nulth in what is now Barclay Sound and Alberni Inlet, 1860-1865, laid a foundation for his later attempts to resolve Indigenous and settler conflict over land and to find a way for the two cultures to co-exist. The elements of Sproat's later perspectives are clearly visible in his actions and writings from this period. This chapter examines that period in Sproat's life.

2.1 SPROAT AS A BUSINESSMAN

Sproat left London in 1860 for what was then the British Colony of Vancouver Island. He settled at Alberni, on the west coast of Vancouver Island, on land to which British investors (including Sproat's employer, Anderson & Co.) acquired rights from both the colonial government and the Indigenous inhabitants.¹ He spent five years in Alberni and, increasingly, in Victoria, where he became well-known within the settler community, frequently leading local community or business organizations. After returning to London in 1865, he maintained a keen interest in the two Pacific coast British colonies (and, after 1866, in the united Colony of British Columbia) and in British emigration to North America generally. He eventually became British

¹ David A Rossiter, "Lessons in possession: colonial resource geographies in practice on Vancouver Island, 1859-1865" (2007) 33 *Journal of Historical Geography* 770 at 781-782.

Columbia's first Agent-General in London in 1872, responsible primarily for encouraging British emigration to the province. From these experiences, Sproat understood settler and governmental perspectives on the processes of settlement.

Sproat was born in southern Scotland in 1834.² As a young man, he studied for the Indian Civil Service³ and for the English Bar⁴ with a private tutor and at Kings College in London.⁵ By the late 1850s, a London firm, Anderson & Co., employed Sproat as a junior clerk.⁶ In April 1860, the firm sent Sproat to the Colony of Vancouver Island, on a ship by way of the southern tip of South America, to oversee its investment in a saw mill and associated operations.⁷ The British investors and a local businessman, Captain Edward Stamp, planned a saw mill, a fishery, a fish-curing establishment, a ship repair dock, and other projects.⁸ Stamp and the Governor of the Colony of Vancouver Island had agreed that in return for at least a £7,500 investment, the sawmill company would “be at liberty to acquire any quantity of land in that part of the Colony under 15,000 Acres, at a fixed price not in any case to exceed £1 per acre.”⁹

² Introduction by Charles Lillard in Gilbert Malcolm Sproat, *The Nootka: Scenes and Studies of Savage Life*, Charles Lillard, ed. (Victoria: Sono Nis Press, 1987) at xix [Sproat, *The Nootka*]. See also Typescript memorandum on Gilbert Sproat by Alexander Sproat (c. 28 October 1935), Victoria, B.C. Archives (MSS W/Sp85 at 1) [Alexander Sproat Memorandum]. Although I have cited here to Lillard's edited version of Gilbert Sproat's book, I have found significant enough differences between the original and the edited versions that, except where I am relying on Lillard's comments, I have cited to the original – Gilbert Malcolm Sproat, *Scenes and Studies of Savage Life* (London: Smith, Elder and Co., 1868) [Sproat, *Savage Life*] – which is available in certain libraries and online, for example at <<https://archive.org/stream/scenesandstudie00sprogoo#>>, accessed 3 September 2017.

³ “General Testimonials in favour of Gilbert Malcolm Sproat, Esq., respectfully submitted for the consideration of the Right Honourable the Secretary of State for the Colonies” (1869), Victoria, B.C. Archives (NWp/920/S771g) [Sproat Testimonials].

⁴ “Curriculum vitae of Gilbert Sproat” in Sproat Testimonials, *ibid.* See also a different version of Sproat's curriculum vitae in “Printed vitae and notes re application as governor of B.C.” for G.M. Sproat (undated), Victoria, B.C. Archives (MS 257, file 2) [Sproat's CV & Notes].

⁵ Per Lillard, in Sproat, *The Nootka*, *supra* note 2 at xix.

⁶ Alexander Sproat Memorandum, *supra* note 2.

⁷ *Ibid.*

⁸ Stamp to Douglas (21 December 1859), Kew, U.K., The National Archives (Records of the Colonial Office (“CO”) 305/14), online: <<https://bcgenesis.uvic.ca>>, accessed 20 September 2017; Douglas to Newcastle (21 June 1860), Kew, U.K., The National Archives (CO 305/14), online: <<https://bcgenesis.uvic.ca>>, accessed 20 September 2017. See also Stamp to Pearse, Assistant Colonial Surveyor (14 May 1860), Victoria, B.C. Archives (GR-1169, enclosing a rough sketch of Stamp's land claim).

⁹ Douglas to Newcastle (26 January 1860), Kew, U.K., The National Archives (C.O. 305/14), online: <<https://bcgenesis.uvic.ca>>, accessed 20 September 2017.

The sawmill began operating in May 1861, and over the next several years the operation took out enormous quantities of lumber, spars, salt fish, fish oil, skins, and furs, for export around the world.¹⁰ By the spring of 1862, 120 men lived at the Alberni settlement.¹¹ In early 1863, when Stamp left and Sproat became the “proprietor of the settlement at Alberni,” Sproat estimated that he employed, “on an average about 270 men at Alberni – perhaps three-fourths of these Canadian and American.”¹² In 1863, in addition to managing the sawmill and settlement at Alberni, Sproat also assumed duties as a justice of the peace for Barclay Sound, the area in which Alberni was located.¹³

Despite Sproat’s multiple responsibilities in relation to the Alberni operations, he still spent considerable time in Victoria, where he was deeply involved in the social life and politics of the British settler community. He had become a sought-after meeting chairman, known for his ability to give popular speeches. One of his first activities in Victoria had been to organize a Volunteer Rifle Corps, which he did within ten months of arriving from England.¹⁴ At the Rifle Corps’s first meeting, the 125-man corps elected Sproat as the chair of the meeting.¹⁵ The local newspaper emphasized the importance of the Corps, which blended the “British elements of our population, drawn from every portion of an empire on which the sun never sets.”¹⁶ From the newspaper’s perspective, this blending ensured that “one sentiment pervades the whole – to defend their homes, their adopted country, and their Queen from ‘all enemies and opposers

¹⁰ Rossiter, *supra* note 1 at 783; “Exports of Lumber, From Alberni, Barclay Sound”, *The Daily British Colonist* (4 February 1864) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017. See also Banfield to Young, Colonial Secretary (24 August 1862), Victoria, B.C. Archives (GR-1372, Colonial Correspondence: William E. Banfield, file 107/19).

¹¹ Stamp to Young, Colonial Secretary (20 June 1862), Victoria, B.C. Archives (GR-1372, Colonial Correspondence: E. Stamp, file 1643/18).

¹² Sproat, *Savage Life*, *supra* note 2 at xii, 32.

¹³ “Oath of Office and Oath of Allegiance” by G.M. Sproat (24 July 1863), Victoria, B.C. Archives (MS-0257, file 9).

¹⁴ Sproat to Young (18 June 1861 and 21 August 1862), Victoria, B.C. Archives (GR-1372, Colonial Correspondence: G. Sproat, file 1638).

¹⁵ “The Topic of the Day”, *The Daily British Colonist* (1 July 1861) 2, online: <www.britishcolonist.ca>, accessed 20 September 2017.

¹⁶ *Ibid.* See also “The Volunteer Movement”, *The Daily British Colonist* (1 July 1861) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.

whatsoever.’ It cannot but be regarded as a wise precaution against an Indian outbreak; and as the best means that could be adopted to instruct our colonists how to defend themselves.”¹⁷

During his time in Victoria, Sproat served on committees and boards or participated in meetings and clubs with many men who later would figure prominently in his activities as Indian reserve commissioner, including Alexander C. Anderson (the future Dominion Indian Commissioner¹⁸), Amor De Cosmos (the future premier and federal M.P.¹⁹), Joseph W. Trutch (the future colonial Chief Commissioner of Lands and Works, then the new province’s first Lieutenant Governor, and later the Confidential Agent of the Dominion of Canada²⁰), George Blenkinsop (the future Indian Reserve Commission census-taker²¹), and A.C. Elliott (the future Premier and Attorney-General²²).

In August 1862, Sproat and other Victoria citizens met to propose the formation of an “Immigrant Board” to further “the interests of new comers, no matter from what quarter of the world they may chance to hail.” As their first act, the men elected Sproat to chair their meetings. Sproat announced that the Board’s purpose was “the assistance of immigrants arriving in the Colony without means with which to assist themselves, or friends on whose judgment they could rely for advice,” that “a large immigration was on its way hither,” and that it was the duty of all settlers to encourage new settlers and to support and facilitate their settlement.²³

A few months later, Sproat chaired a banquet to honour a visitor from Canada. In his speech, Sproat foresaw the two west coast colonies’ joining with “the great nation of our own

¹⁷ *Ibid.*

¹⁸ See, for example, “The Volunteer Movement”, *The Daily British Colonist* (1 July 1861) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.

¹⁹ See, for example, “The Rifle Corps”, *The Daily British Colonist* (21 February 1862) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017; “Rifle Volunteers”, *The Daily British Colonist* (22 February 1862) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.

Amor De Cosmos’s surname is capitalized differently in various secondary sources. I have chosen the capitalization which De Cosmos himself appears to have used: see masthead, *The Daily British Colonist* (11 December 1858) 1, online: <www.britishcolonist.ca>, accessed 20 September 2017.

²⁰ See, for example, “A Meeting of the Members of the Agricultural and Horticultural Society...”, *The Daily British Colonist* (9 July 1862) 2, online: <www.britishcolonist.ca>, accessed 20 September 2017.

²¹ *Ibid.*

²² See, for example, “Mass Meeting in the Theatre”, *The Daily British Colonist* (3 February 1865) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.

²³ All quotations in this paragraph from “Immigration Board Meeting”, *The Daily British Colonist* (5 August 1862), 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.

people on the other side of the Continent,” and “some sort of a line of British settlements across from Canada.” He looked forward to the day when “wave after wave of colonization will advance, till the settlements form an unbroken chain,” an object “earnestly desired in these colonies.”²⁴

By the fall of 1864, the sawmill company had a mill site, village, two farms, roads, and wharves at Alberni, and it had cut timber from extensive areas in the region.²⁵ However, according to Sproat, the investment had proved “disastrous to the proprietors, for there is no wood in the district sufficient to supply the wants of a large mill,” and Sproat, as “partner and representative” of the London investor, was trying to untangle the land arrangements. As part of his suggested resolution, Sproat proposed to the Governor that the logged territory would be suitable for “a permanent settlement at Alberni of the right class of farmers.” He urged that with the imminent shutdown of the mill for lack of wood, the time was right to form such a settlement because “there will be much difficulty in inducing settlers to remain in the district owing to the number of natives in the neighborhood of Barclay Sound.” However, Sproat pointed out the many advantages to settlers of sustaining the “present settlement” and encouraging new settlement, including “effectual protection,” available land and manure, and a local market while the mill remained open.²⁶

This was Sproat’s first pitch for group colonization. He proposed that the colony appoint his London firm as “Colonial Government Agents” and instruct it to select and send out “suitable families to commence the Alberni Settlement.” He also requested that the government survey land into farm-sized parcels “to await the arrival of immigrants.”²⁷ The government did not pursue Sproat’s proposal, but instead agreed that in return for the £400 Stamp had paid in 1860, the sawmill company would own the mill site, village, and two farms, with no further claims to the up to 15,000 acres of land it had a right to acquire under the original agreement.²⁸

²⁴ All quotations in this paragraph from “Public Speaking,” in Sproat Testimonials, *supra* note 3.

²⁵ Rossiter, *supra* note 1 at 785.

²⁶ All quotations in this paragraph from Sproat to Colonial Secretary (1 November 1864), Victoria, B.C. Archives (GR-1372, Colonial Correspondence: G.M. Sproat, file 1638).

²⁷ *Ibid.*

²⁸ Rossiter, *supra* note 1 at 786.

By March 1865, the sawmill company had used all the accessible wood and closed the mill at Alberni.²⁹ After that, only four settlers remained: a husband and wife pair, the Clarks, who were caretakers of the mill; a farmer named Taylor who managed the farm up the river; and another man, Reid, who intended to pursue cod fishing.³⁰ By August 1866, only Taylor and one other man were left at the “lately prosperous little settlement of Alberni fast becoming a heap of ruins; one white man ... is there, who takes care of the machinery connected with the saw mill. The pretty little gardens of the settlers are overgrown with weeds and the houses falling to decay.”³¹ Taylor still farmed “some excellent land” and raised “some very fine looking stock.”³²

By early in 1865, Sproat was making plans to return to England with his wife, Katharine, whom he had married in December 1862, and their daughter, Agnes, born in April 1864.³³ The family departed Victoria for London in August 1865, at which point the *Colonist* printed this tribute:

FAREWELL – We yesterday took leave of the respected head of the mercantile firm of Anderson & Co. of this city, Mr. Gilbert M. Sproat, who with Mrs. Sproat is about to bid a final adieu to the colony. Mr. Sproat was one of the first representatives of English capital in Vancouver Island, and has probably been the means of circulating more money in the country than any other merchant in Victoria. It is in the social circle, however, that Mr. Sproat’s departure will be the most severely felt. His kind,

²⁹ Sproat, *Savage Life*, *supra* note 2 at xix-xx.

³⁰ “From Alberni”, *The Daily British Colonist* (30 March 1865) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017. Sproat describes Reid in *Scenes and Studies of Savage Life*, *ibid*, in his Author’s Preface, at xxiii and 140. According to Sproat, Reid began working for Sproat as a cooper but was promoted “to the position of superintendent of Indian affairs at Alberni,” a position Sproat must have created, perhaps in an effort to maintain good relations with the Nuuchah-nulth in the area. In his Author’s Preface, Sproat writes that he is “especially indebted to the late George Reid of Alberni,” as one of the friends with whom Sproat would obtain information from concerning the “language, manners, customs, and ways of life” of Indigenous people. According to Sproat, Reid died in Victoria in October 1865.

³¹ “Cruise of H.M.S. “Scout” round the Island”, *The Daily British Colonist* (21 August 1866) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.

³² *Ibid*.

³³ Sproat married Katharine Anne Wigham in December 1862 in Victoria. (Wigham’s first and middle names are spelled inconsistently in the historical records. I have used the spellings from her signature on her divorce petition: *Katharine Ann [sic] Sproat, Appellant, v. Gilbert Malcolm Sproat, Respondent*, Wife’s petition (30 July 1870); Kew, U.K., The National Archives (J 77/105/1634). She refers to their marriage date at para. 1 of her Petition. *The Daily British Colonist* also reported the marriage: “Married”, *The Daily British Colonist* (25 December 1862) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.) The *Daily British Colonist* reported Agnes’s birth: “Birth”, *The Daily British Colonist* (18 April 1864) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017. The Sproats had two more children: Alexander, born December 1866, and Gilbert, born January 1868. The dates of all three births are noted in Wigham Sproat’s petition.

gentlemanly and affable bearing has rendered him a universal favorite, and in all measures emanating for the promotion of the welfare and comfort of the people he universally took a prominent part. Whatever credit others may deserve for the present efficient Volunteer organization it will not be forgotten that to Mr. Sproat is due the first initiatory movement in this city. The chief management of the local business of the firm is entrusted to Mr. Johnson, a young gentleman who during his sojourn on the island has also acquired numerous friends.³⁴

In May 1866, with Sproat in London, Anderson & Co. transferred its commercial licence in Victoria to “Sproat & Co.”³⁵ Matthew Johnston, the man referenced in the *Colonist’s* tribute to Sproat, was the company’s Victoria representative.³⁶ The following month, the first Sproat & Co. advertisement appeared in the *Colonist*, referring to offices in London, San Francisco, and Victoria, and announcing itself as merchant and exporter of spars, lumber, cured fish, and dogfish.³⁷ Sproat would continue to operate Sproat & Co. for many more years – indeed, Sproat & Co. appears to have operated through Sproat’s tenure as reserve commissioner.³⁸ By operating a business in the province during the decade he spent in London, Sproat maintained his ties to the province he would later describe as having “got hold of my heart.”³⁹

British Columbia entered the Canadian confederation on July 20, 1871.⁴⁰ Privy Council records indicate that Sproat’s name was put forward as a B.C. senator, but the Privy Council did not appoint him.⁴¹ In September 1871, Sproat returned for a visit to Victoria; he toured San Juan

³⁴ “Farewell”, *The Daily British Colonist* (15 August 1865) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017; “Departure of Old Friends”, *The Daily British Colonist* (26 August 1865) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.

³⁵ “Retail Licences”, *The Daily British Colonist* (4 May 1866) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.

³⁶ Matthew Johnston’s surname is spelled “Johnson” and “Johnston” in the historical records. I have spelled it “Johnston”, as that is how Mr. Johnston spelled it: see Johnston to Powell (18 October 1872), Ottawa, Library and Archives Canada [LAC] (RG 10, vol. 3583, f. 1062).

³⁷ “Business Cards”, *The Daily British Colonist* (28 June 1866) 1, online: <www.britishcolonist.ca>, accessed 20 September 2017.

³⁸ See, for example, advertisement in *The Daily Standard* for “G.M. Sproat” as the British Columbia agent for the Scottish Commercial Insurance Company, on 28 November 1878, the same date as an article extremely critical of Sproat’s work as reserve commissioner and on which he commented also appeared: “The Indian Commissioner”, *The Daily Standard* (28 November 1878) in Ottawa, LAC (RG 10, vol. 3669, f. 10,691, reel C-10117).

³⁹ Sproat to McCreight (1 October 1871), Victoria, B.C. Archives (GR-1372, Colonial Correspondence: Gilbert M. Sproat, file 1638).

⁴⁰ British Columbia Terms of Union, RSC 1985, App II, No 10.

⁴¹ PC 1871-0715 (introduced 3 March 1871).

Island and Barclay Sound with Lieutenant Governor Joseph Trutch, Chief Justice Begbie, and Hector Langevin, the Dominion Minister of Public Works, who was in British Columbia to prepare what would become his detailed 246-page report for the Dominion on British Columbia.⁴² Sproat, Langevin, and Trutch went to Alberni to inspect the “sea-approaches ... with a view to the probable termination of the Canadian Pacific Railway there.”⁴³ At the time of their visit, the settlement and mills “reminded them of Gray’s Elogy of The Deserted Village – only one man residing there, where a few years ago several hundred people lived, moved and had their being.”⁴⁴ In his 1872 Report on British Columbia, Langevin described Alberni in this way:

There are here [Barclay Sound] some fishing establishments and at the head of the Alberni Canal, is a small town now deserted. Here formerly flourished the saw mills of Messrs. Anderson & Co. Then there were some 280 persons employed in the mills, the little town had a population of 600 souls, and in the adjacent waters rode large vessels of 1000 tons, which bore away to distant parts the timber which the district produced. Now nothing is to be seen but the Indian who formerly made the place his abode; and the civilization which once visited the spot would seem to have doomed it to barbarism or solitude. And yet if the terminus of the Pacific Railway is destined to be situated on Vancouver Island, it may be that the voice of civilization may again before long make itself heard in that region.⁴⁵

Langevin included Alberni among the possible locations for the railway terminus and wrote that Barclay Sound, he had “not the slightest doubt, will hereafter become one of the most important places on the Island.”⁴⁶ Alberni would not become the terminus for the railway, but Sproat would continue to push it as a site for settler colonization, even as he became a provincial government official responsible for British emigration. However, before he assumed that role in London in 1872, Sproat spent several years in London as an amateur ethnographer writing and speaking about the Nuu-chah-nulth peoples of the west coast of Vancouver Island.

⁴² “Barclay Sound and San Juan Island”, *The Daily British Colonist* (19 September 1871) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017; “The Visit of Hon. Mr. Langevin, C.B., to Barclay Sound”, *The Daily British Colonist* (22 September 1871) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017; Canada, Ministry of Public Works, *British Columbia: Report of the Hon. H.L. Langevin, C.B., Minister of Public Works* (Ottawa: Parliament, 1872) at 1 [*Langevin Report*].

⁴³ “Barclay Sound and San Juan Island”, *supra* note 42.

⁴⁴ “The Visit of Hon. Mr. Langevin, C.B., to Barclay Sound”, *supra* note 42.

⁴⁵ *Langevin Report*, *supra* note 42 at 42.

⁴⁶ *Ibid* at 33, 50.

2.2 SPROAT AS AN ETHNOGRAPHER

Sproat first came into contact with Indigenous people when he arrived on Vancouver Island. When he returned to London in 1865, he wrote two articles based on his experiences with Indigenous peoples in the colony and read the articles at the Ethnological Society of London, which published them as part of their transactions.⁴⁷ He also published *Scenes and Studies of Savage Life*, a book about his encounters with the Nuu-chah-nulth (whom he called the “Aht”) in which he set out his early thoughts about Indigenous occupation and land ownership.⁴⁸ The book reveals that Sproat was thinking deeply about the basis of Indigenous and settler rights to land and of how to “civilize” Indigenous peoples in a humanitarian way.

When Sproat arrived at Alberni on September 1, 1860, accompanied by Captain Stamp, two other ships associated with the proposed mill had already arrived; the third ship increased the settler contingent to around forty.⁴⁹ While Captain Stamp oversaw the mill’s construction and operation, William “Eddy” Banfield, a Colony of Vancouver Island Government Agent, assisted these first settlers in negotiating their occupation of land amidst the Indigenous inhabitants.

The British Navy had discharged Banfield in Victoria in 1849. He then became a trader with the Nuu-chah-nulth, travelling the west coast of Vancouver Island.⁵⁰ After a decade of this work, Banfield knew the Nuu-chah-nulth as well as any European and had reportedly learned their language.⁵¹ In April 1859, Governor Douglas made Banfield a Government Agent for the area,⁵² and by the time Sproat and the other settlers arrived in what they called Barclay Sound, Banfield had already purchased three parcels of land from two different Nuu-chah-nulth First

⁴⁷ Gilbert M. Sproat, “The West Coast Indians in Vancouver Island” (1867) *Ethnological Society of London Transactions* 243; Gilbert M. Sproat, “On the Probability of a Bone Age” (1868) *Ethnological Society of London Transactions* 253.

⁴⁸ Sproat, *Savage Life*, *supra* note 2.

⁴⁹ Banfield to Young, Colonial Secretary (6 September 1860), Victoria, B.C. Archives (GR-1372, Colonial Correspondence: William E. Banfield, file 107/5).

⁵⁰ Rossiter, *supra* note 1 at 778.

⁵¹ *Ibid* at 778. The Nuu-chah-nulth people were formerly known by Europeans as the Nootka or by Sproat as the “Aht.” The Nuu-chah-nulth Tribal Council now represents fourteen First Nations: see Nuu-chah-nulth Tribal Council website, online: <<http://www.nuuchahnulth.org/>>, accessed 13 August 2017.

⁵² See “Oath of Allegiance” by W.E. Banfield (28 April 1859), Victoria, B.C. Archives (GR-1372, Colonial Correspondence: William E. Banfield, file 107).

Nations, signing “title deeds” with each group and forwarding the deeds to Victoria for Governor Douglas’s information.⁵³

When Sproat arrived, Banfield had most recently purchased land from the joint chiefs of the “Opecheset” (Hupacasath) people at Alberni in February 1860.⁵⁴ For “five blankets and other small articles,” Banfield had acquired approximately 100 acres of land at the mouth of the Somass River.⁵⁵ Banfield had given the Hupacasath chiefs a copy of the deed, as he had done previously with the “Ohiat” (Huu-ay-aht) chiefs with whom he had signed the previous two deeds.⁵⁶ He had explained to Governor Douglas that his objective in negotiating the purchases was to save himself “from native annoyance” and to provide the Nuuchahnulth with “an example of honest dealing that they might perceive that white men would not occupy their valueless ground without purchase.”⁵⁷

According to Banfield, the day after Stamp and Sproat arrived at Alberni, Stamp made a “treaty” with the “Sheshat Tribe” (Tseshah), which ceded to Stamp the land he had selected for a mill site and buildings in exchange for fifty blankets, molasses, food, trinkets, and some other goods.⁵⁸ “After some slight hesitation,” the community removed their lodges from the lands, which were not their usual camping grounds but where they had been staying since the first work

⁵³ The first agreement was “Agreement for purchase of land by William Eddy Banfield from Indians of Barclay Sound” (6 July 1859), Victoria, B.C. Archives (MS-0772, Item I-68374). The second agreement apparently has not survived but is referred to in Banfield to Young, Colonial Secretary (4 March 1860), Victoria, B.C. Archives (GR-1372, Colonial Correspondence: William E. Banfield, file 107). The third agreement is discussed in the text *infra* and in the footnote below. Neil Vallance discusses Banfield’s purchases in Neil Vallance, *Sharing The Land: The Formation of the Vancouver Island (or “Douglas”) Treaties of 1850-1854 in Historical, Legal and Comparative Context* (PhD dissertation, University of Victoria, 2015) [unpublished] at 130-131.

⁵⁴ “Agreement for purchase of land by William Eddy Banfield from Indians at head of Alberni Canal”, page 1 (14 February 1860), Victoria, B.C. Archives (MS-0772, Item I-68376); “Agreement for purchase of land by William Eddy Banfield from Indians at head of Alberni Canal”, page 2 (14 February 1860), Victoria, B.C. Archives (MS-0772, Item I-68377). The people Banfield called the “Opecheset” are the Hupacasath (Hupacasath) First Nation; see online: <<http://hupacasath.ca/>>, accessed 20 September 2017.

⁵⁵ Banfield to Young, Colonial Secretary (4 March 1860), Victoria, B.C. Archives (GR-1372, Colonial Correspondence: William E. Banfield, file 107).

⁵⁶ The people Banfield called the “Ohiat” are the Huu-ay-aht First Nations; see online: <<https://huuayaht.org/>>, accessed 20 September 2017.

⁵⁷ Banfield to Young, Colonial Secretary (4 March 1860), Victoria, B.C. Archives (GR-1372, Colonial Correspondence: William E. Banfield, file 107).

⁵⁸ Banfield to Young, Colonial Secretary (6 September 1860), *supra* note 49. The people Banfield called the “Sheshat” and Sproat the “Seshah” are the Tseshah (Ts’ishaa7ath) First Nation; see online: <<https://www.tseshah.com/>>, accessed 20 September 2017. Neil Vallance discusses this purchase in Vallance, *supra* note 53 at 131-132.

party had arrived two months earlier.⁵⁹ Banfield could not persuade them to return to their old encampment on the seaboard, but he was able to persuade them to move to the land he had purchased recently from the Hupacasath chiefs at the mouth of the Somass River.⁶⁰

In *Scenes and Studies of Savage Life*, published eight years after these events, Sproat described the same circumstances somewhat differently, giving himself the leading role:

In the morning I sent a boat for the chief, and explained to him that his tribe must move their encampment, as we had bought all the surrounding land from the Queen of England, and wished to occupy the site of the village for a particular purpose. He replied that the land belonged to themselves, but that they were willing to sell it. The price not being excessive, I paid him what was asked – about twenty pounds' worth of goods – for the sake of peace, on condition that the whole people and buildings should be removed next day. But no movement was then made, and as an excuse it was stated that the children were sick. On the day following the encampment was in commotion; speeches were made, faces blackened, guns and pikes got out, and barricades formed. Outnumbered as we were, ten to one, by men armed with muskets, and our communications with the sea cut off by the impossibility of sailing steadily down the Alberni Canal (the prevalent breeze blowing up it), there was some cause for alarm had the natives been resolute. But being provided, fortunately, in both vessels with cannon – of which the natives at that time were much afraid – they, after a little show of force on our side, saw that resistance would be inexpedient, and began to move from the spot.⁶¹

Sproat reports that he visited the Tseshaht chief's house several days later and, through an interpreter, spoke to the chief about the settlers' presence and Indigenous land. It seems unlikely that Sproat acted as the settlers' spokesperson during these talks. Banfield, who likely was present, had a decade of experience in interacting with the Nuu-chah-nulth, probably spoke their language or at least Chinook, and had recently negotiated three purchases of land from them. Stamp, who also likely was present, had selected the location and negotiated for it with

⁵⁹ Banfield to Young, Colonial Secretary (20 July 1860), Victoria, B.C. Archives (GR-1372, Colonial Correspondence: William E. Banfield, file 107). Banfield to Young, Colonial Secretary (6 September 1860), *supra* note 49.

⁶⁰ Banfield to Young, Colonial Secretary (6 September 1860), *supra* note 49.

⁶¹ Sproat, *Savage Life*, *supra* note 2 at 1-3. Sproat first gave this account, in almost identical words, in Sproat, "West Coast Indians", *supra* note 47 at 244. Cole Harris discusses Sproat's arrival at Alberni at length in his Introduction in Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: UBC Press, 2002), see especially xvi-xviii [C Harris, *Making Native Space*]. His account appears to be based solely on Sproat's account from *Scenes and Studies of Savage Life*. Robin Fisher also discusses Sproat's account, based on Sproat's 1868 book and his 1866 article in Robin Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890*, 2nd ed. (Vancouver: UBC Press, 1992) at 117-118 [Fisher, *Contact and Conflict*]. David Rossiter discusses the contrast between Sproat's and Banfield's accounts in Rossiter, *supra* note 1 at 771.

the colonial government and in all probability with the Tseshah. Sproat, on the other hand, was a London office-worker on his first trip outside of Britain, recently arrived after a four-month journey by ship. He was encountering Indigenous people for the first time and could not have known either their language or their customs. Nonetheless, it does seem likely that the settlers and the Tseshah chief discussed the “King-George-men” – the English – and the effect of their arrival on the Indigenous people and their land.

According to Sproat, he greeted the chief and wished him and his people well. The chief, reportedly, replied that his people were well, “but how long this will last we know not. We see your ships, and hear things that make our hearts grow faint. They say that more King-George-men will soon be here, and will take our land, our firewood, our fishing grounds; that we shall be placed on a little spot, and shall have to do everything according to the fancies of the King-George-men.”⁶²

Sproat agreed that more “King-George-men” were coming but assured the chief that “your land will be bought at a fair price.” The Chief responded that his people did not wish to sell their land or their water, and, further, wished Sproat’s compatriots to remain in their own country. Sproat reports his answer: “[m]y great chief, the high chief of the King-George-men, seeing that you do not work your land, orders that you shall sell it. It is of no use to you. The trees you do not need; you will fish and hunt as you do now, and collect firewood, planks for your houses, and cedar for your canoes. The white man will give you work, and buy your fish and oil.”⁶³

These words, among Sproat’s first to Indigenous people, display elements of the “agriculturalist argument” entrenched in British settler societies in the 18th and 19th centuries.⁶⁴ This perspective – evidenced in particular by Sproat’s denying Nuu-chah-nulth ownership rights in land because they did not “work” the land – showed itself in many Victorian beliefs, including

⁶² Sproat, *Savage Life*, *supra* note 2 at 3.

⁶³ All quotations in this paragraph from *ibid* at 4.

⁶⁴ For a concise summary of the “agriculturalist argument,” see Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, Massachusetts: Harvard University Press, 2005) at 36. See also Pat Moloney, “Colonisation, Civilisation and Cultivation: Early Victorians’ Theories of Property Rights and Sovereignty” in A.R. Buck, John McLaren & Nancy E. Wright, eds., *Land and Freedom: Law, Property Rights and the British Diaspora* (Hants, England: Ashgate Publishing Ltd., 2001) 23; and Pat Moloney, “Savagery and Civilization: Early Victorian Notions” (2001) 35:2 NZ J Hist 153 at 163-167 [Moloney, “Savagery and Civilization”].

stadial theory and imperial understandings of the basis of individual and state rights to land. It also was tied tightly to Victorian understandings of “civilization.”

The stadial view of history – that is, the theory that human societies move inexorably through stages – first emerged during the Scottish Enlightenment in the second half of the 18th-century and enjoyed a re-invigoration in the first half of the 19th-century.⁶⁵ Mark Hickford describes this theory and its relationship to agriculture, “civilization,” and individual property rights in this way:

In essence, this theoretical history purported to chart and to explain the transmutation of human societies from crudeness to mannered refinement through distinct stages. These stages mirrored a process of change through time that was driven by universally applicable psychological impulses and socio-economic circumstances. In outline, stages in that history were assorted according to predominant modes of subsistence in historical sequence, such as hunting and gathering, pastoralism, agriculture and commerce. Conventionally, there were four such stages (although there could be variations of emphasis in each of the stages). Adam Smith described the four-stages variety most succinctly – ‘1st, the age of hunters; 2^{dly}, the age of shepherds; 3^{dly}, the age of agriculture; and 4^{thly}, the age of commerce’. ...

Notoriously, stadial theory was used to frame a theoretical view of savagery, as well as the development of conceptions of property through time. In circumstances of hunting, rudimentary notions of property operated, with hunters acquiring property in the flora and fauna to the extent that was in their physical possession. ...

Where agriculture predominated as the mode of subsistence, arable cultivation of the soil entailed sufficient physical connection to earthly soils to lead to a state of society in which the land itself might be viewed as an exchangeable commodity. Accordingly, land could be alienated. Mobile communities that wandered pursuing sustenance or followed their migratory herds were considered to have an insufficiently developed concept of property in land due to a lack of fixity in their habitations.⁶⁶

Thus, stadial theory rested on a conception of “civilization” which included a momentum of “progress” through the stages: “[s]avagery and civilization were the two poles of a lengthy spectrum whose principal intervals were the four modes of subsistence” under the stadial

⁶⁵ Paul G. McHugh, *Aboriginal Societies and the Common Law: A History of Sovereignty, Status, and Self-Determination* (Oxford: Oxford University Press, 2005) at 121-122. For a discussion of the stadial view of societal development, see also Moloney, “Savagery and Civilization,” *supra* note 64.

⁶⁶ Mark Hickford, “‘Decidedly the Most Interesting Savages on the Globe’: An Approach to the Intellectual History of Maori Property Rights, 1837-53” (2006) XXVII:1 *Hist Pol Thought* 122 at 124-125 [Hickford, “Intellectual History”].

model.⁶⁷ The transition from “savagery” to “civilization” was a presumed “‘natural’ progression from primitive to advanced states.”⁶⁸

The idea that property rights emerged from working the land was an unquestioned truth for Sproat. Of the Nuu-chah-nulth, he wrote: “[a]griculture is not here practised, and probably separate ownership of the soil nowhere exists generally until cultivation begins.”⁶⁹ But the agriculturalist argument provided the basis not only for the asserted rights of individuals over particular parcels of land but also for the claims of imperial powers to land occupied by Indigenous peoples. One of the most influential political philosophers to espouse these views was Swiss jurist Emerich de Vattel, whose *Le droit de gens* (1758) linked the agriculturalist argument to *ius gentium* (the law of nations).⁷⁰ Chitty’s 1834 English translation gave Vattel’s text a presence in mid-19th-century British imperial policies, and the book “enjoyed a life in use for colonial governors.”⁷¹ In fact, in 1876, Sproat himself would quote explicitly from Vattel’s text in expressing his own ideas about Indian title.⁷² But in his 1868 account of his interaction with the Tseshaht chief in 1860, Sproat implicitly incorporated Vattel’s theory that although Indigenous people had “no right to appropriate” all the lands of the country, they were entitled to “the tracts of country of which they make use.”⁷³ Consistent with Vattel, Sproat considered the legitimacy of “the deliberate intrusion of a superior people into another country” to depend “to some extent [on] the use which the dispossessed or conquered people have made of the soil, and

⁶⁷ Moloney, “Savagery and Civilization,” *supra* note 64 at 154; McHugh, *supra* note 65 at 122; and Mark Francis, “The ‘Civilizing’ of Indigenous Peoples in Nineteenth-Century Canada” (1998) 9:1 *Jour World Hist* 51 at 81, 83, 85.

⁶⁸ Peter Mandler, “‘Race’ and ‘Nation’ in Mid-Victorian Thought,” in Stefan Collini et al., eds., *History, Religion, and Culture: British Intellectual History, 1750-1950* (Cambridge: Cambridge University Press, 2000) 224 at 226.

⁶⁹ Sproat, *Savage Life*, *supra* note 2 at 80.

⁷⁰ Hickford, “Intellectual History,” *supra* note 66 at 134; Andrew Fitzmaurice, *Sovereignty, Property and Empire, 1500-2000* (Cambridge: Cambridge University Press, 2014) at 141.

⁷¹ Hickford, “Intellectual History,” *supra* note 66 at 134. See also Mark Hickford, *Lords of the Land: Indigenous Property Rights and the Jurisprudence of Empire*, Oxford Studies in Modern Legal History (Oxford: Oxford University Press, 2011) at 50; and Fisher, *Contact and Conflict*, *supra* note 61 at 104, who agrees that Vattel was “perhaps the authority that was most frequently referred to in North America.”

⁷² Sproat to Minister of the Interior, “Memorandum on the ‘Indian problem’” (29 September 1876), Victoria, B.C. Archives (MS 0257, file 15 at 48-52).

⁷³ Emerich de Vattel, *The Law of Nations or the Principles of the Law of Nature applied to the Conduct and Affairs of Nations and Sovereigns* (Neuchatel, 1758), English translation ed. J. Chitty (London, 1834) at Book II, Chapter VII, §97, as quoted in Hickford, “Intellectual History,” *supra* note 66 at 134.

with their general behaviour as a nation.”⁷⁴ The key consideration was whether the inhabitants were cultivating the land, and Sproat justified settler occupation of Vancouver Island “by the fact of all the land lying waste without prospect of improvement.”⁷⁵ In 1877, during the JIRC’s second circuit, Sproat still maintained the importance of agriculture and of working the land in the allotment of reserves; he remarked, of a good arable reserve the commissioners had allotted, that he trusted “its great capabilities may be developed [because] to permit it to lie in a state of nature would be a sin.”⁷⁶

Despite subscribing to the agriculturalist argument, Sproat offered an interpretation of Indigenous relationships to land not often perceived by settlers. For example, he observed the communal nature of Nuu-chah-nulth land ownership, reporting: “[t]here is no very strict notion of individual property in land among the Aht. The land belongs to the whole tribe. In dealing with other tribes the hereditary chief represents the proprietary body. . . . [T]he general rule, among all the Aht, [is] that the whole extent of the tribal land is the common property of all the free men.”⁷⁷ Further, although he thought that the Nuu-chah-nulth did not recognize individual property rights in land, he perceived that “each tribe maintains the exclusive right of its members to the tribal territory — including all lands periodically or occasionally occupied or used, sites for summer and winter encampments, fishing and hunting grounds and spots for burial — and would strongly resist encroachment upon these places.”⁷⁸ Sproat agreed with Captain Cook’s earlier observation of the Nuu-chah-nulth that “nowhere in his several voyages did he meet with any uncivilized nation or tribe who had such strict notions of their having a right to the exclusive property of everything that their country produces.”⁷⁹ Sproat further recognized that the resident tribes strictly defined the limits of their fishing-grounds and their ownership of islands.⁸⁰

⁷⁴ Sproat, *Savage Life*, *supra* note 2 at Chapter II: “Rights of Savages to the Soil,” 6-9. Cole Harris, in *Making Native Space*, *supra* note 61, discusses this passage at length in his Introduction at xv-xxv. Foster also discusses it in Hamar Foster, “Letting Go the Bone: The Idea of Indian Title in British Columbia, 1849-1927” in Hamar Foster and John McLaren, eds., *Essays in the History of Canadian Law, Volume VI: British Columbia and the Yukon* (Toronto: University of Toronto Press for The Osgoode Society for Canadian Legal History, 1995) 28 at 32-34.

⁷⁵ *Ibid.*

⁷⁶ Sproat to Superintendent General (27 August 1877), Ottawa, LAC (RG 10, vol. 3611, f. 3756-12).

⁷⁷ Sproat, *Savage Life*, *supra* note 2 at 79.

⁷⁸ *Ibid* at 80.

⁷⁹ *Ibid* at 80-81.

⁸⁰ *Ibid* at 81.

However, Sproat's agriculturalist perspective resurfaced when he explained the Nuu-chah-nulth's "common property rule" as having emerged from a failure to cultivate land. He believed the tribal ownership of land existed because "the land really is of little use to individuals, except for the berries which the women collect, or unless it is a good hunting-ground for the beaver, mink, marten, or deer. Agriculture is not here practised, and probably separate ownership of the soil nowhere exists generally until cultivation begins."⁸¹

In *Scenes and Studies of Savage Life*, Sproat also referred repeatedly to the idea of "civilizing" Indigenous people, declaring, for example, that he "could not be easily persuaded that any barrier exists to prevent savage races from attaining a fair degree of mental cultivation, whatever might be their capacity for advancing ultimately in civilization beyond a certain point." At other points, Sproat was less complimentary about the prospect that Indigenous people could become "civilized." For example, he spoke derisively about Indigenous peoples' ability to communicate verbally, which Sproat thought arose not "from the [British] questioner's imperfect knowledge of the language," but because, "a short conversation wearies him [the Indigenous person], particularly if questions are asked that require efforts of thought or memory on his part. The mind of the savage then appears to rock to and fro out of mere weakness, and he tells lies and talks nonsense." Despite this "weakness," Sproat had no doubt that "in course of time the mental powers of the Indian could be greatly improved by education. The chief difficulty is that the people would vanish from before the white man during the polishing process, as so many tribes of savages have done in other parts of the world."⁸² Sproat also displayed his perspective on the benefits of British "civilization" when he described certain Nuu-chah-nulth practices and beliefs – listed under the heading, "Coldbloodedness" – in this way: "[t]hey are atrocities of which it is painful to read, but which, nevertheless, should be placed before the reader, in order to show to him what savages really are, and how blessed are the influences of Christianity and civilization."⁸³

Sproat devoted an entire chapter of his book to the "effects upon savages of intercourse with civilized men," concluding that, "in reference to savages of a low class," there were "elements of natural decay" within them which, "with increased speed and intensity, work out

⁸¹ *Ibid* at 80.

⁸² All quotations in this paragraph from *ibid* at 120.

⁸³ *Ibid* at 158.

their destructive tendencies, if the people consort habitually with a greatly superior nation.”⁸⁴ Sproat believed, in fact, that English colonization would mean the “extinction” of Indigenous people: he had “little doubt that colonization on a large scale, by English colonists, practically means the displacing and extinction of the savage native population.”⁸⁵

Sproat was not alone in his views that Indigenous people would disappear when confronted with settler colonialism.⁸⁶ Yet, he took a humanitarian approach to what he considered to be this inevitable extinction: he thought that if English settlers had “a clear view of the impending extinction of the inferior people,” they would be “stimulated” to “acts of justice and humanity towards them.”⁸⁷ Sproat acknowledged that while the new settlers would negatively affect the Indigenous population, exacerbating the Indigenous tendency to “natural decay,” he felt that the settlers should consider “some system of counteraction” for the “injuries” their presence would effect.⁸⁸ In particular, he believed it possible “to benefit isolated bodies of savages by civilized teaching and example, though the improvement may not extend to the prolongation of their national existence.”⁸⁹ Sproat proposed “a large native village, at a distance from civilized settlements, and connected by language with a good many neighbouring tribes.”⁹⁰ He imagined five secular Englishmen presiding over this village, all “carefully chosen in England, on verified testimonials of their peculiar fitness. They must be men of courage, energy, temper, and proved morality, and at least two should be acquainted with some trade or occupation, in which they might instruct the Indians — a gardener, for instance, would be a most useful man.”⁹¹ One can see Sproat’s humanitarian views about the task of civilizing Indigenous people when he described how these instructors should behave:

these instructors should not attempt to dictate to the Indians, nor seek by trade, nor in any way, to make gain out of them; their influence, which would only come gradually, and after a considerable period of experience in, and use of the language, would

⁸⁴ *Ibid* at 274.

⁸⁵ *Ibid* at 273.

⁸⁶ Robin Fisher discusses the association of this belief with the advent of settler, as opposed to fur-trade, society in what is now British Columbia in the 1850s: Fisher, *Contact and Conflict*, *supra* note 61 at 87-91.

⁸⁷ Sproat, *Savage Life*, *supra* note 2 at 274.

⁸⁸ *Ibid* at 289.

⁸⁹ *Ibid* at 290.

⁹⁰ *Ibid* at 291.

⁹¹ *Ibid* at 291.

depend on their own prudence, intelligence, and uniform endeavour to understand the character of the natives, and really to benefit them. The general duties of these instructors, I would propose to be as follows: — to teach the Indians any useful employments and arts that they were capable of learning; to improve their moral ideas, and to instruct them in Christian truth, as far as possible: in this latter respect, acting as missionaries, or at least, preparing the Indians for the efforts of the missionary.⁹²

However, Sproat suggested that although the English village leader should be authorized to act as a magistrate in judgment against other settlers, he should not be authorized to act against Indigenous people, because “they would not, except out of personal respect to him, be willing to acknowledge his delegated authority.”⁹³ Instead, Sproat envisioned “Indian constables” for Indigenous people.

Sproat’s humanitarianism also appears in his description of an incident on an evening in November 1863. A messenger roused him from his bed, bringing word that an employee had shot a Nuu-chah-nulth man stealing potatoes. Sproat, in his capacity as Justice of the Peace, convened an inquest, drawing the jury from his employees. He engaged one, a former staff surgeon in the British army, to conduct the post-mortem examination.⁹⁴ The surgeon concluded that the Nuu-chah-nulth man had died from wounds in the chest – he found a pea in the man’s lung – consistent with the reports that Sproat’s employee had shot him.⁹⁵

Despite the surgeon’s conclusion, the inquest jury first advised Sproat that the Nuu-chah-nulth man had died because he had been “worried by a dog.”⁹⁶ When Sproat pointed out this finding’s incompatibility with the evidence, the jury next returned a verdict that the Indian had been “killed by falling over a cliff,” a conclusion that Sproat rejected because “a mile every way from where the dead body was found, was as level as a table.”⁹⁷ “The fact was,” Sproat concluded, “the men were determined to shut their eyes and they shut them so close that they became quite blind.”⁹⁸ Sproat ultimately took matters into his own hands: he entered his own

⁹² *Ibid* at 292.

⁹³ *Ibid* at 291.

⁹⁴ *Ibid* at 74.

⁹⁵ *Ibid* at 74-75.

⁹⁶ *Ibid* at 76.

⁹⁷ *Ibid* at 76.

⁹⁸ *Ibid* at 76-77.

verdict in the inquest, arrested the employee, and sent him to Victoria in charge of a constable, presumably for a trial. However, the prisoner escaped before arriving in Victoria.⁹⁹

Sproat's views on the "humanitarian civilizing" of Indigenous people come through repeatedly in his book in his discussion of the settlers' impact on Indigenous people. Though he felt that the Nuu-chah-nulth at Alberni were better off than they had been prior to the settlers' arrival, he felt that the "intruders" – the settlers – "would be bound to act always with such justice, humanity, and moderation as should vindicate fully those superior pretensions which were the ground of the right of occupying. Any extreme act, such as a general confiscation of cultivated land, or systematic personal ill-treatment of the dispossessed people, would be quite unjustifiable." In other words, Sproat believed that though the settlers had justifiably "dispossessed" the Indigenous inhabitants, their dispossession carried with it a concomitant obligation to exhibit "justice, humanity, and moderation" towards the dispossessed.¹⁰⁰ This belief would become a fundamental organizing principle for Sproat's reserve-allotment decisions.

Sproat's writings from the period before he became reserve commissioner show not only that he thought deeply about the basis of Indigenous and settler rights to land and how to "civilize" Indigenous people in a humanitarian way, but also that he was genuinely curious about Indigenous people, their cultures, and their ways of understanding the world. In his book, Sproat devoted chapters to such topics as "Houses," "Domestic Manners," "Feasts," "Tribal Ranks," and "Usages in Fishing." Within these categories, Sproat spent pages describing Nuu-chah-nulth practices, ways of living, beliefs, and customs. At the end of his book, he included a "Vocabulary of the Aht Language," listing some 900 words and their English translations and even identifying those the Nuu-chah-nulth had invented since their contact with white men.¹⁰¹

Sproat's book garnered widespread and generally enthusiastic reviews, at least according to those he included in his General Testimonials which he collected to support his bid for governor of the colony in 1869. The *Westminster Review* observed that Sproat had "a personal character which enabled him ... to gather full particulars of their superstitions and legends, ... [and he] had special opportunities for observation, being brought into official as well as personal

⁹⁹ *Ibid* at 77.

¹⁰⁰ All quotations in this paragraph from *ibid* at Chapter II: Rights of Savages to the Soil," 6-9.

¹⁰¹ *Ibid* at 295.

connection with the savage tribes.” The *Civil Service Gazette* thought that “the keen, earnest, intelligent, truthful observer appears on every page,” and lamented that Sproat was “quite an exceptional character, while the rule shows us a crowd of *soi-disant* “naturalists” persistently foisting upon the public their own empty verbiage, mixed with plagiarisms unblushingly presented as original.” The *Guardian* concluded that “Mr. Sproat has thoroughly studied his subject in a humane and philosophical disposition.”¹⁰² Thus, Sproat – the businessman intent on representing his employer, the investor in the saw mill and associated businesses, and the eager member of the Victoria expatriate community – was also genuinely interested in the Nuu-chah-nulth and how they could coexist with the new settlers. His book attempted to record Nuu-chah-nulth culture and to propose how the Nuu-chah-nulth and settlers could live together in the future.

Sproat’s book builds to its final chapter, in which he provides his thoughts about how to manage and ameliorate the effects upon Indigenous peoples of their interaction with “civilized men.” Several of the book reviewers thought this the most important aspect of his book, with one concluding that his recommendation about how the colonial and British governments should interact with Indigenous people was “the most humane and politic view of the case.”¹⁰³ Sproat’s concluding proposition was that since the English “Home Government” sanctioned and encouraged colonization of new territories, that government was responsible for controlling colonists and protecting Indigenous peoples from the negative impact of the colonists’ arrival:

With this sanction, and under the protection of the English flag, a society is formed [in the colony] which, in its first stages, harbours, it must be admitted, an unusual number of eager money-makers, discontented politicians, fugitives from justice, and adventurers of all sorts, needy, unscrupulous, and immoral. This portion of colonial society has an evil influence upon all around it, and, of course, upon the character of any neighbouring Indians. To argue that the Home Government is not in some degree concerned with this and is not morally bound, either to compel a colonial settlement to some adequate measure of counteraction, or itself to take the matter in hand, is to say that the parent is neither bound to correct the child, nor can be called upon to repair the mischief arising from his own neglect.¹⁰⁴

¹⁰² Sproat Testimonials, *supra* note 3.

¹⁰³ *The Leader* in *ibid.*

¹⁰⁴ Sproat, *Savage Life*, *supra* note 2 at 288.

Sproat clarified that in allocating this responsibility, he knew it would be only possible for the Home Government “to interfere effectually on behalf of the aborigines, before the colonists received from the mother country a constitution and independent power of self-government.” He then seemingly lamented the course of events in what was by that time the united Colony of British Columbia:

In granting constitutions to colonies, the Crown should have insisted on provisions as regards the treatment of the natives; it should have reserved to itself a greater authority than it is now able to exercise, through its colonial governors, in directing the policy of colonial legislatures towards the aborigines. The rule of policy which requires that colonies must work their own way by their own energies, without expecting assistance from the parent country – a rule open, I think, from a national point of view, to various objections – is one that cannot, with justice, be strained to comprehend the treatment of the aborigines. The question is not whether colonists shall be assisted to build up their own fortunes, but whether certain conditions of their social state shall, without any mitigation, be allowed to exercise a deadly influence upon their fellow-subjects; whether they shall not be urged or impelled towards some system of counteraction which shall cancel or compensate for injuries so inflicted upon the native population.¹⁰⁵

This passage displays what makes Sproat such an intriguing subject. He was not simply an English businessman in a new colonial outpost. Nor was he just a Victorian gentleman-ethnographer. He was both, but more. He was a man genuinely interested in trying to understand Indigenous peoples and to mitigate the effects of the tsunami of British settler society that would irrevocably change virtually everything they knew.

2.3 SPROAT AS A GOVERNMENT OFFICIAL

Back in London in the fall of 1865, Sproat associated with group of men who had some connection to British Columbia, notably A.G. Dallas (a director of the Hudson’s Bay Company and son-in-law of Sir James Douglas¹⁰⁶) and Donald Fraser (a friend of and advisor to Douglas

¹⁰⁵ *Ibid* at 288-289.

¹⁰⁶ Dorothy Blakey Smith, entry for “Alexander G. Dallas” in “Biographical Appendix” to Arthur Thomas Bushby, “The Journal of Arthur Thomas Bushby, 1858-1859,” ed. Dorothy Blakey Smith (1957-58) XXI:1-4 BC Hist Quar 83 at 176-77.

and a large investor in Vancouver Island real estate).¹⁰⁷ In the spring of 1866, Sproat, Dallas, Fraser, and others formed the “London Committee for Watching the Affairs of British Columbia.”¹⁰⁸

Sproat brought to the Committee his acquaintance with men in the Vancouver Island government and “supplied, perhaps... the element of calculated audacity on the part of the Committee,” since he was, as he put it, “young, combative and disgusted” – disgusted, perhaps, with the Colonial Office’s control over the colony.¹⁰⁹ Alexander Dallas “was a power in the Hudson’s Bay Company, which, in view of its Rupert’s Land and North West claims (checking Canada’s extension), the head of the Colonial Office – even at that early time – wished to be well with.”¹¹⁰ Donald Fraser “linked [the Committee] to the press.”¹¹¹ Sproat saw the London Committee as aiding “local effort in the colony” by offering “the great advantage of face-to-face discussion with the home authorities.”¹¹² To Sproat, the London Committee was “a fighting organization, and – true it is though strange – a nucleus of general colonial opinion, in London, for half a dozen years.”¹¹³ In sum, Sproat saw the London Committee as providing the colony with a strong voice in London, a voice to advocate for the colony’s interests (as the colonial businessmen and politicians saw them).

The London Committee first weighed in on the question of the union of the two colonies, opposing it as Sproat had done during a brief involvement in Vancouver Island politics in early 1865.¹¹⁴ Though the Committee came late to the dispute and lost that battle – the British

¹⁰⁷ James E. Hendrickson, “Fraser, Donald,” in *Dictionary of Canadian Biography*, vol. 12, University of Toronto/Université Laval, 2003–, online: <http://www.biographi.ca/en/bio/fraser_donald_12E.html>, accessed 9 June 2017.

¹⁰⁸ Sproat, draft “History of British Columbia” (c. 1900), Victoria, B.C. Archives (Add. MSS 257, file 7) at (handwritten) 46 [Sproat, “History of British Columbia”].

¹⁰⁹ *Ibid* at (handwritten) 46, 49.

¹¹⁰ *Ibid* at (handwritten) 49.

¹¹¹ *Ibid* at (handwritten) at 49; see also Hendrickson, *supra* note 107.

¹¹² Sproat, “History of British Columbia”, *supra* note 108 at (handwritten) 46, 48.

¹¹³ *Ibid* at (handwritten) 46.

¹¹⁴ Shortly before leaving Vancouver Island in 1865, Sproat let his name stand for election to the Colonial House of Assembly, despite the fact that it was known he intended to return to England shortly. (There are numerous articles in the *Colonist* about Sproat’s role in this election, from “A Case of Dog and Kettle”, *The Daily British Colonist* (6 February 1865) 3, online <www.britishcolonist.ca>, accessed 20 September 2017, to “Votes for Mr. Sproat are Thrown Away”, *The Daily British Colonist* (13 February 1865) 3, online <www.britishcolonist.ca>, accessed 20 September 2017.) In the February election, Sproat came third behind De Cosmos and McClure and was not elected: “The Election: Death Blow to the Free Port – Union and Tariff

Parliament passed an Act joining the two colonies in the summer of 1866¹¹⁵ – it was more successful in advocating that Victoria should be the capital of the united colony.¹¹⁶

The London Committee orchestrated the delivery to the Colonial Office of two memorials arguing for Victoria.¹¹⁷ *The Colonist*, in publishing excerpts from the first memorial, described a meeting in Victoria called “for the purpose of returning thanks to Donald Fraser, Esq., and other gentlemen in London, for their exertions towards having the Seat of Government fixed at Victoria.”¹¹⁸ In another report, the *Colonist* described the meeting as having been convened “to return thanks to Messrs Sproat, Fraser, Dallas and other friends of the Colony in London, who were instrumental in framing the Capital Memorial.” These men, the article said, had succeeded in being understood in London, where the Colony had failed: “we were at last represented properly in London.”¹¹⁹ In the end, the meeting resolved the following:

That desirous of expressing our gratitude, and our appreciation of the valuable service rendered, we tender our heartfelt thanks to Donald Fraser Esq., A.G. Dallas Esq., Gilbert M. Sproat Esq., and others; the Banks, Mercantile Firms, and gentlemen who have in the hour of need interested themselves in favour of this sadly neglected Colony, for their kind labours and meritorious service in its behalf, and whilst begging that they will continue their active exertions, we also pledge ourselves to aid their endeavours as far as our now restricted freedom will permit.¹²⁰

Dr. Powell, the future Indian Superintendent who would play a pivotal role in Sproat’s work as reserve commissioner, remarked at the meeting that “it was pleasant to know that we

Triumphant – DeCosmos and McClure Returned”, *The Daily British Colonist* (14 February 1865) 3, online <www.britishcolonist.ca>, accessed 20 September 2017.

¹¹⁵ Sproat, “History of British Columbia”, *supra* note 108 at (handwritten) 46.

¹¹⁶ Margaret A. Ormsby, “Seymour, Frederick,” in *Dictionary of Canadian Biography*, vol. 9, University of Toronto/Université Laval, 2003–, online: <http://www.biographi.ca/en/bio/seymour_frederick_9E.html>, accessed 9 June 2017.

¹¹⁷ For a description of these memorials, see John Sebastian Helmcken, *The Reminiscences of Doctor John Sebastian Helmcken*, Dorothy Blakey Smith, ed. (Vancouver: University of British Columbia Press, 1975) at 223, footnote 2. See also “The Capital Memorial” (15 November 1867) 1-2; “Letter from Donald Fraser, Esq.” (15 November 1867) 3; “The Capital Memorial Meeting” (28 November 1867) 2; and “Correspondence with the Colonial Office, with Reference to the Memorials on the Subject of the Capital and Seat of Government of British Columbia” (13 February 1868) 1, all in *The Daily British Colonist*, online: <www.britishcolonist.ca>, accessed 20 September 2017.

¹¹⁸ “The Capital Memorial Meeting”, *supra* note 117. See also “The Seat of Government”, *The Daily British Colonist* (29 November 1867) 2, online: <www.britishcolonist.ca>, accessed 20 September 2017.

¹¹⁹ “The Capital Memorial”, *The Daily British Colonist* (29 November 1867) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.

¹²⁰ *Ibid.*

had friends so able, so willing and so competent to lay before the Home Government a statement of our wrongs and wants.” He further noted that, “Messrs. Fraser, Dallas, Sproat and others were largely interested in the future welfare of the colony, and for the part they had taken in this matter they deserved the hearty endorsement of this meeting and of all well-wishers of the Colony.” This last suggestion was met with cheers.¹²¹ In April 1868, British Columbia’s Legislative Council reaffirmed its choice of Victoria as the capital, after the matter was “thrown by Downing Street on to the Governor of the Colony, and by him thrown... on to the Council.”¹²²

In 1867, Governor Seymour of the united Colony of British Columbia was ill and out of favour with many in the colony over his support of New Westminster as the capital.¹²³ By November 1868, a petition emanated from Victoria calling for Seymour’s recall and former Governor Douglas’s appointment as administrator of the Colony.¹²⁴ By 1869, even Sir John A. Macdonald, the prime minister of Canada, supported Seymour’s recall in a letter to then-Governor of the Colony of Newfoundland (and future Governor of the Colony of British Columbia), Anthony Musgrave.¹²⁵

In April 1869, no doubt hearing of the possibility of Seymour’s replacement, Sproat wrote to an old friend, Edmund Verney, to seek Verney’s views on his ambition to become either the first Lieutenant Governor of the new Canadian province of Saskatchewan or the last governor of the Colony of British Columbia.¹²⁶ Sproat and unnamed supporters promoted his candidacy for the British Columbia governorship, producing a booklet for the Secretary of State for the

¹²¹ This and all preceding quotations in this paragraph in *ibid.*

¹²² “Legislative Council”, *The Daily British Colonist* (6 April 1868) 1, online: <www.britishcolonist.ca>, accessed 20 September 2017; Ormsby, *supra* note 116.

¹²³ Ormsby, *supra* note 116.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ Allan Pritchard, ed., *Vancouver Island Letters of Edmund Hope Verney, 1862-65* (Vancouver: UBC Press, 1996) at 52. Sproat dedicated his book, *Scenes and Studies of Savage Life*, *supra* note 2, to Verney, of the Royal Navy, “whose name, associated with good works, will long be remembered in Vancouver Island.”

In a similar vein, two 1869 Privy Council records suggest that Sproat’s name was put forward to be the “Governor of Rupert’s Land” in connection with the Hudson’s Bay Company’s transfer of Rupert’s Land to Canada, but the Privy Council did not appoint Sproat or any other person to be Governor of Rupert’s Land: PC 1869-0312 and 1869-0313. Instead, the Privy Council appointed William MacDougall as Lieutenant Governor of the North West Territories: PC 1869-0705.

Colonies entitled, *General Testimonials in favour of Gilbert Malcolm Sproat, Esq.*¹²⁷ A printed (but unaddressed and unsigned) copy of a letter seeking testimonials of Sproat for the Secretary of State emphasized that the next governor of British Columbia would need to ensure that the British Columbia government was “administered cheaply and vigorously” and recommended Sproat for the job. The letter noted the importance of “the saving of the smallest sum,” given the state of the colony’s finances. It further noted:

An active Governor is especially wanted in a country so extensive and thinly peopled, and without regular institutions. Another point of much importance has to be considered, in providing for the government of the Colony. The warlike Indian tribes outnumber the white population 5 to 1, and there is not a single soldier in the Colony. A heavy debt might at any time be incurred, by the necessity of quelling an outbreak on the part of native tribes.¹²⁸

The letter recommended Sproat: “[h]e is in the prime of life, is a trained man of business, and experienced in dealing with large bodies of men, and in managing financial matters.” As well, it claimed, “Mr. Sproat is not only known as a man of practical intellect, but has, additionally, a literary and scientific reputation,” and noted that “[p]robably, no one has so closely observed, or so fully understands the character of the native Indian races on the north-west of America. His reputation as a descriptive ethnologist is European.”¹²⁹

By the spring of 1869, Seymour was very ill; he died on June 10, while on a journey, with Joseph Trutch and William Duncan of Metlakatla, to resolve a dispute with Indigenous people on the Nass River and at Fort Simpson.¹³⁰ On Seymour’s death, the British government appointed Anthony Musgrave, then Governor of Newfoundland, as Governor of British Columbia. Musgrave had requested the position some months earlier when in England.¹³¹ If Sproat’s application material were ever submitted to the Colonial Office, his candidacy probably never had a chance, given Macdonald’s and Musgrave’s relationship, as well as Musgrave’s

¹²⁷ Sproat Testimonials, *supra* note 3. Sproat’s own notes, apparently in preparation for a letter to a friend, also refer to Sproat’s having been called to apply for the governorship of British Columbia: Sproat’s CV & Notes, *supra* note 4.

¹²⁸ Sproat Testimonials, *supra* note 3.

¹²⁹ *Ibid.*

¹³⁰ Ormsby, *supra* note 116.

¹³¹ Kent M. Haworth, “Musgrave, Sir Anthony,” in *Dictionary of Canadian Biography*, vol. 11, University of Toronto/Université Laval, 2003–, online: <http://www.biographi.ca/en/bio/musgrave_anthony_11E.html>, accessed 9 June 2017.

standing in London. Not to be deterred, Sproat's pursuit of a government position continued with his pitch, in 1871, to obtain a position relating to British emigration to the new province of British Columbia.

In September 1871, Dominion and provincial officials (including a British Columbia representative, T.L. Stahlschmidt¹³²) held an immigration conference in Ottawa to work out their respective roles on immigration, a matter of concurrent jurisdiction under the 1867 *British North America Act*.¹³³ At the conference, the participants unanimously agreed, among other things, that the Dominion would maintain an immigration agency in the United Kingdom and Europe but that each province could appoint European immigration agents as well.¹³⁴

In November 1871, Sproat travelled to Alberni with Minister Langevin before returning to London. Probably knowing of the immigration conference and its results (which Stahlschmidt had reported to Lieutenant Governor Trutch on September 23¹³⁵), Sproat wrote a 26-page memorandum to Trutch concerning "a subject which [had] interested [him] for ten years past – namely, European immigration into British Columbia."¹³⁶ He was referring to his proposal, originally floated in 1864, for the farming settlement at Alberni. Sproat also set out numerous ideas for slow but steady European immigration, adverting repeatedly to "the Agent General of the province in England." He listed many things a provincial Agent-General could do, but the Agent-General's primary role would be to encourage and facilitate immigration to the province. Sproat eventually admitted that "no such officer at present exists," but he urged the province to create the position and advised Trutch of his willingness to accept the office, if created.¹³⁷

¹³² The province appointed Stahlschmidt as delegate to the Conference because he had already planned a visit to Ottawa: Good to Stahlschmidt (31 August 1871) in British Columbia, Legislative Assembly, "Return to an Address of the Legislative Assembly, dated 14th March 1872, for copies of the Instructions to the Delegate who represented the Province of British Columbia, at the Immigration Conference held at Ottawa, last Summer, together with the Report of the said Delegate, and papers and correspondence touching the same" in *Sessional Papers*, No. 4 (1872) at 81 [1871 Immigration Conference Documents].

¹³³ *Constitution Act, 1867* (UK), 30 & 31 Vict c 3, s 95, reprinted in RSC 1985, Appendix II, No. 5.

¹³⁴ Parliament, "Report of the Minister of Agriculture for the calendar year 1871" in *Sessional Papers*, vol. V (Ottawa: Parliament, 1872) at 12-13.

¹³⁵ Stahlschmidt to Lieutenant Governor (23 September 1871) in 1871 Immigration Conference Documents, *supra* note 133 at 83-84.

¹³⁶ Sproat to Lieutenant Governor (3 November 1871), Victoria, B.C. Archives (MS 257, file 3).

¹³⁷ All quotations in this paragraph in *ibid.*

Sproat set out from Victoria for England shortly after penning the letter to Trutch, travelling by rail across the United States and spending “several months in reviewing immigration by visiting personally almost every state in the United States into which farming immigrants are coming – Washington Territory, the States of Oregon and California, Colorado, Kansas, Missouri.”¹³⁸ Sproat’s “special object” was “to study immigration in those portions of the United States which correspond generally to Central Canada and British Columbia.”¹³⁹ From Philadelphia in March, Sproat wrote about immigration to both the provincial Chief Commissioner of Lands and Works and the Dominion Minister of Immigration, advising the provincial government that after having visited several U.S. settler “colonies” on his trip, he was “more convinced than [he] was of the value of colonies in forwarding settlement” and hoped the province would encourage some attempt in this direction.¹⁴⁰ In a similar but significantly more detailed vein, Sproat wrote three letters to the Dominion Minister of Immigration, urging the Minister to pursue farming colonies on Dominion lands and to engage him to assist with European emigration to these colonies.¹⁴¹

In March 1872, the provincial Legislative Assembly recommended that the Lieutenant Governor appoint a local Board of Immigration and offer a prize for the best-written pamphlet for immigrants.¹⁴² The pamphlet was to set out “in a concise and popular form the advantages

¹³⁸ Sproat to Pope, Minister of Agriculture, Letter “A” (27 March 1872), Ottawa, LAC (RG 17, A III 2, vol. 2397); underlining in original.

¹³⁹ *Ibid.*

¹⁴⁰ Sproat to CCLW (26 March 1872), Victoria, B.C. Archives (GR-1039, box 1).

¹⁴¹ Sproat to Pope, Minister of Agriculture, Letter “A” (27 March 1872), *supra* note 138; Sproat to Pope, Minister of Agriculture, Letter “B” (27 March 1872), Ottawa, LAC (RG 17, A III 2, vol. 2397); Sproat to Pope, Minister of Agriculture, Letter “C” (1 April 1872), Ottawa, LAC (RG 17, A III 2, vol. 2397). Ryan Eyford discusses Sproat’s letters in Ryan Eyford, *White Settler Reserve: New Iceland and the Colonization of the Canadian West* (Vancouver: UBC Press, 2016) at 55-58. I am grateful to Eyford for providing me with transcriptions of Sproat’s lengthy letters.

In August 1872, Sproat advised the Provincial Secretary that he was not aware whether his three letters had ever reached the Dominion Minister of Immigration, as he had given them to a Senator Carrall to give to the Minister: Sproat, “Memorandum of a few suggestions for opening the business of emigration to British Columbia, referred to as Memo C...” (9 August 1872), Victoria, B.C. Archives (GR-419, box 10, file 1872, part 2 of 2). Sproat further advised that he had not kept copies of his letters but had recently written to Ottawa seeking them.

¹⁴² The 28 March 1872 report of the Select Committee is set out in “Does British Columbia Want Population?” (3 September 1872) 2 and in “Land and Population” (8 October 1872) 2, both in *The Daily British Colonist*, online: <www.britishcolonist.ca>, accessed 20 September 2017.

presented by the province to Immigrants generally.”¹⁴³ It seems that the province never formed the Immigration Board, but it did award Alexander C. Anderson, the future Dominion Indian reserve commissioner, \$250 for his “Prize Essay on British Columbia.”¹⁴⁴

In July 1872, the Provincial Secretary, at Lieutenant Governor Joseph Trutch’s direction, wrote to Sproat in London to offer him the position of Emigration Agent in England for British Columbia.¹⁴⁵ Sproat accepted the job, but he requested that the government title him as “Agent General” for the province instead, a matter on which he held a “strong opinion.”¹⁴⁶ He described the Agent-General’s role as “almost as an ambassador” and the Agents-General collectively as “the true representatives of the colonies” (taking the latter description from the *London Times*).¹⁴⁷ Sproat acknowledged that British Columbia was no longer “a colony with direct relations to Downing Street,” but he considered that an Agent-General still could play an important role for the province in promoting emigration, business ties, and tourism.¹⁴⁸

Sproat also enclosed several memoranda with his letter, including his “rough plan of work” and a statement about “opening the business of emigration to British Columbia.” In the first, Sproat suggested that he focus on trying to select “suitable emigrants,” and he sought detailed instructions from the government on its general immigration policy and on detailed matters such as the inducements the government would offer to attract emigrants.¹⁴⁹ Sproat’s

¹⁴³ Per the 28 March 1872 report of the Select Committee, as set out in “Does British Columbia Want Population?” (3 September 1872), *supra* note 142, and “Land and Population” (8 October 1872), *supra* note 142. According to the latter article, eight men submitted essays.

¹⁴⁴ Alexander C. Anderson, *The Dominion At The West: A Brief Description of the Province of British Columbia, Its Climate and Resources -- The Government Prize Essay, 1872* (Victoria, B.C.: Province of British Columbia, 1872). See also “Does British Columbia Want Population?” (3 September 1872), *supra* note 142.

¹⁴⁵ The province did not announce Sproat’s appointment in *The British Columbia Gazette* until April 1873, when a short notice stated that “Gilbert Malcolm Sproat, Esq., of 4 Lime Street Square, London, was, towards the end of the year 1872, appointed Agent-General in England for the Province of British Columbia”: *British Columbia* (12 April 1873), XIII:15 *The British Columbia Gazette* 1. Because Sproat was styled as the “Agent-General” in the Gazette notice, I have used the hyphenated spelling in this thesis.

¹⁴⁶ Sproat to Provincial Secretary, “No. 1” (29 August 1872), Victoria, B.C. Archives (GR-695) [Sproat, “Letter No. 1”].

¹⁴⁷ Sproat, “Memorandum as to the designation of the Provincial Agent in England – referred to as Memorandum A...” (29 August 1872), Victoria, B.C. Archives (GR-419, box 10, file 1872, part 1 of 2).

¹⁴⁸ Sproat, “Letter No. 1”, *supra* note 146; underlining in original.

¹⁴⁹ Sproat, “Memorandum of Rough Plan of work for English Agency – referred to as Memorandum B...” (29 August 1872), Victoria, B.C. Archives (GR-419, box 10, file 1872, part 1 of 2).

second memorandum suggested what he could do to encourage emigration while awaiting his detailed instructions.¹⁵⁰

Once appointed Agent-General, Sproat began work immediately, focusing on providing the province with information about British colonial emigration generally.¹⁵¹ In an early letter, Sproat continued to emphasize farming colonies, hoping that, “His Excellency will see his way to recommend the appropriation of blocks of land for special settlement, by farm emigrant associations. I have lost no opportunity of urging this plan of emigration, having witnessed its success in the United States.”¹⁵²

Sproat knew that the incoming settlers would occupy land that, in many cases, was already occupied by Indigenous people. He urged the province that, “[a] preliminary condition in framing any scheme of immigration is the appointment of an Indian Agent, and subagents within the province, to protect settlers against the menaces or pillage of the Indians. This, I know, is a Dominion matter.” In urging the province to consider the possibility of a large-scale settlement of Scandinavian emigrants, Sproat again urged the province to address the presence of Indigenous people: “[t]he North West of North America is very like the North West of Europe. Why not get the Canadian Government to take the Indians in hand - then set apart land, vote money, and try to introduce Scandinavians into all these British Columbian inlets and fiords? No country would be so likely to take their fancy.”¹⁵³

By October, *The Daily British Colonist* had heard of Sproat’s appointment and praised it, suggesting “no better selection than that of Mr. Sproat could well have been made.”¹⁵⁴ However, the *Colonist* questioned the need for an Agent-General in London (and an emigration agent in

¹⁵⁰ Sproat, “Memorandum of a few suggestions for opening the business of emigration to British Columbia, referred to as Memo C...” (29 August 1872), Victoria, B.C. Archives (GR-419, box 10, file 1872, part 2 of 2).

¹⁵¹ Sproat’s early letters focused on providing the province with extensive information on two topics: the emigration activities of other “colonies” and the cost of conveying emigrants to British Columbia. See, for example, Sproat to Provincial Secretary, “No. 5” (3 September 1872), Victoria, B.C. Archives (GR-695) [Sproat, “Letter No. 5”]. With respect to information about other colonies, Sproat also provided the Provincial Secretary with, among other things, the 32nd General Report of the Colonial Land & Emigration commissioners (for 1872) and also with their Colonisation Circular for 1872.

¹⁵² Sproat, “Letter No. 5”, *supra* note 151.

¹⁵³ All quotations in this paragraph in *ibid.*

¹⁵⁴ “Good Intentions”, *The Daily British Colonist* (11 October 1872) 2, online: <www.britishcolonist.ca>, accessed 20 September 2017.

San Francisco), given that the Dominion had similar immigration infrastructure aimed at promoting immigration to B.C. as well as the rest of Canada.¹⁵⁵

In October, Sproat sent the province a 131-page “Memorandum on Immigration,” accompanied by another lengthy document containing appendices.¹⁵⁶ He urged British Columbia to raise its profile in Britain, as “so many colonies are competing for the best class of emigrants.”¹⁵⁷ “To be honourably known in Great Britain,” according to Sproat, “means everything to outlying portions of the Empire; it means population, visitors, money, credit.”¹⁵⁸ Sproat expounded upon almost every conceivable topic associated with British emigration to the province. British Columbia was, he said, “in the position of a great landowner, with a very good, but, at present, an untenanted estate. . . . I must think that the utilization of the public lands of British Columbia, by the introduction of settlers, is among the first duties of any Provincial Government, and a very important matter for the Dominion, also.”¹⁵⁹ Sproat later referred to the province’s duty of “utilizing and managing the immensely valuable landed estate for which the parliament of British Columbia is trustee.”¹⁶⁰

In his memorandum, Sproat again displayed his knowledge of the complexities associated with promoting British emigration to British Columbia and making land available to settlers. He urged “Parliamentary action” by the province and set out “[t]he order in which matters will arrive for the consideration of Parliament.”¹⁶¹ Sproat listed first, with no further explanation, “the Indian question,” which he acknowledged was a Dominion matter but which might “require the notice of the Provincial Parliament.”¹⁶² It seems that Sproat was anticipating the challenges that large-scale British emigration would present for Indigenous people. Or perhaps more likely,

¹⁵⁵ *Ibid.*

¹⁵⁶ Although the Memorandum is dated simply “October”, Sproat refers to sending it, presumably on the same day, in an October 10 letter, Sproat to Provincial Secretary, “No. 21” (10 October 1872), Victoria, B.C. Archives (GR-695).

¹⁵⁷ Sproat, “Memorandum on Immigration” (October 1872), Victoria, B.C. Archives (GR-419) at 5 [Sproat, “Memorandum on Immigration”].

¹⁵⁸ *Ibid* at 15.

¹⁵⁹ *Ibid* at 19.

¹⁶⁰ *Ibid* at 20.

¹⁶¹ *Ibid* at 120.

¹⁶² *Ibid* at 120.

he was anticipating the challenges that Indigenous occupation of land would present for large-scale British emigration.

In November, the Provincial Secretary wrote to Sproat, advising that the government planned “during the coming Session of the Legislature to introduce a Bill for the encouragement of Emigration to this province.”¹⁶³ As soon as that bill became law, the province would convey “the fullest instructions” to Sproat.¹⁶⁴ However, neither the law nor Sproat’s “fullest instructions” ever materialized.

The “season” for emigration was early spring, when the weather was better for travelling and, in a best-case scenario, agricultural emigrants would have a chance to acquire land and plant a crop or obtain work on an established farm in order to get themselves through the winter. This created some urgency for Sproat and British Columbia in spreading information about the Canadian province. In the fall of 1872, the province published Anderson’s Prize Essay, its intended advertisement for prospective emigrants. *The Daily British Colonist* lauded the essay as an “interesting and instructive” book and recognized its “literary excellence,” but observed that it would “especially recommend itself to gentlemen of leisure and letters” and that it was “not what was wanted by the country or asked for by the Legislature. What was wanted was a small pamphlet or hand-book of thirty or forty pages, setting forth in a simple and concise form the advantages presented by British Columbia as a field for emigration.”¹⁶⁵ The province sent Sproat fifty-three copies. Sproat, too, criticized the essay’s appropriateness as well as the expense of printing the essays in British Columbia and sending them by ship to London.¹⁶⁶

In November, just as the province had published the Prize Essay, the Provincial Secretary asked Sproat to prepare a short pamphlet and a map, similar to those issued by other colonies.¹⁶⁷ The Secretary also instructed Sproat to lecture over the winter and to distribute the pamphlet and map, thus sowing “the seed of information through Great Britain” and allowing the province “to reap a fair crop of the annual Emigration leaving not only our shores, but those of France and

¹⁶³ Provincial Secretary to Sproat (6 November 1872), Victoria, B.C. Archives (GR-419).

¹⁶⁴ *Ibid.*

¹⁶⁵ “More About the Prize Essay”, *The Daily British Colonist* (8 November 1872) 2, online: <www.britishcolonist.ca>, accessed 20 September 2017.

¹⁶⁶ Sproat to Provincial Secretary, “No. 45” (12 February 1873), Victoria, B.C. Archives (GR-526, box 6).

¹⁶⁷ Provincial Secretary to Sproat (6 November 1872), *supra* note 163.

Germany.”¹⁶⁸ Following these instructions, Sproat spent the winter of 1872-1873 travelling around Britain lecturing on emigration to British Columbia, hiring others to lecture, drafting an “Emigrant’s Handbook,” commissioning the requested map, and providing still more emigration-related information to the Provincial Secretary.¹⁶⁹ By January, Sproat had completed a draft of the Emigrant’s Handbook.¹⁷⁰ In February, he advised the Secretary that because of the lack of instructions and the “advancing season,” he had concluded “that I must do at once what seems to be necessary before the spring opens, without specific instructions from the Government.”¹⁷¹ The handbook, he felt, would “entirely supersede the Essay, and place the matter on the footing recommended and adopted by others here.”¹⁷² The cartographer was soon to finish the map of British Columbia.¹⁷³ Sproat proceeded to print many copies of each, resulting in high costs for which the government later criticized him.

In December 1872, the government of J.F. McCreight, British Columbia’s first premier, was defeated on a confidence motion in the legislature, and Amor De Cosmos became the province’s second premier.¹⁷⁴ Sproat advised the new government that, in the absence of instructions, he had “acted so far on what [he] thought would be the wish of the Government in the matter,” and he listed his activities in detail.¹⁷⁵ Although there is no indication that the province ever sent Sproat the instructions he sought, it does seem that the government disapproved of the cost of his work and instructed him to suspend his lectures, except those he could conduct without cost.¹⁷⁶ However, Sproat had finished the handbook.¹⁷⁷ He sent 250

¹⁶⁸ *Ibid.*

¹⁶⁹ Sproat to Provincial Secretary, “No. 50” (5 April 1873), Victoria, B.C. Archives (GR-526, box 7).

¹⁷⁰ Sproat to Provincial Secretary, “No. 44” (9 January 1873), Victoria, B.C. Archives (GR-526, box 6).

¹⁷¹ Sproat to Provincial Secretary, “No. 45” (12 February 1873), *supra* note 166.

¹⁷² Sproat to Provincial Secretary, “No. 47” (6 March 1873), Victoria, B.C. Archives (GR-526, box 6).

¹⁷³ *Ibid.* This map – or one of these maps – is in the B.C. Archives: J. Wyld, “Emigration map of British Columbia shewing the mineral, agricultural and timber sections of the province”, 1873), Victoria, B.C. Archives (Item 17736A).

¹⁷⁴ Elections British Columbia, “An Electoral History of British Columbia, 1871-1986” (1988), online: <http://www.elections.bc.ca/docs/rpt/1871-1986_ElectoralHistoryofBC.pdf>, accessed 20 September 2017, at 545 [Elections B.C., “Electoral History”].

¹⁷⁵ Sproat to Provincial Secretary, “No. 50” (5 April 1873), *supra* note 169.

¹⁷⁶ Sproat to Provincial Secretary, “No. 61” (23 May 1873), Victoria, B.C. Archives (GR-526, box 7).

¹⁷⁷ Gilbert Malcolm Sproat, *British Columbia - Information for Emigrants* (London, 1873), online: <<https://babel.hathitrust.org/cgi/pt?id=aeu.ark:/13960/t18k7tn10;view=1up;seq=7>>, accessed 16 August 2017.

copies to Victoria, 500 to British Columbia's agent in San Francisco, and a few to Canada, and he gave copies to "our own local Agents" and to the "Dominion Emigration Agents."¹⁷⁸ By the end of June, Sproat had distributed all but 450 of the 3,000 handbooks he had printed, and he expected to distribute the remaining copies shortly.¹⁷⁹

Although the province had shelved Sproat's general emigration-promotion activities, Sproat focused on encouraging discrete groups of settlers to emigrate to British Columbia. He pursued three groups in particular, helping them to organize while at the same time pushing the province to make accommodations for them. None of the schemes materialized, but the one that came closest to succeeding relied on an unusual provision in provincial legislation. British Columbia was one of three British "colonies" that continued to offer land-related benefits to military and naval settlers, and the only one that offered free land.¹⁸⁰ The provincial *Military and Naval Settlers Act, 1863* entitled "Field Officers" with twenty-five or more years of service to 600 acres each and those with less service to fewer acres, (a man with a minimum of seven years' service was entitled to 200 acres).¹⁸¹ Sproat worked with a British naval captain to organize retiring officers in an effort to settle them in British Columbia.¹⁸² At one point, he estimated that fifty men and their families might emigrate to British Columbia; he told the province they wished to have 30,000 acres in one block to form a colony.¹⁸³ In addition, Sproat advocated that they receive a free grant of land "of as much as the Government can give, up to say 170,000 or 200,000 acres."¹⁸⁴ He later urged the province to give the retired officers land in New Westminster, Similkameen, Nicola "or elsewhere, say 18 to 20 miles square."¹⁸⁵ The provincial government indicated a willingness to grant land according to the legislation and to

This handbook was re-issued in 1875: Gilbert Malcolm Sproat, *British Columbia - Information for Emigrants* (London, 1875), online: <https://archive.org/details/cihm_14494>, accessed 16 August 2017.

¹⁷⁸ Sproat to Provincial Secretary, "No. 59" (8 May 1873), Victoria, B.C. Archives (GR-526, box 7).

¹⁷⁹ Sproat to Provincial Secretary, "No. 67" (25 June 1873), Victoria, B.C. Archives (GR-526, box 7).

¹⁸⁰ "Notice on Colonial Land Privileges to Naval and Military Officers" in United Kingdom, Her Majesty's Colonial Land and Emigration Commissioners, *Colonization Circular*, no. 31 (Westminster, 1872) at 166-167.

¹⁸¹ *Military and Naval Settlers Act, 1863*, RSBC 1871, c 43.

¹⁸² Sproat to Provincial Secretary, "No. 90" (15 September 1873), Victoria, B.C. Archives (GR-526, box 8).

¹⁸³ Sproat to Provincial Secretary, "No. 91" (15 September 1873), Victoria, B.C. Archives (GR-526, box 8).

¹⁸⁴ *Ibid.*

¹⁸⁵ Sproat to Provincial Secretary, "No. " [sic: 94] (4 October 1873), Victoria, B.C. Archives (GR-526, box 8).

“recommend such a reasonable and further grant to the Legislature, as would be likely to satisfy their requirements.”¹⁸⁶

Over the winter of 1873-1874, the “colony of Retired officers” progressed slowly.¹⁸⁷ By March 1874, it was “still in course of formation,” and several of the retired military settlers – including Captain Jemmett, who would become a surveyor for the Indian Reserve Commission – headed to British Columbia on their own.¹⁸⁸ However, by the end of May, Sproat put the brakes on organized emigration; he had “not been recommending intending emigrants to go to the province hastily,” since Amor De Cosmos had suggested that “the country was not quite ready for them last spring.”¹⁸⁹ Whatever momentum Sproat had generated was lost, and the officers’ colony never formed.

In November 1874, the Dominion and the provinces (though not British Columbia) met to discuss immigration matters.¹⁹⁰ In an effort to eliminate the duplication of efforts, the attendees agreed that the Dominion would direct all matters connected with European emigration and the provinces would discontinue their European work.¹⁹¹ Although the Dominion did not impose the agreement on provinces who did not attend the conference, by the end of 1874 Sproat could probably see that his days as British Columbia’s Agent-General focusing primarily on emigration were numbered.¹⁹²

Throughout 1874 and 1875, Sproat continued to work as Agent-General, assisting the province with various other projects, including the funding of a graving dock at Esquimalt and the arbitration over the Dominion’s failure to fulfill its transcontinental railway obligations under Article 11 of the B.C. Terms of Union. Sproat worked closely with Premier Amor De Cosmos

¹⁸⁶ Provincial Secretary to Sproat (24 October 1873), Victoria, B.C. Archives (GR-540, vol. 1) at 265-266.

¹⁸⁷ Sproat to Provincial Secretary, “No. 103” (8 January 1874), Victoria, B.C. Archives (GR-526, box 9).

¹⁸⁸ Sproat to Provincial Secretary, “No. 113” (19 March 1874), Victoria, B.C. Archives (GR-526, box 9).

¹⁸⁹ Sproat to Provincial Secretary, “No. 124” (25 June 1874), Victoria, B.C. Archives (GR-526, box 10).

¹⁹⁰ Parliament, “Report of the Minister of Agriculture of the Dominion of Canada, for the calendar year 1874” in *Sessional Papers*, No. 40 (Ottawa, Parliament: 1875) at x [1874 Minister of Agriculture Annual Report].

¹⁹¹ *Ibid* at xi. Privy Council records suggest that De Cosmos had recommended Sproat as the Dominion’s immigration agent in London in late 1873; however, the Privy Council did not make the appointment: PC 1873-1737 (introduced 31 December 1873).

¹⁹² The Dominion asked British Columbia whether it would sign on to the agreement: see Taché to Provincial Secretary (16 November 1874) in 1874 Minister of Agriculture Annual Report, *supra* note 190 at 9.

on the graving dock¹⁹³ and then Premier George Walkem on the railway arbitration.¹⁹⁴ Although he eventually would clash with both men when he became reserve commissioner, he seemed to have had good working relationships with them from London, and they appear to have appreciated his assistance with Imperial matters.

Sproat left London in April 1875¹⁹⁵, travelling to Montreal¹⁹⁶ and Ottawa¹⁹⁷, and arriving in Victoria at the end of May, where he would stay for almost eight months.¹⁹⁸ On arriving in Victoria, Sproat travelled to Alberni. There he found Mr. Taylor, the farmer who had lived upriver from Alberni for more than a decade, and Mr. & Mrs. Clark, whom he had left in charge of the mill and who now farmed at Alberni. Mr. Taylor had explored the valley for Sproat, assessing its future viability for farming colonies. Sproat agreed that “30 or 40 settlers could

¹⁹³ Sproat, “Memorandum about the Dry Dock, referred to as Memorandum D...” (29 August 1872), Victoria, B.C. Archives (GR-419, box 10, file 1872, part 1 of 2). Interestingly, “Sproat & Co.” at Victoria had written to the CCLW on April 30, 1872, with respect to the recent invitation for tenders for the construction of the graving dock requesting particulars on the project: Sproat & Co. to CCLW (30 April 1872), Victoria, B.C. Archives (GR-1039, box 1, file 3, no. 36). Sproat & Co. wrote again on the same topic, again requesting particulars, on 12 June 1872: Sproat & Co. to CCLW (12 June 1872), Victoria, B.C. Archives (GR-1039, box 1, file 4, no. 27). For De Cosmos’s involvement, see De Cosmos to Secretary of State for the Colonies (3 December 1873), and Secretary of State for the Colonies to Governor General (29 April 1874), in Parliament, “Return to an Address of the House of Commons, dated 15th March, 1875: For copies of all correspondence with the Government of British Columbia... respecting the construction of a first class Graving Dock at Esquimalt...” in *Sessional Papers*, No. 64 (1875) at 1-2. See also B.C. Archives (GR-526, box 9).

¹⁹⁴ Sproat to Provincial Secretary, “No. 65” (16 June 1873) and Sproat to Provincial Secretary, “No. 67” (25 June 1873), both in Victoria, B.C. Archives (GR-526, box 7); Trutch, Lieutenant Governor, to Aikins, Secretary of State (26 July 1873), in Parliament, “Correspondence regarding the non-fulfilment of the terms of Union with the Province of British Columbia” in *Sessional Papers*, No. 19 (1875) at 2 [Parliament, “Terms of Union”].

Sproat wrote to the Secretary of State for the Colonies in June to advise of Walkem’s imminent arrival in London and, at the behest of the Province as directed by a telegram, “to protest privately to your Lordship, strongly against the negotiation of the loan now being sought in the London market for the Dominion.” Sproat submitted a lengthy argument concerning Article 11 to the Secretary of State: Sproat to Secretary of State for the Colonies, (16 June 1874), Victoria, B.C. Archives (GR-526, box 11). See also Carnarvon to Governor General (18 January 1874) and Carnarvon to Governor General (18 June 1874) in Parliament, “Terms of Union”, *ibid* at 12-13. See also Sproat to Provincial Secretary, “No. 180” [sic: this is the second piece of correspondence labelled “No. 180”] (19 December 1874), Victoria, B.C. Archives (GR-526, box 12).

¹⁹⁵ This is evident from the fact that the last letter that Sproat signed personally was dated April 14: Sproat to Provincial Secretary, “No. 208” (14 April 1872), Victoria, B.C. Archives (GR-526, box 12).

¹⁹⁶ “Mr. G.M. Sproat”, *The Daily British Colonist* (11 May 1875) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.

¹⁹⁷ Sproat to Ash, Provincial Secretary (21 June 1875), Victoria, B.C. Archives (GR-526, box 13).

¹⁹⁸ *Ibid*.

find fairly good locations without the necessity of at once removing heavy timber.”¹⁹⁹ One of the newspapers reported that the local Nuuchahnulth received Sproat warmly: “[t]he Opechisaht [Hupacasath] Indians with their excellent chief Kaloweish, and particularly the old hunter Quassoon, were delegates to see Mr. Sproat and shook hands long and warmly, and invited him to a tribal feast and presentation. He went . . . and after ceremonies and speeches too long to describe, was presented with a fine bearskin. Messengers also arrived from the Sish-ahts [Tseshahts] and the You-clul-yets [Ucluelets] expressing good-will.”²⁰⁰

On August 30, 1875, a B.C. election was called,²⁰¹ and Sproat spent the fall in Victoria, engaged in political meetings.²⁰² At the same time, an anonymous letter to the editor of *The Daily British Colonist* criticized Sproat and Premier Walkem for “playing the delightful mutual admiration game,” and Sproat for “moon[ing] away from his post in London, first to Ottawa, &c, and lastly to Victoria. Here he unwisely meddles in local politics, and bespatters Walkem with praise for those very virtues our Premier is notoriously ‘not inclined to.’ Sproat, it may also be noticed, has a ready knack for self-laudation.”²⁰³ The letter also criticized Sproat for his reportedly high salary as Agent-General. The voters went to the polls in September and October, and Walkem returned as premier.²⁰⁴

On January 18, 1876, having heard about the JIRC and probably sensing that his position as Agent-General was in jeopardy, Sproat wrote (on Sproat & Co. letterhead) to the British Columbia Chief Commissioner of Lands and Works, advising that, “[h]aving taken some interest for many years past in Indian affairs, I beg leave to offer my services to the Government on the Joint Commission proposed for the settlement of the Indian question in this province. I will at

¹⁹⁹ “To Alberni and Back”, *The Daily British Colonist* (4 July 1875) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.

²⁰⁰ *Ibid.*

²⁰¹ Hamar Foster, “Walkem, George Anthony,” in *Dictionary of Canadian Biography*, vol. 13, University of Toronto/Université Laval, 2003–, online: <http://www.biographi.ca/en/bio/walkem_george_anthony_13E.html>, accessed 12 June 2017 [Foster, “Walkem”].

²⁰² See, for example, articles in *The Daily British Colonist* on 8 September 1875 (“The Issue”, 3), 14 September 1875 (“The Great Reform Victory” 2 and “Mr. Sproat and Public Sentiment” 3), 17 September 1875 (“Mr. Sproat and Mr. ‘Pan’”, 3), and 19 September 1875 (“Mr. Sproat and Mr. ‘Pan’”, 3), all online: <www.britishcolonist.ca>, accessed 20 September 2017.

²⁰³ “Walkem and Sproat”, *The Daily British Colonist* (1 October 1875) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.

²⁰⁴ Elections B.C., “Electoral History”, *supra* note 174 at 544, 548; Foster, “Walkem”, *supra* note 201.

once reply to any telegram on the subject, should you be disposed to accept my services.”²⁰⁵ Sproat left for London shortly thereafter. However, provincial politics was in turmoil. Premier Walkem lost another no-confidence vote, and A.C. Elliott replaced him as premier on February 1.²⁰⁶ On March 9, *The Colonist* reported that the new government had removed Sproat as Agent-General and abolished the position.²⁰⁷ That same week, Sproat and Matthew Johnston, Sproat & Co.’s representative in Victoria, dissolved their partnership.²⁰⁸ Sproat remained in London only long enough to close up the Agent-General’s office, and he arrived back in Victoria on May 15.²⁰⁹

2.4 SPROAT, THE MAN WHO WOULD BE RESERVE COMMISSIONER

The relatively scant biographical literature about Sproat gives a sense that he was a man from another time, that he somehow possessed rare, if not unique, and perhaps even contemporary sensitivities and sympathies towards British Columbia’s Indigenous people.²¹⁰ However, Sproat was not a man “out of time” but, rather, if anything, a man “out of place.” His ideas were entirely consistent with some of those in England at the time and even, perhaps, in Ottawa. When viewed in their entirety, they form a coherent worldview, consistent with certain Victorian ideas about Indigenous people and their land.

Sproat was born in 1834. He studied and worked in London, England, in the 1850s, and he arrived at age twenty-six in the Colony of Vancouver Island, where he would spend five years before returning to London. As such, Sproat was a man of the Victorian era²¹¹, and his reserve-

²⁰⁵ Sproat to CCLW (18 January 1876), Vancouver, Indigenous & Northern Affairs Canada (Specific Claims West) (Provincial Collection, vol. 1: Minutes of Decision, Correspondence no. 271/76).

²⁰⁶ Foster, “Walkem”, *supra* note 201; Elections B.C., “Electoral History”, *supra* note 174 at 545. Sproat wrote from San Francisco on 28 January 1876: See “Contradiction – Editor Colonist”, *The Daily British Colonist* (1 February 1876) 2, online: <www.britishcolonist.ca>, accessed 20 September 2017.

²⁰⁷ “The Late Agent General”, *The Daily British Colonist* (9 March 1876) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.

²⁰⁸ “Notice”, *The Daily British Colonist* (14 April 1876) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.

²⁰⁹ “Back Again”, *The Daily British Colonist* (16 May 1876) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.

²¹⁰ See, for example, C Harris, *Making Native Space*, *supra* note 61 at 137.

²¹¹ The Victorian era, strictly speaking, was the length of Queen Victoria’s reign, from her ascension to the throne in 1837 to her death in 1901: Martin Hewitt, “Why the Notion of Victorian Britain Does Make Sense” (2006) 48:3 *Victorian Studies* 395.

allotment decisions reflect some of the notable colonial ideas of his time about Indigenous people, including a “stadial” view of human history, beliefs about Indigenous “civilization,” and humanitarianism.²¹²

Yet, as I suggested above and as other “Sproat scholars” note repeatedly, there is something more to Sproat. Perhaps it is the sum of the parts of Sproat – the settler businessman, the ethnographer, the government emigration official – that makes him so intriguing. Perhaps it is that the reserve commissioner position seems explicitly designed for a man of his amalgam of experiences. And perhaps, as some “Sproat scholars” would probably argue, the “something more” comes from Sproat’s individual perspective and is difficult to articulate or identify.

All of these explanations resonate with me. There is no doubt that Sproat’s Vancouver Island experiences and his early attempts to intellectually justify settler occupation and possession of land at the expense of Indigenous peoples would inform his views as reserve commissioner. Although he would have infrequent contact with Indigenous peoples during his visits to British Columbia while resident in London (1865-1876), he delivered a long memorandum on Indian title and related matters immediately upon his appointment as reserve commissioner, suggesting that he had continued to contemplate the nature of Indigenous and settler rights to land. So too, certainly, his combination of experiences – as a mill manager and investor representative, as member of the colonial elite, as a justice of the peace, as a keen observer of Indigenous peoples, and as a government official in London focused on promoting the interests of former colony and encouraging emigration to it – informed his work as reserve commissioner. Moreover, Sproat’s experience was markedly different from that of the other two men appointed as reserve commissioners, giving him perhaps a more balanced and cosmopolitan view of the work at hand and the interests at play.

²¹² McHugh, *supra* note 65 at 121-127. Brett Christophers quotes Reverend Good, who was an Anglican missionary to the Nlha7káp̓mx between 1867 and 1879, as saying that he was in British Columbia “not only to evangelize but to civilize”: Brett Christophers, *Positioning the Missionary: John Booth Good and the Confluence of Cultures in Nineteenth-Century British Columbia* (Vancouver: UBC Press, 1998) at 119. Christophers continues (at 119):

it was clear to him [Reverend Good] that the ‘heathen’ lacked Christian civility as well as Christian Truth. ... Like other Anglican missionaries, he was convinced that moral improvement required enlightenment. Thus, while the colonial government encouraged mission work as an important means to civilize Natives, the Anglicans saw it as the *only* means, for morality without religion was deemed morality without motive, and civilization without Christianity was therefore ‘lame charity.’ A civilized Native population was by definition a Christian population.

Nonetheless, I also have no doubt that another man with similar experiences would not have thought, written, done, or decided what Sproat did. His uncommon qualities are perhaps best summed up by the private tutor under whom Sproat studied between the ages of 19 and 23. In 1869, the tutor, John Wade, observed: “I have always decidedly recognized your very comprehensive and valuable powers of mind, accurate observation, and judicious view of the whole bearings of the given subjects on which you have been engaged. I will not omit to notice the useful practical drift of your views on subjects connected with our common humanity.”²¹³ Although Wade wrote these words over seven years before Sproat was appointed as reserve commissioner, it is the clearest enunciation of the unexampled qualities Sproat brought to the position.

²¹³ Wade to Sproat (14 January 1869) in Sproat Testimonials, *supra* note 3.

Chapter 3: The Joint Indian Reserve Commission's creation and first circuit, 1876-77

In the fall of 1872, the newly-appointed Dominion Indian Superintendent in British Columbia, I.W. Powell¹, forwarded a letter to Ottawa from Sproat's employee, Matthew Johnston, about Nuu-chah-nulth claims to land around Alberni and their opposition to the colonial survey or to settler occupation of land.² Powell's notes on Johnston's letter, probably intended for Ottawa officials, read as follows: "[t]here are no land reservations for Indians on the west coast of this Island (the locality [illegible: "attended"?]) and they (the Indians) consequently claim all lands and inland waters in this region."³ Powell requested guidance from Ottawa concerning "threatened Indian troubles at Alberni," since he was without any instructions regarding his specific duties in the newly-created office he had occupied for only a few weeks.⁴

In turn, the Deputy Superintendent General of Indian Affairs (Deputy Superintendent General) used Powell's information to prepare a "Memorandum relative to difficulties apprehended with British Columbia Indians at Alberni."⁵ In it, the Deputy Superintendent General argued that Powell's communications proved "the absolute necessity for his being empowered to confer with the Local Government, with a view to sufficient Reserves, on a liberal and just scale being set apart, and marked off in survey, for the various Bands of that province." The Deputy repeated a recent suggestion "that each family should be assigned a location of 80 acres of land, of average quality, which would remain permanently the property of the family for whose benefit it would be allotted," and urged that Powell be given immediate authority:

¹ The Dominion appointed Powell on 7 October 1872 by Order-in-Council, PC 1872-0907. The Deputy Superintendent General advised Powell of his appointment by letter on October 9 and asked for a full report on Indian affairs in British Columbia: Spragge, Deputy Superintendent General, to Powell (9 October 1872), Ottawa, Library and Archives Canada [LAC] (RG 10, vol. 3581, f. 829). The Deputy Superintendent General advised Lieutenant Governor Trutch of Powell's appointment the following day: Spragge to Trutch (10 October 1872), Ottawa, LAC (RG 10, vol. 3581, f. 829).

² Johnston to Powell (20 November 1872), Ottawa, LAC (RG 10, vol. 3583, f. 1062). Johnston enclosed letters he had already written to the Lieutenant Governor "on the subject of the unsatisfactory relations existing with the Indians at Alberni."

³ *Ibid.*

⁴ Powell to Spragge (28 November 1872), Ottawa, LAC (RG 10, vol. 3583, f. 1062).

⁵ Spragge, "Memorandum relative to difficulties apprehended with British Columbia Indians at Alberni" (3 January 1873), Ottawa, LAC (RG 10, vol. 3583, f. 1062).

to confer with the Local Government in regard to Indian Reserves already set apart and which may require to be extended and the outlines marked out in survey, and for the setting apart such additional reserves as in his judgment he may deem to be important, for the purpose of fulfilling the just expectations of those Indians who have cause for complaint, and thus by a judicious interposition in this [illegible] induce feelings of amity and attachment to the Government of the Dominion.⁶

The Deputy Superintendent General's memorandum resulted in a Dominion Order-in-Council on March 21, 1873, the Dominion's opening position in what became a multi-year negotiation between the Dominion and the province over the responsibility to set aside Indian reserves in British Columbia.⁷ This Order-in-Council refers to Powell's correspondence, the Deputy Superintendent General's memo, and the "difficulties apprehended with British Columbia Indians at Alberni," listing Powell's recitation of Johnston's complaints about land-related conflicts between settlers and the Nuu-chah-nulth at Alberni. It resolved that each family be assigned 80 acres and that Powell be authorized, in the short term, to visit the "Coast Indians" in the Dominion steamer and British naval gunboat "with a view to a settlement of their land disputes" and, in the long term, "to confer with the Local Government with the view to sufficient Reserves, on a liberal and just scale being set apart, and marked off in survey, for the various bands of that province."⁸

This correspondence about Nuu-chah-nulth claims in 1872 initiated a process that, four years later, culminated in the creation of the Joint Indian Reserve Commission (JIRC). Ultimately, the province would not agree to the Dominion's suggested eighty acres or even to forty acres per family, leading to a protracted dispute resolved only when the province and the Dominion agreed, as Cole Harris puts it, to a "*modus vivendi*" that did not provide for any fixed acreage.⁹ In November 1875, the Dominion passed an Order-in-Council setting out terms for the allotment of Indian reserves in British Columbia should be allotted, terms largely based on a

⁶ *Ibid.*

⁷ PC 1873-0275.

⁸ *Ibid.*

⁹ PC 1875-1088; Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: UBC Press, 2002) at 94-95; see generally 74-76, 86-98 [C Harris, *Making Native Space*]. Robin Fisher also discusses the negotiations leading to the JIRC's creation in Robin Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890*, 2nd ed. (Vancouver: UBC Press, 1992) at 175-188 [Fisher, *Contact and Conflict*]. Paul Tennant discusses this time period in Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989* (Vancouver: UBC Press, 1990) at 46-49.

provincial report from August 1875: each government would appoint one “Indian reserve commissioner,” and they would jointly appoint a third; the commissioners would then visit each Indian nation and “fix and determine for each nation separately, the number, extent, and locality of the reserve or reserves to be allowed to it.”¹⁰ British Columbia accepted these terms with its own Order-in-Council on January 6, 1876,¹¹ and when it did the path opened for the appointment of commissioners to the Joint Indian Reserve Commission (JIRC).

3.1 DOMINION AND PROVINCIAL INSTRUCTIONS TO THE RESERVE COMMISSIONERS

On January 18, 1876, less than two weeks after the province accepted the Dominion’s terms regarding the establishment of the JIRC, Sproat wrote to the provincial Chief Commissioner of Lands and Works (CCLW) offering his services as Indian reserve commissioner.¹² He was still the province’s Agent-General, although he likely knew his days in the position were numbered, and the new government fired him in early March. He arrived back in Victoria from London on May 15, not having heard anything about the reserve commissioner position.¹³

It was not until August that the provincial government recommended Sproat as the third, jointly-appointed commissioner to the JIRC, after the Dominion had appointed Alexander C. Anderson in May and the province Archibald McKinlay in late July.¹⁴ The Minister of the Interior quickly seconded Sproat’s appointment, and the Dominion appointed him by Order-in-

¹⁰ PC 1875-1088.

¹¹ British Columbia, “Report of a Committee of the Honorable the Executive Council, approved by His Excellency the Lieutenant Governor on the 6th day of January, 1876” reproduced in Parliament, “Annual Report of the Department of Interior for year ended 30 June 1875 – Special Appendix” (Ottawa: Parliament, 1876) at 50.

¹² Sproat to CCLW (18 January 1876), Vancouver, Indigenous & Northern Affairs Canada (Specific Claims West) (Provincial Collection, vol. 1: Minutes of Decision, Correspondence no. 271/76).

¹³ “Back Again”, *The Daily British Colonist* (16 May 1876) 3, online: <www.britishcolonist.ca>, accessed 24 September 2017.

¹⁴ Richards to Secretary of State for Canada (5 August 1876), Ottawa, LAC (RG 10, vol. 3633, f. 6425-1, reel C-10111); Sproat and McKinlay to Elliott, Attorney-General (9 October 1876), Ottawa, LAC (RG 10, vol. 1273, p.53, reel C-13900). Anderson and McKinlay were both former Hudson’s Bay Company employees and had met, worked together, and become friends as early as 1835: Nancy Marguerite Anderson, *The Pathfinder: A.C. Anderson’s Journeys in the West* (Toronto: Heritage House Publishing Company Ltd., 2011) at 54, 56, 163, 168.

Council on August 16, notifying the province of Sproat's appointment by telegram.¹⁵ On August 25, the Dominion sent Sproat a letter advising him of his appointment and enclosing its instructions to Anderson, which were to be Sproat's "guide as to the views of the Dominion Government."¹⁶ Sproat was "to act in accordance therewith so far as is consistent with your position as a Joint Commissioner for both Governments."¹⁷ On October 23, the provincial government, who had received copies of the Dominion instructions¹⁸, provided Sproat and McKinlay with nearly identical instructions, which differed slightly from those of the Dominion.¹⁹

Sproat's instructions did not change once he succeeded the three-man Commission as sole commissioner in March 1878, and though the two sets of instructions differed slightly, Sproat never appears to have felt a conflict between them.²⁰ In fact, the instructions were more similar than they were different. For example, the Dominion and the province instructed the commissioners to assure the province's Indigenous people of the government's intention "to deal justly and reasonably with them" and to assist them to raise themselves socially, morally, and physically so that they may "enjoy all the privileges and advantages" enjoyed by their fellow white "subjects" (Dominion instructions) or "brethren" (provincial instructions).

However, the instructions differ subtly in several ways. With respect to the size of reserves, the Dominion's instructions focused on not disturbing Indigenous ways of life: it was "theoretically desirable" to concentrate each "Indian nation" on three or four large reserves and

¹⁵ Minister of the Interior, "Memorandum" (15 August 1876), Ottawa, LAC (RG 10, vol. 3633, f. 6425-1, reel C-10111); PC 1876-0779, Ottawa, LAC (RG 10, vol. 3633, f. 6425-1, reel C-10111); Langevin to Elliott (22 August 1876), Ottawa, LAC (RG 10, vol. 3633, f. 6425-1, reel C-10111).

¹⁶ [Unsigned] to Sproat (25 August 1876), Ottawa, LAC (RG 10, vol. 3633, f. 6425-1, reel C-10111); "Memorandum of Instructions to the Dominion Commissioner on the British Columbia Indian Land Question" (25 August 1875), Ottawa, LAC (RG 10, vol. 3633, f. 6425-1, reel C-10111). I reproduce these instructions in Appendix C.

¹⁷ All quotations in this paragraph from [unsigned] to Sproat (25 August 1876), *supra* note 16.

¹⁸ Sproat to Elliott, Attorney-General (12 September 1876), Victoria, B.C. Archives (GR-429, box 1, file 5, reel B-9318). See also Sproat and McKinlay to Elliott, Attorney-General (9 October 1876), *supra* note 14, indicating that Sproat provided a copy of his Dominion instructions to the Province.

¹⁹ Memorandum of Instructions to Gilbert Malcolm Sproat (23 October 1876), Ottawa, LAC (RG 10, vol. 3633, f.6425-1, reel C-10111). I reproduce these instructions in Appendix D. See also Memorandum of Instructions to Archibald McKinlay (23 October 1876), Victoria, B.C. Archives (GR-494 at 1).

²⁰ The Dominion appointed Sproat as the sole commissioner in March 1878: PC 1878-0170. See also Sproat to Lieutenant Governor, accepting the position as sole commissioner (16 March 1878), Victoria, B.C. Archives (GR-494 at 606).

to limit the number of small reserves, but the commissioners were not to do “any needless violence to existing tribal arrangements.” If “natural physical barriers” or “differences in the habits, pursuits and modes of life of different portions of the nation or for other causes” meant that each nation needed three or more reserves, then, “in determining the number of reserves to be assigned to any particular Indian nation,” the commissioners were to “be guided rather by the special circumstances of that nation, their habits, tastes, pursuits and physical surroundings, than by any fixed theoretical rule.” In particular, they were “especially not to disturb the Indians in the possession of any villages, fishing stations, fur-trading posts, settlements or clearings, which they may occupy and to which they may be specially attached, and which may be to their interest to retain.” In a similar vein, the Dominion instructed the commissioners not “to attempt to make any violent or sudden change in the habits of the Indians, or that those who are now engaged in fishing, stock-raising, or in any other profitable branch of industry should be diverted from their present occupations or pursuits, in order to induce them to turn their attention to agriculture.” The Dominion qualified the reserve-what-they-use instruction in the circumstance that a “special objection” recommended against allotting particular land as a reserve, “for example, where the Indian settlement is in objectionable proximity to any city, town, or to a village of white people.”

On the other hand, the province placed the interests of the “white settlers” ahead of Indigenous interests. It instructed the commissioners not to apportion any “unnecessarily large Reserves such as would interfere with the progress of white settlement” and urged them to use “mature and unbiased judgment... so that while you endeavor in all cases to act with a liberal spirit toward the Indians, you do not imperil the progress of white settlement by conceding unnecessarily large Reserves.” When the province listed the factors the commissioners should consider in allotting the reserves, it included settlers’ land claims: “each Nation has to be dealt with severally, regard being had to the spirit of the British Columbia terms (which contemplate a liberal policy being pursued towards the Indians) – to the habits, wants and pursuits of each nation – the amount of available territory in each region – and to the claims of the white settlers.” However, the province also sought to preserve Indigenous-occupied lands and urged its commissioners to “be guided... by the habits, tastes, pursuits and physical surroundings of each Nation than by any fixed preconceived determined rule.” In “all cases where convenient,” the reserves should “be in such spots as are endeared to the Indians by habit or association.” The commissioners should not deprive the Indigenous people, “without cogent reasons, of any small

isolated or particular spots, of no real value in themselves but endeared to the race who have occupied them.” Moreover, commissioners were to “avoid disturbing them in their proper and legitimate avocations whether of the chase or of fishing, whether pastoral or agricultural.” However, despite the similarities, the province’s emphasis differed from the Dominion’s. Whereas the Dominion instructed its commissioners to “endeavor to allay the fears existing among the Indians in reference to land matters . . . and to carefully avoid anything which might be calculated to alarm or disturb the Indian mind,” the province instructed its commissioners to “seek to avoid on all occasions either disturbing their minds or unnecessarily raising their hopes.”

3.2 THE JIRC AND INDIAN TITLE

By September 12, 1876, the Dominion-appointed commissioners, Anderson and Sproat, sent a telegram to the Minister of the Interior advising, “[i]nstructions received. Commission organized and ready.”²¹ In mid-September, the commissioners asked for an interview with the Governor General of Canada, Lord Dufferin, then in Victoria to placate British Columbia over the Dominion’s failure to build the transcontinental railway and “to soothe the province” generally.²² They wanted him to convince the Minister of the Interior to increase the Commission’s funding.²³ The Governor General met with the commissioners, and they discussed “the Indian question,” but Sproat claims to have only gained the “full breadth of his views as to the Indian title to the soil in this part of the world” from the extraordinary public speech Dufferin gave at Government House in Victoria on September 20.²⁴ In that speech, Dufferin admonished the province for failing to recognize and extinguish Indian title through treaties, something the Dominion was doing across the former Rupert’s Land and North-Western Territory lands which

²¹ Anderson & Sproat telegram to Minister of the Interior (12 September 1876), Ottawa, LAC (RG 10, vol. 1273, p.38, reel C-13900).

²² Dufferin was also in New Westminster and toured various parts of the province. Keith Carlson discusses and analyzes his various meetings with and documents from Indigenous groups in Keith Thor Carlson, *The Power of Place, the Problem of Time: Aboriginal Identity and Historical Consciousness in the Cauldron of Colonialism* (Toronto: University of Toronto Press, 2010) at 240-247.

²³ Moffatt to Littleton (14 September 1876), Ottawa, LAC (RG 10, vol. 1273, p.19, reel C-13900); “For the First Time since British Columbia Was Incorporated with Canada the Governor-General of the Dominion Has Visited the New Province”, *The [London, England] Morning Post* (22 August 1876) 4.

²⁴ Sproat to Minister of the Interior, “Memorandum on the ‘Indian problem’” (29 September 1876), Victoria, B.C. Archives (MS 0257, file 15 at 48-52) at 16 [Sproat, “Memorandum on the ‘Indian problem’”].

the Hudson's Bay Company transferred to the Dominion in 1870 (in what is today Manitoba, Saskatchewan, and Alberta):

Now we must all admit that the condition of the Indian question in British Columbia is not satisfactory. Most unfortunately, as I think, there has been an initial error ever since Sir James Douglas quitted office, in the Government of British Columbia neglecting to recognise what is known as the Indian title. In Canada this has always been done: no Government, whether provincial or central, has failed to acknowledge that the original title to the land existed in the Indian tribes and the communities that hunted or wandered over them. Before we touch an acre we make a treaty with the chiefs representing the bands we are dealing with, and having agreed upon and paid the stipulated price, oftentimes arrived at after a great deal of haggling and difficulty, we enter into possession, but not until then do we consider that we are entitled to deal with a single acre. The result has been that in Canada our Indians are contented, well affected to the white man, and amenable to the laws and Government.

At this very moment the Lieutenant Governor of Manitoba has gone on a distant expedition in order to make a treaty with the tribes to the northward of the Saskatchewan. Last year he made two treaties with the Crees and Chippeways, next year it has been arranged that he should make a treaty with the Blackfeet, and when this is done the British Crown will have acquired a title to every acre that lies between Lake Superior and the top of the Rocky Mountains.

But in British Columbia – except in a few places where, under the jurisdiction of the Hudson Bay Company or under the auspices of Sir James Douglas, a similar practice has been adopted—the Provincial Government has always assumed that the fee simple in, as well as the sovereignty over the land, resided in the Queen. Acting upon this principle they have granted extensive grazing leases, and otherwise so dealt with various sections of the country as greatly to restrict or interfere with the prescriptive rights of the Queen's Indian subjects. As a consequence, there has come to exist an unsatisfactory feeling amongst the Indian population. Intimations of this reached me at Ottawa two or three years ago, and since I have come into the province my misgivings on the subject have been confirmed.

Now, I consider that our Indian fellow-subjects are entitled to exactly the same civil rights under the law as are possessed by the white population, and that if an Indian can prove a prescriptive right of way to a fishing station, or a right of any other kind, that that right should no more be ignored than if it were the case of a white man.²⁵

Dufferin then subtly linked the issue of Indian title to the Joint Indian Reserve Commission: “I am very happy that the British Columbian Government have recognised the

²⁵ Henry Milton, ed, *Speeches and Addresses of the Right Honourable Frederick Temple Hamilton, Earl of Dufferin* (London: John Murray, 1882) at 209–211. I have added paragraph breaks for ease of reading. Paul Tennant discusses this speech briefly in Tennant, *supra* note 9 at 49-50. Robin Fisher also discusses and quotes from Dufferin's speech in Robin Fisher, “Joseph Trutch and Indian Land Policy” (Winter 1971-72) 12 BC Studies 3 at 26.

necessity of assisting the Dominion Government in ameliorating the present condition of affairs in this respect, and that it has agreed to the creation of a joint commission for the purpose of putting the interests of the Indian population on a more satisfactory footing.”²⁶

A few days later, following Dufferin’s references to Indian title “in conversation and also publicly,” and because he had told Dufferin he would “send a statement of my views on the subject to Ottawa and perhaps His Excellency may find time to read [it],” Sproat sent a 79-page memorandum to the Minister of the Interior, providing his views on many things but, most importantly, on Indian title, treaties for the extinguishment of Indian title, and Indian reserves.²⁷

Sproat spent many pages discussing the extent to which Imperial, Dominion, and British Columbian policy recognized Indian title. He considered whether each jurisdiction required the extinguishment of Indian title by treaty before the Crown legitimately acquired title and could begin making land grants. The Dominion’s position, he concluded, was that Indian title covered all the land, not just lands occupied by Indigenous people.²⁸ Although he refrained “from expressing any opinion as to this policy, for my mind is open on the subject,” he perceived this policy to be different from Britain’s. He cited Vattel as the basis for what he understood as Britain’s more limited understanding of Indian title:

There is probably not much use in referring to old authorities, still I may remind you, that Vattel, Chapter 18, states, that the above rule may be considered to be an established part of the law of nations. “The law of Nations,” he says, “only acknowledges the property and sovereignty of a nation over uninhabited countries of which they shall really and in fact take possession; in which they shall form settlements, or of which they shall make actual use.”

“A nation may lawfully take possession of a part of a vast country in which are found none but erratic nations incapable by the smallness of their numbers to people the whole. The earth belongs to the human race in general, and was designed to furnish it with subsistence.”

²⁶ Milton, *supra* note 25 at 210.

²⁷ Sproat to Minister of the Interior (30 September 1876), Ottawa, LAC (RG 10, vol. 3637, f. 7131), enclosing Sproat, “Memorandum on the ‘Indian problem’”, *supra* note 24. This memorandum is well-canvassed in the literature on Sproat, including in Hamar Foster, “Letting Go the Bone: The Idea of Indian Title in British Columbia, 1849-1927” in Hamar Foster and John McLaren, eds., *Essays in the History of Canadian Law, Volume VI: British Columbia and the Yukon* (Toronto: University of Toronto Press for The Osgoode Society for Canadian Legal History, 1995) 28 at 61-64, and C Harris, *Making Native Space*, *supra* note 9 at 98-103.

²⁸ Sproat, “Memorandum on the ‘Indian problem’”, *supra* note 24 at 44.

“If each nation had resolved from the beginning to appropriate to itself a vast country that the people might live only by hunting, fishing and wild fruits, our globe would not be sufficient to maintain a tenth part of its present inhabitants. People have not therefore deviated from the views of nature in confining the Indians within narrow limits.”

These views will seem to many persons to be reasonable, and many probably will agree with this old Jurist in considering that the Indian right of possession stands, with respect to the greater part of the country, upon a somewhat questionable foundation. The law of nations and also, I imagine, the common law of England (and English colonies where it operates) would, if they could sue, be sufficient to secure to the Indians their cultivated Fields, their constructed habitations, the amenities of their dwellings, also whatever they had annexed to themselves by personal labor. Again, humanity and wise policy on the part of intruders of a superior race, would secure to the Indians tracts of land of ample sufficiency for their subsistence, and would also dictate laws of intercourse between the races, seeing that the Indians are incompetent to manage their own business, in the midst of an industrious and complex community of civilized men.

But is not the question of Indian rights to anything beyond the above a little open?²⁹

Sproat then articulated what he thought the “practical question”: “does Canada propose to apply this principle of the full Indian title in the land, to the Indians of British Columbia?”³⁰ If so, Sproat felt it was “necessary that the reserve commissioners be instructed immediately to make treaties for the cession of the land and as to what is to be given to the Indians for them.”³¹ Sproat advised that “this treaty making, evidently, would be a work of much time and possibly of great cost.”³²

He also wondered whether, if the government acted to “buy the land rights” of the Indigenous people in areas not yet settled by Europeans, the Indigenous people who already had reserves “in the best farming districts of the province” would “expect to be recompensed for the land around their present reserves (which they will consider they can claim on the principle of their having had a full title) which are now cultivated and held at high prices by white settlers?”³³ Sproat explained: “[t]hese Indians are very keen in all matters of business, and if you lay down a general principle, they apply it rapidly and logically to their own case. I confess I do not see at

²⁹ *Ibid* at 18-22.

³⁰ *Ibid* at 48-52.

³¹ *Ibid*.

³² *Ibid* at 51.

³³ *Ibid* at 48-52.

present how the proposal can be carried out at any reasonable cost.”³⁴ Ever the pragmatist, Sproat advised the Minister: “[h]ad the country been vacant or with but few whites in it, the matter would have been different, but the government of Canada have to deal with an existing state of affairs.”³⁵ Sproat recommended that the Dominion consider the probable cost of treaty-making in the province and then determine whether it was necessary.³⁶ Until he heard from the Dominion on the question of the extinguishment of Indian title, Sproat proposed the following:

the commissioners go on with their work as regards the reserves, without reference to the presumed “full title” of the Indians. No pledges of any kind should be made to Indians without an absolute certainty as to the power of performing them.

If any of the tribes made claims under this full title, it might be possible to settle with them, without payment of money or goods, by allotting to them an extra quantity of Crown lands for their reserves, but this clearly would require the consent of the province, as it would be using provincial lands to satisfy claims under a title which the province has never admitted, but on the contrary has distinctly denied.

I may here repeat that I am not objecting to the principle, nor defending it, but merely wish to point out how it bears on present circumstances.³⁷

Sproat wrote a separate covering letter to the 79-page memorandum in which he added “a word or two” on “the question of the full Indian title to the Country, and the supposed necessity of extinguishing such full title,” a matter which he feared was “larger and likely to be more costly than the Government imagine.”³⁸ Sproat reacted to Dufferin’s speech, telling the Minister bluntly that Dufferin should not have “enunciated” the principle of “full Indian title to the country” in British Columbia. Sproat doubted that the Canadian Parliament would vote to fund treaties to extinguish the Indian title, as the cost was too high. Moreover, he thought that even if Parliament did take these steps, “the Indians would be no more satisfied than they were before it was paid. It would therefore be a waste of money.” On the other hand, he recognized that “[t]he difficulty now is that the new principle is known everywhere. The Indians in this province are wide awake; halfbreeds in Victoria read the newspapers to Indians who transmit the news from

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid* at 52.

³⁷ *Ibid* at 52-54; underlining in original.

³⁸ Sproat to Laird, Minister of the Interior (30 September 1876), Ottawa, LAC (RG 10, vol. 3637, f. 7131); underlining in original.

tribe to tribe, with a rapidity that outstrips the mail.” As a result, Sproat thought the commissioners needed to know from the Minister what the Dominion required, “looking to these facts and to the non existence of any treaty Indians at all in British Columbia at present. If the Indians ask about this new principle what are the commissioners to do? Are they to lay out the Reserves, & depart, leaving the Indians more dissatisfied than ever, under the notion that the commissioners are evading a settlement with them contrary to the Queen's wishes?”

Ultimately, Sproat reiterated what he had said in his memorandum: that it would have been better to regard British Columbia as a “special part of Canada as regards Indian matters,” to have exempted the province from the *Indian Act* almost entirely, “to have said nothing about treaties or full title to the Indians, and then instructed the commissioners to go straight ahead & endeavour to please the Indians by liberal reserves, without reference to any particular principle.” In this way, Sproat urged, “[j]ustice thus would have been done & the people would have been satisfied. If you pet Indians, or give them new, unaccustomed vague ideas of their rights, you cannot satisfy them by any expenditure.”³⁹ In fact, the following summer, the new Minister of the Interior, David Mills (who would take office just a few weeks after Sproat wrote his letter and memorandum), would instruct the commissioners, essentially, to do just what Sproat had urged.

3.3 THE JIRC’S FIRST CIRCUIT AROUND THE SOUTH COAST

Before the governments appointed Sproat, Anderson and McKinlay had agreed that the Commission should begin its work at Kamloops because the Secwépemc⁴⁰ and Syilx⁴¹ were complaining vigorously about their unaddressed land claims.⁴² However, the delay in establishing the commission and the difficulty of winter travel prompted the commissioners to begin on the coast, in the New Westminster District.⁴³

³⁹ *Ibid.*

⁴⁰ The Shuswap Nation Tribal Council now represents the Secwépemc (formerly anglicized as “Shuswap”); see online: <<http://shuswapnation.org/>>, accessed 12 September 2017.

⁴¹ These are the Syilx/Okanagan people of the Okanagan Nation; see online: <<https://www.syilx.org/about-us>>, accessed 18 September 2017.

⁴² Anderson to Minister of the Interior (17 August 1876), Ottawa, LAC (RG 10, vol. 3633, f. 6425-1, reel C-10111).

⁴³ Moffatt to Minister of the Interior (21 September 1876), Ottawa, LAC (RG 10, vol. 1273, 41, reel C-13900).

The commissioners left Victoria for New Westminster on November 3,⁴⁴ and over the next five months, they met with at least nineteen Indigenous groups.⁴⁵ First, they travelled around the Lower Mainland, visiting the Musqueam, Squamish, and Tsleil Watuth (Burrard Inlet) peoples. They then went north to Squamish territory in what is now Howe Sound and further up the coast to Sechelt territory. In mid-December, they crossed to Vancouver Island and worked their way down the island,⁴⁶ arriving back in Victoria on March 9, 1877.⁴⁷ During this first circuit, the commissioners dealt with the lands of some 2,900 Indigenous people.⁴⁸ In most places, the commissioners discovered that settlers were already occupying land in the region and that previous colonial governments had set aside some lands as Indian reserves. Most of these existing reserves had been discretionary allotments by the colonial government, but some on Vancouver Island had been allotted pursuant to the Douglas or Vancouver Island Treaties, the fourteen agreements Hudson's Bay Company Chief Factor James Douglas made with Indigenous groups, 1850-54.⁴⁹

Although the Dominion had known about the Vancouver Island Treaties at least since Langevin's Report in 1872 – Langevin had set out in full two of the “treaties made with Indian tribes for purchase of their lands” and had included a detailed listing he had received from the CCLW of all fourteen treaties⁵⁰ – the reserve commissioners, and especially Sproat, did not initially know quite what to make of the Treaties. They even wondered if they had jurisdiction to alter reserves set aside pursuant to the Treaties, as they considered them to be the result of “a

⁴⁴ Sproat to Superintendent General (6 May 1878), Ottawa, LAC (RG 10, vol. 3663, f. 9802).

⁴⁵ Cole Harris discusses this first circuit in *Making Native Space*, *supra* note 9 at 105-118. Robin Fisher discusses it in *Contact and Conflict*, *supra* note 9 at 190-191.

⁴⁶ All information in this paragraph is from JIRC to Minister of the Interior, “Report of the proceedings of the Joint Commission for the settlement of the Indian Reserves in the Province of British Columbia” (21 March 1877), Ottawa, LAC (RG 10, vol. 3645, f. 7936) [JIRC's Dominion Report (21 March 1877)]. The JIRC sent a similar Memorandum to A.C. Elliott, Provincial Secretary (undated), Victoria, B.C. Archives (GR-494 at 220).

⁴⁷ Sproat to Superintendent General (6 May 1878), *supra* note 44.

⁴⁸ Blenkinsop, “Abstract of Census and Inventory of Live Stock” (3 November 1876 to 2 March 1877), Victoria, B.C. Archives (GR-494 at 295).

⁴⁹ For a discussion of the Vancouver Island Treaties, see, for example, Wilson Duff, “The Fort Victoria Treaties” (Fall 1969) 3 BC Studies 3; and Neil Vallance, *Sharing The Land: The Formation of the Vancouver Island (or “Douglas”) Treaties of 1850-1854 in Historical, Legal and Comparative Context* (PhD dissertation, University of Victoria, 2015) [unpublished].

⁵⁰ Canada, Ministry of Public Works, British Columbia: Report of the Hon. H.L. Langevin, C.B., Minister of Public Works (Ottawa: Parliament, 1872) at 183-187.

sale or agreement to convey for a valuable consideration.”⁵¹ Sproat described the agreement with the Songhees around Victoria as a “special deed of sale” that did not “raise the whole question of the Indian title to the Land suggested in Lord Dufferin’s speech.” Nonetheless, he worried that if the agreement were to “fall through,” then “the Indians might claim again the large now settled district which they relinquished for the village site now in question.”⁵² A year later, Sproat would describe the Vancouver Island Treaties quite differently: they were “old written agreements between tribes in Vancouver Island and Mr. Douglas Governor of Hudson’s Bay Co acting on behalf of the Crown, by which the [Indian] title was recognized and extinguished on certain conditions.”⁵³

The JIRC records reveal that the commissioners heard many variants of three principal and recurring complaints from Indigenous peoples on this first circuit: the colonial government had set aside too few reserves; the reserves were too small; and settlers had encroached on existing reserves and, more generally, on Indigenous land.⁵⁴ The decisions of the JIRC in respect of complaints by the Snuneymuxw (Nanaimo) provide an idea of the land disputes that had developed over the approximately twenty-five years of European settlement. First, the commissioners agreed to allow a deceased settler’s children to keep land that was part of the colonial Indian reserve but on which their father had built a house and buildings. They added equivalent land to the reserve to make up for the loss. Second, although the commissioners decided that the “Indian village” was “too near the town and interferes with its development,” they decided not to allot land elsewhere for a new reserve, because “the Indians so strongly objected to remove the village, for reasons by no means unreasonable from their point of view.” Third, while the Snuneymuxw greatly desired a piece of land on the left bank of the Nanaimo river, near its entrance – most likely it was a long-standing fishing place – a coal company held this land under a Crown grant, and the commissioners could not allot it as a reserve. Fourth, the commissioners refused the mayor of Nanaimo’s request for a small reserve near the city on which Indigenous people travelling up or down the coast or coming to Nanaimo in search of

⁵¹ Sproat to Deputy Minister Meredith (23 March 1877), Ottawa, LAC (RG 10, vol. 3646, f. 7959). See also JIRC to Powell (20 April 1877), Ottawa, LAC (RG 10, vol. 1273); and Sproat and McKinlay to Attorney General of British Columbia (27 April 1877), Ottawa, LAC (RG 10, vol. 1273).

⁵² Sproat to Deputy Minister Meredith (23 March 1877), *supra* note 51.

⁵³ Sproat to Superintendent General (6 May 1878), Ottawa, LAC (RG 10, vol. 3662, f. 9756, pt. 1).

⁵⁴ For a discussion of the JIRC’s first circuit, see C Harris, *Making Native Space*, *supra* note 9 at 105-118.

work could stay. The mayor wanted this reserve because he objected to the “strange Indians” encamping “here, there and everywhere, on private property.” Fifth, the commissioners reported to Powell a Snuneymuxw complaint that a settler was logging part of the reserve and making roads to do so, but they recommended that it might not be necessary “to deal hardly with him.” Sixth, the commissioners did not report to Powell a “white squatter [who] had encroached, in a high handed manner, on the fenced potatoe grounds of an old fishing station of the Nanaimo Indians at the south end of Gabriola Island.” Although the commissioners knew this place was “one of those places which, by our instructions, we have specially to secure to the Indians,” they decided that since the squatter was “a new comer, who appeared to have acted on misinformation,” they would make a decision allowing both the squatter and the Snuneymuxw to use the land: they confirmed “to the Indians a small piece of land, so shaped as to include their houses, potatoe patch, and a little woodland for fuel, without compelling M Martin to remove his house, or lose the fruit of his past labour.” These were the decisions for just one of the approximately nineteen Indigenous groups with whom the commissioners met.⁵⁵

As the commissioners worked through the many local conflicts, trying to resolve them, they adhered to their instructions, not allotting any particular acreage to each group but instead attempting “throughout to meet the just and reasonable expectations of the Indians, while at the same time endeavouring to fulfil, where possible, the wishes of the Governments, by assigning compact Reserves of considerable area.”⁵⁶ However, at the end of their circuit they reported to the Superintendent General of Indian Affairs (Superintendent General) generally on Indigenous complaints about past land dealings:

The Indians generally expressed themselves to the Commissioners in a loyal manner, and appeared to get on fairly well, with their white neighbours, but it was impossible not to notice, in some parts, that they distrusted the action of the governments with reference to their lands. They said that, first one Chief had come, then another, and another, all saying the same things, and all, afterwards, cutting and carving their lands, and that, after the Commissioners had gone, perhaps some other Chief would come, and undo their acts.⁵⁷

⁵⁵ Sproat, “Summarised Report of the Joint Commissioner appointed by the governments of Canada and British Columbia,” enclosed with Sproat to Minister of the Interior (29 March 1877), Ottawa, LAC (RG 10, vol. 3611, f. 3756-11) [Sproat, “Summarised Report” (29 March 1877)].

⁵⁶ JIRC’s Dominion Report (21 March 1877), *supra* note 46. The JIRC sent virtually an identical report to the Provincial Secretary (undated), Victoria, B.C. Archives (GR-494 at 220-261).

⁵⁷ JIRC to Superintendent General (7 April 1877), Ottawa, LAC (RG 10, vol. 3641, f. 7567).

Within a few weeks of this report, the governments rushed the commissioners to Kamloops, where they had intended to begin their work the previous fall. There, they were to address exactly what the coastal Indigenous groups on their first circuit had complained of: Crown or Crown-authorized takings of their lands.

3.4 SPROAT AND THE “HUMANITARIAN CIVILIZING” OF INDIGENOUS PEOPLES

The eight months from the governments’ appointment of Sproat as the joint commissioner to the JIRC in August 1876 and the JIRC’s conclusion of its first circuit in March 1877, provide many insights into Sproat’s beliefs about the “humanitarian civilizing” of Indigenous peoples. These beliefs, which Sproat articulated first in his *Scenes and Studies of Savage Life* in 1868, appear little-changed during his first year as a reserve commissioner. Although two other factors influenced Sproat’s work as commissioner – the government’s instructions and his understanding of Indian title – his beliefs about “humanitarian civilizing” continued to exert the dominant influence on his decisions.

Sproat’s instructions from the two governments appear to have been front of mind during the JIRC’s first circuit. He referred to them often in his correspondence to the governments and appeared to rely on them much more than he would in subsequent circuits.⁵⁸ When writing to the Dominion, for example, he assured the Minister of the Interior that “it appeared to me that everything was done to give proper effect to the instructions of the Dominion Government.”⁵⁹ Similarly, when writing to the province, he explained that the commissioners had “endeavoured, as far as possible, to give effect to the instructions of the provincial government.”⁶⁰ Even with their instructions, Sproat and McKinlay admitted bluntly that “as Provincial Commissioners, we have rather specially to look to the interests of white settlers.”⁶¹ Thus, the governmental instructions prompted Sproat and his fellow commissioners to reconcile conflicting interests in land: to the extent that the instructions directed the commissioners to different outcomes – the

⁵⁸ See, for example, Sproat to Minister of Interior (27 November 1876), Ottawa, LAC (RG 10, vol. 3611, f. 3756-7).

⁵⁹ Sproat, “Summarised Report” (29 March 1877), *supra* note 55.

⁶⁰ Sproat and McKinlay, “Summarised Report of the Indian Reserve Commissioners acting for the Government of British Columbia” (22 March 1877), Victoria, B.C. Archives (GR-494 at 270a).

⁶¹ Sproat and McKinlay to Elliott (B.C. Attorney General) (20 April 1877), Ottawa, LAC (RG 10, vol. 1273).

province emphasizing settler interests, the Dominion requiring greater regard to Indigenous interests – the commissioners had to find compromise.

Indian title was another important factor informing the commissioners' reserve-allotments in the JIRC's first circuit, although one that was more fully felt in its second circuit. At the end of the first circuit, the commissioners explained to the Superintendent General what the Coast Salish people understood about Indian title: "[t]he Indians generally have a tolerably correct notion of the principles of the Canadian Indian policy adopted on the east side of the Rocky mountains" – the Dominion's recognition of Indian title and the negotiation of treaties for its extinguishment – "and are aware that it causes a considerable expenditure among the Indians of that region, in addition to the allotment of land reserves."⁶² However, the commissioners also explained that they had "been able to arrange actual land questions in British Columbia without reference to any questions involving money payments for extinguishment of presumed land title or annuities."⁶³ The JIRC and then Sproat continued to follow this approach to reserve-allotment through to Sproat's resignation in 1880.

Within the framework of the instructions and understandings of Indian title, the reserve commissioners exercised considerable discretion in their decision-making. Sproat's beliefs about the "humanitarian civilizing" of Indigenous peoples guided his exercise of that discretion in the first circuit.⁶⁴ Indeed, the "humanitarian civilizing" of Indigenous peoples was his "North Star" in his work as reserve commissioner. In his first reporting letter to the Minister of the Interior, Sproat explained that the Squamish people had told the commissioners that they "were anxious that they should not be taken away from their homes, and placed on large reserves." They wanted to continue to enjoy, just like white people, "the right of moving about freely, and seeking employment or occupation where they pleased. They particularly asked whether they would be allowed to hunt and fish as usual."⁶⁵ Sproat reported the same but more widespread Indigenous concerns at the end of the first circuit.⁶⁶ In addressing this concern, Sproat linked the

⁶² JIRC to Superintendent General (7 April 1877), *supra* note 57.

⁶³ *Ibid.*

⁶⁴ Cole Harris adverts briefly in *Making Native Space* to Sproat's linking of Indigenous cultivation of the land to Indigenous "progress" and "civilization": C Harris, *Making Native Space*, *supra* note 9 at 101, 108, and 137.

⁶⁵ Sproat to Minister of Interior (27 November 1876), *supra* note 58.

⁶⁶ Sproat, "Summarised Report" (29 March 1877), *supra* note 55.

commissioners' exercise of discretion under their instructions to the goal of "humanitarianly civilizing" Indigenous people:

the Commissioners were glad to be permitted by their instructions to inform the Indians that though the Queen, for the good of the Indians in the respects stated, wished them to be concentrated on larger reserves and to give up their roving habits and their practice of partially occupying patches of ground, yet having a good heart towards them, and considering specially the feelings of the old people, the Queen had told the Commissioners not to do any needless violence to existing tribal arrangements, and especially not to disturb the Indians in the possession of any villages, fishing stations, fur trading posts, settlements or clearings which they really occupied and to which they were attached, and which it was to their interest to retain.⁶⁷

In other words, the commissioners were not only attempting to achieve a compromise between settler and Indigenous interests on the ground; they also strove for compromise between traditional ways of life and the new, settler-patterned ways. At the end of the first circuit, Sproat cited this compromise to explain the extent to which the commissioners could not and did not follow the governments' instructions to "concentrate" Indigenous people on a few, large reserves. He explained that, because of the scarcity of available land and strong Indigenous attachment to "their old places of residence and resort," the commissioners had realized that "[r]emoving the Indians from many of these places would not only have given them pain, but would have interfered with praiseworthy occupations, and with the tribal industries and intertribal traffic which as above said, largely enable them to be a self supporting people."⁶⁸ He went on to link the commissioners' reserve-allotment decisions in this regard explicitly to the object of "civilizing" Indigenous people:

The last [not removing the Indians from their old places] seemed to me to be a very important consideration. It will greatly increase the difficulty of civilising these Indians, if anything is done to wound their feelings, or harass them in their accustomed occupations, by an arbitrary exercise of power in conformity with mere theories of management. There is no mystery, so far as I know, in managing Indians, or in dealing with them. --The great thing to recollect is that they are men, and the best way for the government to deal with them is to treat them, generally, like other men -- neither coddling them nor frightening them, but giving them a fair field, and such friendly advice and protection as are within the limits of a governmental interference that should not hurt their pride of independence, nor make them think that there is any

⁶⁷ Sproat to Minister of Interior (27 November 1876), *supra* note 58.

⁶⁸ Sproat, "Summarised Report" (29 March 1877), *supra* note 55.

royal road to comfort, or to an improved well being, more open to Indians than to white men. The Commissioners have explained to the Indians that the only road to progress, open for both races, is through steady industry, thrift and obedience to the law.

Sproat's last sentence of this passage encapsulates one of his most important perspectives in making his reserve-allotment decisions during his four-year tenure. If the governmental instructions and even Indian title provided the broad framework within which the Sproat and the other commissioners operated, Sproat's beliefs about the "humanitarian civilizing" of Indigenous peoples provided the underlying reasons for many of his reserve-allotment decisions. For Sproat, the common goal of Indigenous peoples, governments, and settlers, alike, was for Indigenous peoples to become "civilized." Indigenous obligations in achieving this outcome were to follow the recommended path for both races – importantly, industry, thrift, and obedience to the law – and also to adopt or display other qualities and characteristics. The government's role was to encourage and manage Indigenous people's "progress."

Sproat believed that reserving some "tribal" places and some new, more central reserves would benefit Indigenous people not only because it preserved their traditional areas, but also because the new, central reserves helped to reduce the influence of tribal or hereditary chiefs. In advocating for larger, central reserves in his 1876 memorandum, Sproat explained that "the tribal system might perhaps be broken up on such a general domain," which would allow for the more effective "civilizing" of Indigenous people:

Everyone admits that the existence of numerous scattered tribes under petty chieftains, is a great bar to the progress of the native population, making it indeed, in the opinion of some persons, almost impossible that they can ever come up to the social and political level of their white neighbors.

There is much weight in the argument that it is only by the constant training and example that can be brought to bear on an Indian community of considerable numbers that the Dominion government help to neutralize effectually the hurtful influence of the chiefs and medicine men and combat the inborn prejudices of the Indians against the laws and usages of a civilized people.⁶⁹

In advocating for "civilizing" in future years, Sproat would repeatedly make decisions "to neutralize effectually the hurtful influence of the chiefs."

⁶⁹ Sproat, "Memorandum on the 'Indian problem'", *supra* note 24 at 92-94.

Further, Sproat pointed out to the Minister that one of the advantages of a large, central, “territorial” reserve was that “wild tribes might be brought into close contact with those of their own race of a more elevated condition, and might join them in gradually working out the problem of their possible civilization and final incorporation into the nation.”⁷⁰ In his subsequent letters, Sproat incorporated his “savage”/“civilized” distinction into descriptions of the Indigenous people he met and the direction he thought they should “progress.” As benefits of “the occupation of the country by the whites,” he pointed to the cessation of “constant intertribal warfare,” salaried employment, commercial markets for Indigenous goods or produce, warm clothing, and good food. He noted, however, that some of these benefits may not have been felt by Indigenous people:

Few Indians will abandon their savage dress all at once, and wear civilised apparel constantly. For a time, the Indian changes from coat to blanket and from boots to barefeet, and vice versa. His body is thus rendered more susceptible to the effects of changes of weather and of exposure. Something of the same kind may take place with respect to his use of civilised articles of food to which he has been unaccustomed. But warmer clothing and better food must be good for the Indians in the long run, and it is fair to suppose that the stoppage of tribal massacres, and the checking of the ravages of epidemics, together with an increase of physical comfort generally, will result by and by in a considerable increase of numbers.⁷¹

Sproat further noted, appreciatively, that the homes of Indigenous women “who have lived with white men, and who, afterwards have married Indians often show superior neatness to that visible in the ordinary Indian houses.”⁷² In a similar vein, in his report at the end of the first circuit, Sproat explained that the commissioners “had abundant evidence that the Indians are a useful part of the general population. The mere fact that, by their own exertions, the 3000 Indians whom we have dealt with – men and women – were able to appear before us warmly clad in European dress, and looking well fed and hearty, is some proof of their value both as producers and consumers.”⁷³ He concluded with this observation: “[u]pon the whole, these Indians on the shores of the Gulf of Georgia gave us the idea of a vigorous, intelligent race, capable of considerable improvement, if they are judiciously encouraged in the efforts which

⁷⁰ *Ibid* at 90-92.

⁷¹ Sproat to Minister of Interior (27 November 1876), *supra* note 58.

⁷² *Ibid*.

⁷³ Sproat, “Summarised Report” (29 March 1877), *supra* note 55.

they seem willing to make to overcome their old habits. Their progress so far, is remarkable, considering the savage condition in which they were a few years ago.”

Sproat wanted a compromise in terms of *places* reserved for Indigenous people between the tribal places and larger, more central reserves; he also wanted a compromise in terms of the *pace* of Indigenous “progress” or “civilization,” recognizing that those changes could not and should not occur too quickly. In advocating for the gradual “civilizing” of Indigenous people in his September 1876 memorandum, Sproat advised the Minister not to interfere with “the tribal system” – by which Indigenous people organized themselves – “at least until the people, by such means as may be within the power of the government, shall have been, in a considerable degree, prepared for the change.”⁷⁴ He felt that Indigenous people should be encouraged “to make preparations for changes which experience may perhaps in another generation sanction rather than be driven now into changes in accordance with theories of our own as to what will be good for them.”⁷⁵ In other words, while he felt that “change” was coming for Indigenous people – not just inexorably, but as a result of a perceptible governmental push – Sproat also believed that humanitarianism compelled the government to push this change gently. In a similar vein, Sproat told the Minister that “it might be neither humane nor wise to compel the fishing Indians to become farmers.” In making his point, he observed: “[i]t would not be kindly to take a hundred English farmers, and force them to get a living by canoe work in a British Columbia inlet. It would be much the same thing to try to make fishing Indians into farming Indians all at once.”⁷⁶ In his first reporting letter to the Minister on the JIRC’s first circuit, Sproat again highlighted what he envisioned as the government’s firm but measured role in encouraging Indigenous progress:

I have been much pleased with these Indians [the Musqueam and Squamish]. They showed good sense and proper self respect in all their dealings with us. They gave me the idea of a vigorous intelligent race, capable of considerable improvement, if they are judiciously encouraged in the efforts which they seem willing to make to overcome their old habits. They already contribute largely to the revenue of Canada, and I see no reason why they should not, in a generation or two, become useful citizens.⁷⁷

⁷⁴ Sproat, “Memorandum on the ‘Indian problem’”, *supra* note 24 at 100-102.

⁷⁵ *Ibid.*

⁷⁶ *Ibid* at 126-128.

⁷⁷ Sproat to Minister of Interior (27 November 1876), *supra* note 58.

Sproat subsequently reiterated his “two generation” outlook in a more candid letter to the Deputy Minister of the Interior in which he advocated that the Dominion use Indian “sub agents” to effect the “civilizing” of Indigenous people and to encourage them to take up agriculture, albeit in a way that respected their traditional attachments to land and family:

The sub agent would have to consider the occupations & habits of each tribe – endeavour for the sake of the education of the young to draw them gradually towards a village where schools existed, pay respect to family association and tribal ideas of ownership connected with particular spots – particularly on the frontage; encourage gardening and then give a sufficient acreage from time to time during the next two or 3 generations to those Indians who proved by actual work that they were likely to clear land and farm it. ... The Indians should be visited frequently; the agent & the Superintendent should be among them to chide [the] lazy and reward the industrious. Thus you would effect the maximum of good at the minimum of expense. The action to these self supporting people would not be benevolence merely: it would be good public policy for they already consume duty[-]paying commodit[ies] largely, and with a little help and direction, would be useful citizens and taxpayers.⁷⁸

Finally, Sproat also displayed in his initial 1876 memorandum a sentiment common to mid-19th-century humanitarians and one he had expressed in his book nearly a decade earlier: a belief in settlers’ obligations to “civilize” Indigenous people.⁷⁹ Sproat carried this sentiment throughout his tenure as reserve commissioner, and it helps to explain not only his apparent devotion to his reserve-allotment duties, but also his advocacy on behalf of Indigenous peoples. After discussing all of the difficulties inherent in creating reserves for Indigenous people, Sproat suggested:

The question then arises - are we to be content with simply letting the Indians alone without any serious attempt to engraft our better principles, in some practical way upon their hearts and lives?

Certainly not. Every Canadian statesman will admit that we must try to fulfill, in a free and generous spirit, the obligation which we have come under to the Indians by our occupancy of this country as far as circumstances permit.

⁷⁸ Sproat to Meredith (Deputy Minister of Interior) (19 April 1877), Ottawa, LAC (RG 10, vol. 3647, f. 8075).

⁷⁹ Paul G. McHugh, *Aboriginal Societies and the Common Law: A History of Sovereignty, Status, and Self-Determination* (Oxford: Oxford University Press, 2005) at 121-127. See also Pat Moloney, “Savagery and Civilization: Early Victorian Notions” (2001) 35:2 NZ J Hist 153 at 153; and Brett Christophers, *Positioning the Missionary: John Booth Good and the Confluence of Cultures in Nineteenth-Century British Columbia* (Vancouver: UBC Press, 1998) at 119.

It is only necessary that as practical men, acquainted with human nature, we must not allow our wish that the Indians should be civilized as we are, to run away with our judgment.⁸⁰

Sproat's final avowal in this passage highlights again the particular nature of Sproat's Victorian focus on "humanitarian civilizing." In fact, Sproat's advice encapsulates the duality of his focus throughout his tenure as reserve commissioner.

At the end of the JIRC's first circuit, Sproat explained to the Minister of the Interior his perception that Indigenous people sought to become more like the settlers. Whether or not this perception reflected Indigenous desires, it is clear that Sproat thought it did. His beliefs portray a man intent on assisting and even pushing Indigenous people to become "civilized" like the white settlers, but to become so in a way that caused them the least disruption:

The great desire of the best of these Indians is to be like white men, and to be treated as white men, and though at present sensitive, in a degree, about retaining the old lands of their fathers, they admit that a time may come, when their children or their grandchildren, will be able to conquer this stay-at-home feeling, and settle on land anywhere among their other fellow subjects. They said, with some reason, they could not change their ways all at once, but wished to have free opportunities of preparing for whatever might be in store for their people. They are extremely and almost amusingly touchy, at any supposed attempt to discuss or settle any matter of business with them on any other footing than as a question between reasonable men on both sides. The idea of being treated like children, or having questions settled without reasonable explanations, is very displeasing to them.⁸¹

It is with this understanding – that Indigenous people wished to be like white men and to be negotiated with like white men, but that they were not willing to part with "the old lands of their fathers" – that Sproat embarked on the JIRC's second circuit, where the tinderbox containing Indigenous land, Indian title, colonial and provincial legislation, and expanding settlement nearly exploded into war.

⁸⁰ Sproat, "Memorandum on the 'Indian problem'", *supra* note 24 at 108.

⁸¹ Sproat, "Summarised Report" (29 March 1877), *supra* note 55.

Chapter 4: The Joint Indian Reserve Commission's second circuit, 1877

The Joint Indian Reserve Commission (JIRC) spent the summer and fall of 1877 allotting reserves in Secwépemc and Syilx territory. The commissioners met with six Secwépemc communities who lived along the Thompson River system, with Kamloops in the middle,¹ and with five neighbouring Syilx communities who lived along Okanagan Lake and south down the river and lake system to the Canada/U.S. border.² In between the Secwépemc and the Syilx were the Spltasin (whom the commissioners called the Spallumcheens and understood to be part Secwépemc and part Syilx).³ That summer, the commissioners operated in a considerably more volatile environment than that they had encountered on the south coast. By many accounts, war between Indigenous peoples and European settlers and the state was likely. At one point, the commissioners requested the Dominion to send the North West Mounted Police (NWMP) from Edmonton in an effort to prevent, contain, or respond to anticipated Indigenous violence. Into this near-boiling cauldron, the Minister of the Interior dropped the inflammatory issue of Indian title. It was only through the work of the commissioners and the Secwépemc and Syilx chiefs that no blood was shed in British Columbia over land that summer.

4.1 THE JIRC IN SECWÉPEMC TERRITORY

In May and June of 1877, settlers, missionaries, the Dominion's Indian Superintendent at Hope, and the provincial government urged the commissioners to go to the Shuswap and Okanagan valleys in B.C.'s central interior as soon as possible to allot reserves, because "serious

¹ The commissioners believed that the six Secwépemc communities comprised about half of the Secwépemc nation: Sproat to Superintendent General (27 August 1877), Ottawa, Library and Archives Canada [LAC] (RG 10, vol. 3611, f. 3756-12); Sproat to Superintendent General (3 October 1877), Ottawa, LAC (RG 10, vol. 3612, f. 3756-22, reel C-10106). Marianne Ignace and Ronald Ignace discuss settler perceptions and the Secwépemc people's own understanding of historic Secwépemc communities and boundaries in Marianne Ignace & Ronald E Ignace, *Secwépemc People, Land and Laws: Yeri7 re Stsq'ey's-kucw*, McGill-Queen's Native and Northern Series 90 (Montreal & Kingston: McGill-Queen's University Press, 2017), chapter 8.

² The Syilx communities the commissioners visited in 1877 were the Inkumupulux (the community at the head of Okanagan Lake), the Penticton community, and the Osoyoos community. In 1878, Sproat visited Chilliheetsa's people in the Nicola valley and the Syilx community in the Similkameen valley.

³ Sproat and McKinlay to Provincial Secretary (22 August 1877), Victoria, B.C. Archives (GR-494 at 326-327).

consequences are impending.”⁴ By the time the commissioners arrived at Kamloops on June 20, they knew that the Secwépemc already had held numerous meetings about their land grievances. Further, no Indigenous people were in Kamloops on the commissioners’ arrival: they were at a “great final meeting” with the Syilx communities at the head of Okanagan Lake to determine what action they might take to protest the land situation.⁵ Upon hearing that the JIRC would soon arrive, the Tk’emlúps (Kamloops), one of the Secwépemc communities, had considered putting off their meeting with the Syilx, “but decided that they themselves had waited so long that the commissioners must on this occasion wait for them.”⁶

Fisher, Cole Harris, and Thomson have described the JIRC’s 1877 circuit through the Shuswap and Okanagan and agree that British Columbia only narrowly averted a war that summer between Indigenous and non-Indigenous peoples.⁷ While waiting in Kamloops, camped on the existing Indian reserve, the commissioners learned from settlers and missionaries that the Secwépemc were extremely dissatisfied and were talking of war.⁸ In fact, the local Roman Catholic missionary, Father Grandidier, thought that there would have been an “outbreak” of violence, had the commissioners not arrived when they did: “[w]hether the Indians would have

⁴ Anderson to Sproat & McKinlay (16 May 1877), Victoria, B.C. Archives (GR-494 at 306); Richards to Sproat & McKinlay (9 June 1877), Ottawa, LAC (RG 10, vol. 3597, file 1353, reel C-10103); Sproat to Superintendent General (30 June 1877), Ottawa, LAC (RG 10, vol. 3650, f. 8497). For some of the background to the Indigenous anger, see Duane Thomson, *A History of the Okanagan: Indians and Whites in the Settlement Era, 1860-1920* (PhD dissertation, University of British Columbia, 1985) [unpublished] at 126-130 [Thomson, *History of the Okanagan*]. See also Kenneth Brealey, “Travels from Point Ellice: Peter O’Reilly and the Indian Reserve System in British Columbia” (Autumn/Winter 1997-98) 115/116 *BC Studies* 181 at 186, where he describes the reports Powell received in 1875 about an imminent “joint Secwépemc, Okanagan and Sce’emx insurgency... unless complaints over the quality and extent of reserves were immediately addressed.” See also Keith D. Smith, *Liberalism, Surveillance, and Resistance: Indigenous Communities in Western Canada, 1877-1927*, The West Unbound: Social and Cultural Studies Series (Edmonton: AU Press, Athabasca University, 2009), chapter 5.

⁵ Sproat to Superintendent General (30 June 1877), *supra* note 4; Joint Indian Reserve Commission, “Journal of the Proceedings of the Commission for the settlement of the Indian Reserves in the Province of British Columbia, continued from Vol. 1” (27 June 1877), Ottawa, LAC (RG 10, vol. 1284, reel 13902), Victoria, B.C. Archives (GR-1965) [June-December JIRC Journal].

⁶ Sproat to Superintendent General (30 June 1877), *supra* note 4.

⁷ Robin Fisher describes this important circuit in Robin Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890*, 2nd ed. (Vancouver: UBC Press, 1992) [Fisher, *Contact and Conflict*] at 191-197. Cole Harris describes the same circuit in Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: UBC Press, 2002) at 120-133 [C Harris, *Making Native Space*]; Duane Thomson discusses it in *History of the Okanagan*, *supra* note 4 at 130-148; Ignace & Ignace discuss it in Ignace & Ignace, *supra* note 1 at 452-453; and Keith Smith canvasses it in Smith, *supra* note 4 at chapter 6.

⁸ Sproat to Provincial Secretary (30 June 1877), Victoria, B.C. Archives (GR-494 at 303).

contented themselves with driving the settlers away, or would have murdered them and laid the country waste, is a question he could not answer, but some chiefs he spoke to confidentially seemed quite prepared for decisive measures, though they knew that ultimately they would be beaten by the white soldiers.”⁹ Father Grandidier was also doubtful that the Secwépemc would come to any agreement with the commissioners.¹⁰ He had little doubt that the attendees at the Okanagan Lake meeting intended concerted action in respect of land issues, though he did not know whether their intentions were of a “dangerous character” or not.¹¹

After about a week, some Secwépemc arrived in Kamloops, but the chief, Klick.thick.kun (Chief Louis), did not arrive for a few more days.¹² Some weeks after meeting him, Sproat would describe Chief Louis as “of good tribal descent, young, vigorous, and ambitious. He has not been hostile to the whites hitherto, but the unfortunate manner in which Indian land questions have been dealt with has produced general dissatisfaction among the Indians, and given him an opportunity of putting himself forward as the Secwépemc representative and champion.”¹³ Louis met with the commissioners on Saturday, June 30, attended by many men on horseback¹⁴, and at that meeting, the commissioners learned something of the nature and extent of the Indigenous confederation they faced:

⁹ Sproat to Superintendent General (30 June 1877), *supra* note 4.

¹⁰ Sproat to Provincial Secretary (30 June 1877), *supra* note 8 at 303; Sproat to Superintendent General (30 June 1877), *supra* note 4.

¹¹ *Ibid.*

¹² The Indigenous spelling provided here is from George Blenkinsop, “Kamloops Village” (30 June 1877), in “Census of Indians inhabiting Shuswap and Okanagan Districts, 1877”, Ottawa, LAC (RG 10, vol. 10011) and Victoria, B.C. Archives (GR-2928, file 4) [Blenkinsop, “Shuswap/Okanagan Censuses”]. Chief Louis’s Indigenous name was recorded in several ways, including by Teit as “*Xlexle’xkEN*”, in James A. Teit, “The Salishan Tribes of the Western Plateaus”, ed. Franz Boas, *Forty-Fifth Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution* (1927-1928) at 264. For other variations, see Duane Thomson, “Clexlixqen, Louis,” in *Dictionary of Canadian Biography*, vol. 14, University of Toronto/Université Laval, 2003–, online: <http://www.biographi.ca/en/bio/clexlixqen_louis_14E.html>, accessed 12 September 2017.

Settlers also knew Louis as “Petit Louis” or “Che Louis,” French derivations most likely related to the fur-trading posts established at Kamloops in 1812 and largely staffed originally by French-speaking men. Because Chief Louis is most often remembered today by his European name, I have used that name in this thesis: see, for example, Tk’emlúps te Secwépemc, “Our Land”, online: <<https://tkemlups.ca/our-land/>>, accessed 24 November 2017; Daybreak Kamloops, “Tk’emlúps Indian Band honours momentous Chief Louis” (9 April 2015), online: <<http://www.cbc.ca/news/canada/british-columbia/tk-emlups-indian-band-honours-momentous-chief-louis-1.3026360>>, accessed 24 November 2017; and Ignace & Ignace, *supra* note 1.

¹³ Sproat to Minister of Interior (16 July 1877), Ottawa, LAC (RG 10, vol. 3651, f. 8540).

¹⁴ Sproat to Superintendent General (30 June 1877), *supra* note 4.

At our first interview, the six chiefs [of the First Nations which the commissioners identified as the Kamloops, North Thompson, Deadman's Creek, Neskonilth, Adams Lake, Big Shuswap, and Little Shuswap tribes] rode abreast to our camp with their standard bearers behind them and about 100 mounted attendants. During the interview one and all said they had made up their minds as to what they wanted, but would not tell us until we had stated our intentions. They said they recognised Louis as their representative, and some of the chiefs expressed a wish to come to Kamloops with their people and reside there permanently. What their views are as to land we do not yet know as they are very reticent.¹⁵

At this point, Father Grandidier again advised the commissioners that he considered it “doubtful if these Indians of the Shuswap district will come to any agreement now, with the commissioners. Their dissatisfaction is chronic; they know their power, and do not fear war. They are now aiming at concert.”¹⁶ Nonetheless, the commissioners' first step was to arrange with the chiefs to go up the North Thompson River with Chief Andre (Ty.mask.et¹⁷) to view the lands he wished reserved.¹⁸ By this time, the commissioners knew they were facing a Secwépemc and probably Syilx “confederation”: an agreement to take a united position in respect of land demands. They did not know what the Secwépemc would do if dissatisfied with their decisions, but they knew that war was a distinct possibility. As a result, the commissioners approached their work motivated by a policy of appeasement: they wanted to break up the confederation by satisfying the Secwépemc and Syilx through the allotment of large reserves.¹⁹ In addition, they were prepared to use military force to ensure that the Secwépemc and Syilx respected their decisions. Seven months earlier, in January 1877, they had called a naval gunboat to Chemainus and Penelakut Island to force the Penelakut to remove fences from land the commissioners had refused to allot to them.²⁰ Now, in Kamloops, Sproat regretted that “the Government cannot coerce the Indians here by HM [Her Majesty's] gunboats as is possible on

¹⁵ Sproat to Minister of Interior (16 July 1877), *supra* note 13. It is unclear whether Sproat's account describes the initial meeting on June 30 or the one on July 2. On the whole, I think it is the former, though it matters little on which day this event occurred.

¹⁶ Sproat to Superintendent General (30 June 1877), *supra* note 4.

¹⁷ Blenkinsop recorded Andre's Indigenous name as Ty.mask.et: “Two Villages on the N. Thompson and Canoe Lake” (4 July 1877) in Blenkinsop, “Shuswap/Okanagan Censuses”, *supra* note 12.

¹⁸ June-December JIRC Journal, *supra* note 5 at entry for 2 July 1877.

¹⁹ Sproat to Superintendent General (30 June 1877), *supra* note 4.

²⁰ Sproat, “Camp Memo” (7 January 1877), Victoria, B.C. Archives (GR-494 at 178-180); JIRC to Elliott (7 January 1877), Victoria, B.C. Archives (GR-494 at 170-173); Sproat, “Indian Reserve Commission – Field Report” (15 February 1877), Victoria, B.C. Archives (GR-1965).

the coast.”²¹ Based on what he had already heard in Kamloops, he believed that Indigenous violence was a real possibility:

The tribes here ... are more warlike and have had advice from American tribes accustomed to plan war... Indeed, if these Shuswap tribes – bold well armed Horse Indians – who can ride 60 to 70 miles a day, broke out, I do not see what force there is in this country to put them down. There would probably be much bloodshed and an expenditure of many millions of dollars, accompanied by discredit to both governments.²²

In response to the perceived Indigenous threat and urged by local settlers, the commissioners found the equivalent to a gunboat in the interior: by the middle of July, Sproat and Anderson asked the Dominion to send the NWMP to protect the settlers against the Secwépemc.²³

The commissioners’ first reserve-allotments, for Chief Andre’s people up the North Thompson River (Simpchw)²⁴, proved a successful first step in breaking up the Secwépemc confederation. After visiting with Chief Andre and his people for several days, the commissioners made reserve allotments which they perceived to be “accepted joyfully by the Indians.”²⁵ Moreover, on the party’s return to Kamloops, “the other chiefs were angry with [Andre] for ‘settling’ with [the commissioners] and would not admit him to their frequent councils. He remained a day or two, and then went back to his own place.”²⁶ The commissioners concluded, with relief, that Andre had withdrawn from “the league.”²⁷

The commissioners next turned to lands for the Tk’emlúps.²⁸ On July 9, Chief Louis and other chiefs and followers again visited the commissioners “in state, with flags flying, and all mounted on horseback.”²⁹ After the commissioners’ “usual speeches,” advising of their

²¹ Sproat to Superintendent General (30 June 1877), *supra* note 4.

²² *Ibid.*

²³ Sproat & Anderson to Minister of the Interior (13 July 1877), Ottawa, LAC (RG 10, vol. 3651, f. 8540, reel C-10114).

²⁴ This First Nation is the Simpcw First Nation; see online: <<http://www.simpchw.com/>>, accessed 28 September 2017.

²⁵ June-December JIRC Journal, *supra* note 5 at entries for 2 July 1877 and 9 July 1877.

²⁶ Sproat to Minister of Interior (16 July 1877), *supra* note 13.

²⁷ *Ibid.*

²⁸ This First Nation is the Tk’emlúps te Secwépemc; see online: <<https://tkemlups.ca/>>, accessed 28 September 2017.

²⁹ June-December JIRC Journal, *supra* note 5 at entry for 16 July 1877. Ignace and Ignace suggest, based on elder advice, that the flags the Tk’emlúps were flying may have been the Union Jack which they received from

intentions and the nature of their appointments³⁰, they told the chiefs that they intended to deal next with lands for the Tk'emlúps people and proposed riding around the area, “examining narrowly the nature of the country and its connection with the claims of their white neighbors, before coming to a decision.”³¹ In reply, the chiefs “expressed confidence that our decisions would be founded in justice, but reserving the expression of their own wishes or expectations till a later day.”³² Chief Louis clearly was unhappy with Andre’s withdrawal from the confederation, but the JIRC “went on with him [Louis] as usual, hoping that the other chiefs now visiting Kamloops would begin to ask themselves whether they would not be wiser, like the North Thompson chief, to take good reserves for themselves when we visited their places, rather than hang about Kamloops helping the purposes of Louis’ ambition.”³³ For a week, the commissioners rode with Chief Louis 20-30 miles every day in an effort to understand the Tk'emlúps’s “requirements.”³⁴ They thought the existing reserve, allotted in the colonial time period, “a very fine tract of tillable land,”³⁵ and they hoped to make “a satisfactory addition without interfering with other vested rights.”³⁶

During this period, the commissioners also met with representatives of the anxious settler community. On July 7, the commissioners attended “a strictly private meeting in a back room of the courthouse” with four men³⁷: Father Grandidier and Messrs Mara (the local elected Member of the Provincial Parliament), Tait (the Hudson’s Bay Company employee in charge of the HBC

Governor Seymour in the late 1860s, in an effort to symbolize “a bilateral relationship in which they were equals with the Crown”: Ignace and Ignace, *supra* note 1 at 452.

³⁰ Anderson to Superintendent General (16 July 1877), Ottawa, LAC (RG 10, vol. 3650, f. 8495).

³¹ June-December JIRC Journal, *supra* note 5 at entry for 16 July 1877.

³² Anderson to Superintendent General (16 July 1877), *supra* note 30.

³³ Sproat to Minister of Interior (16 July 1877), *supra* note 13.

³⁴ June-December JIRC Journal, *supra* note 5 at entry for 16 July 1877; Sproat to Minister of Interior (16 July 1877), *supra* note 13.

³⁵ Sproat to Minister of Interior (16 July 1877), *supra* note 13.

³⁶ Anderson to Superintendent General (16 July 1877), *supra* note 30. A significant cause of Indigenous dissatisfaction with existing reserves in the Shuswap and Okanagan valleys was due to the Colony of B.C.’s drastic reduction in their size. In 1861-62, Magistrate Cox laid out several large reserves pursuant to Governor Douglas’s direction. Subsequent Magistrates, under the direction of Chief Commissioner of Lands and Works Joseph Trutch, reduced these reserves. For a discussion of these circumstances, see Cole Harris, “The Native Land Policies of Governor James Douglas” (Summer 2012) 174 BC Studies 101 at 111-112 and 121-122; and C Harris, *Making Native Space*, *supra* note 7 at 37-42 and 58.

³⁷ June-December JIRC Journal, *supra* note 5 at entry for 16 July 1877.

post at Kamloops), and Barnard (the contractor for the telegraph line).³⁸ The local men explained that settlers believed the Secwépemc were behind “many suspicious circumstances” and that they planned some “sinister movement,” depending, perhaps, on Indigenous success in an “Indian war” in nearby American territory.³⁹ At the meeting, several argued that the settlers were “entirely without protection” and proposed two options: arm a local force of settlers or have the province send materiel and a militia from Victoria.⁴⁰ Others felt it best to remain quiet and that any movement on the settlers’ part or the sending of materiel or men from Victoria would hasten “an attack.”⁴¹ The best way to prevent an “outbreak,” this group thought, was by “having some force in this part of the country that would answer the same ends as the cruises of HM gunboats on the coast.”⁴²

The four men and the commissioners eventually agreed to ask the Dominion to send a NWMP detachment to the area as “the cheapest, most effective and least alarming force to introduce.” The commissioners thought the Dominion could send the NWMP secretly from Edmonton in about a month. If they did not arrive before the news of their coming did, the settlers could tell the Secwépemc and Syilx that the NWMP did not come with hostile intent but, rather, “to arrange matters on the boundary line.”⁴³ Mara and Tait, both also Justices of the Peace, followed up the meeting with a long letter to the commissioners, “repeating in writing the substance of the oral representations made” and begging the commissioners “to represent by telegram to the Dominion government the condition of affairs, and to suggest the necessity of some provision being made for their future security.”⁴⁴ They reported that they had “every reason to believe that many Indians of the Okanagan, Nicola, and Shuswap tribe are very much dissatisfied, and when assembled in Council have advocated a general uprising, and massacre of every white settler in this section of the Province.”⁴⁵ They also advised that, until recently, they had “hitherto ridiculed the idea of organisation amongst the Indians, and were inclined to look

³⁸ Sproat to Minister of Interior (16 July 1877), *supra* note 13.

³⁹ June-December JIRC Journal, *supra* note 5 at entry for 16 July 1877.

⁴⁰ *Ibid.*; Sproat to Minister of Interior (16 July 1877), *supra* note 13.

⁴¹ Sproat to Minister of Interior (16 July 1877), *supra* note 13.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ June-December JIRC Journal, *supra* note 5 at entry for 16 July 1877.

⁴⁵ Mara & Tait to JIRC (13 July 1877), Victoria, B.C. Archives (GR-494 at 315-316).

upon those who have been prophecying [sic] an outbreak as ‘Alarmists’.” However, they now felt that there was “serious ground for alarm,” and that “unless immediate and decisive measures are taken,” their “worst fears will be realised.” They were “well aware that the Indians have discussed our numerical weaknesses and isolated positions, and that they know as well as we do how utterly helpless and defenceless we are.” They implored the commissioners “to give this matter your most serious consideration, and beg of you to lose no time in communicating with the Dominion Government.”⁴⁶

After much deliberation, the commissioners felt compelled “to admit the reasonableness of the position.”⁴⁷ Although it was “possibly beyond the strict line of [their] duties,” they acceded to the settlers’ request, and while the commissioners actually felt that a police force would impede their work, they nonetheless felt that a show of force by the NWMP would help “to sustain the law.” Anderson described the commissioners’ reasoning this way:

we are impressed with the conviction that the demonstration, after the principal reserve questions shall have been settled by us, of a certain show of power to sustain the law, and to afford protection to the scattered settlers around, will, if prudently managed, have a beneficial future effect on the Indian mind, while restoring confidence to the settlers in the capacity and willingness of the government to protect them. We regard it however prospectively as a temporary measure only, the continuance of which would be found to be no wise necessary.⁴⁸

On the evening of July 13, Anderson and Sproat dispatched the following telegram to the Minister of the Interior in cypher (reproduced below in un-cyphered form) to be sent from Cache Creek, some fifty miles away:

Indian situation very grave from Kamloops to American frontier[,] general dissatisfaction, outbreak possible. Indians attempting to confederate. American Indian representatives present at meeting. Some British Columbian Indians reported to have joined outbreak across the line.

We are quietly working and endeavouring to withdraw people from Confederation. Magistracy[,] Clergy and white people full of alarm and entreat us to communicate very prudent action necessary to prevent immediate bloodshed

⁴⁶ *Ibid.*

⁴⁷ June-December JIRC Journal, *supra* note 5 at entry for 16 July 1877.

⁴⁸ *Ibid.* See also JIRC to Lenihan (16 July 1877), Ottawa, LAC (RG 10, vol. 1021, reel T-1459).

We think after deliberation and consultation that at least one hundred mounted police should be secretly sent to Kamloops via Tete Jaune Cache at once. People here quite helpless. Any action on their part might precipitate crisis. Provincial Militia unfitted for this service. Mounted expert Police necessary. They might ostensibly come to be stationed near American frontier to prevent International questions and thus avoid provoking Indians. We are, at present 50 miles beyond telegraphic communication. We expect absolute secrecy even from newspapers indispensable. Immediate action necessary.⁴⁹

After dispatching the telegram, the commissioners continued with the business at hand. They now understood that the purpose of the Indigenous confederation was “to urge their land claims the more forcibly through union.”⁵⁰ Further, they knew that the Syilx, “who are more numerous, less divided by the rivalries of petty chiefs, and more hostile, it is believed, than the Shuswap people,” were acting in concert with the Secwépemc since coming to an agreement at the Okanagan Lake meeting, itself the result of many smaller meetings held since the spring.⁵¹ Sproat would later describe the commissioners’ feelings about the Indigenous confederation in this way:

To say the truth ... we never expected to be going back as we are. We all had arranged our affairs, because for some weeks, it was touch & go and we had to measure every breath we drew. ... Canada would have been forced to interfere quickly had there been an outbreak. There are a number of fine Canadian women & pretty children in this part of the country -- Nicola more particularly -- & if anything had happened so unutterably horrible as Indian outbreaks make us contemplate, the heart of Canada would have leaped into her mouth & she would have been forced to interfere.⁵²

In continuing their work, the commissioners pursued a clear object: “by prudent and cautious action, to break up if possible, the union, and to deal in detail severally with the various questions in issue.”⁵³ By mid-July, the commissioners believed that they already had “partially

⁴⁹ Sproat & Anderson to Minister of the Interior (13 July 1877), *supra* note 23. On July 16, Sproat and Anderson wrote again to the Minister of the Interior, enclosing a copy of the cypher telegram and its translation: Sproat & Anderson to Minister of the Interior (16 July 1877), Ottawa, LAC (RG 10, vol. 3651, f. 8540, reel C-10114).

⁵⁰ June-December JIRC Journal, *supra* note 5 at entry for 16 July 1877.

⁵¹ Sproat to Minister of Interior (16 July 1877), *supra* note 13.

⁵² Sproat to Meredith (7 December 1877), Ottawa, LAC (RG 10, vol. 3656, f. 9111).

⁵³ June-December JIRC Journal, *supra* note 5 at entry for 16 July 1877.

succeeded” in breaking up the union, because of their first settlement with Chief Andre.⁵⁴ They were succeeding, because they had “steadily and quietly kept in view the need of separating the chiefs, if possible.”⁵⁵ On July 16, Sproat wrote a long letter of his own to the Superintendent General of Indian Affairs (Superintendent General), David Mills, describing the state of the Secwépemc and Syilx confederation and the possibility that the commissioners might succeed in breaking it up.⁵⁶ Sproat told the Superintendent General that he felt it was “imprudent to hope for much in dealing with doublefaced Indian chiefs,” but he was somewhat hopeful that they might succeed with the Secwépemc.⁵⁷ He doubted that Tk’emlúps Chief Louis would ever “admit that he is satisfied, or appear before the Indians as a falterer, after they all have, as is alleged, decisively made up their minds.” Nonetheless, Sproat and his fellow commissioners determined to give “an ample reserve” to the Tk’emlúps people, leaving them “no reasonable cause for dissatisfaction.”

At this point, Sproat considered that, if anything, Father Grandidier had understated the gravity of the situation facing the commissioners. Sproat fully believed that the Indigenous people “over a great part of the southern portion of the province have made a serious attempt to confederate... presumably to act in reference to their relations with the whites.” He also expressed most settlers’ feelings, from the ranchers through to the government officials, when he bluntly advocated strong efforts to break up the Indigenous confederation: “[t]here is always danger, in such a country as this, in having tribes brought together, or congregated in ‘nations’ as was contemplated in the original agreement between the two governments with reference to the land question. The efforts of the Indians to combine, and the hope of safety presented by our efforts to separate the tribes is a practical commentary upon that agreement.”⁵⁸

Sproat also told the Superintendent General about the power the Secwépemc and Syilx held. Although he could not determine whether they had made “any unusual purchases of ammunition,” he warned:

⁵⁴ Sproat to Minister of Interior (16 July 1877), *supra* note 13.

⁵⁵ *Ibid.*

⁵⁶ It was to this letter that David Mills responded, as the Minister of the Interior, on August 3 (which Sproat received August 30), in one of the most important pieces of correspondence of Sproat’s tenure as reserve commissioner. At this time, the Minister of the Interior was also the Superintendent General; correspondents, including Sproat, appear to have been inconsistent in the title they used when writing.

⁵⁷ Sproat to Minister of Interior (16 July 1877), *supra* note 13.

⁵⁸ All quotations in this paragraph from *ibid.*

the Indians so outnumber the whites that on any night, by detailing a certain number of men for each house or store they could with ease summarily murder everybody, and take possession of all the supplies in this part of the country. The Indians would probably make sure of the commissioners first, and the stores and people at Kamloops, and then deal with the settlers in detail. They have plenty of horses and can ride 60 or 70 miles a day, and the mountains are full of cattle and firewood which would enable the hostile Indians to support themselves comfortably at least until winter. They are intelligent, active, warlike and brave, and have a deep sense of injury, from their point of view, and we must confess have at least some grounds of complaint on account of the postponement of the settlement of their land questions.⁵⁹

If there were a war, Sproat felt the costs to Canada and to the province “in money and bloodshed and discredit in the event of an outbreak, can be easily understood.” He described the tension the settlers felt, and the change of feeling they perceived amongst Indigenous people: “[p]eople in this part of the country are thoroughly alarmed. The behaviour of the Indians has quite changed. They do not even visit the cabins of the clergy as they used to do. Young Indians are seen in knots with their heads together. Messengers are constantly passing to and fro, and all the Indians are reticent, and not disposed to joke, though outwardly civil.” Sproat felt, “[o]n the whole..., ... the question of the continuance of peace hangs by a thread. A small cause might precipitate an outbreak. The test time may be when the Okinagans find they cannot get what they demand, but they may defer action until later, should they not be ready.”⁶⁰ Although he felt it was the province’s duty, through its police force, to maintain the peace “under ordinary circumstances,” this was an extraordinary situation that would call for the Dominion’s intervention in the event of an “outbreak.” He reiterated that, on the coast, Her Majesty’s navy helped the provincial government “to maintain its general authority over the Indians on the seacoast.” However, he felt that “an Indian outbreak of the kind believed to be contemplated in this part of the country would be war against Canada; it would be an attempt by the direst methods, to take and hold Canadian territory by force.”⁶¹ For Sproat, the situation was clearly “us” – the settlers, their government, and the JIRC – versus “them” – the Secwépemc and Syilx.

Nonetheless, despite his alarm over the Indigenous confederation, Sproat remained steadfast in his approach to reserve land allocations: “[i]t is impossible for the commissioners to give way under menace; they will go on with their work without reference to that. They will

⁵⁹ *Ibid.*

⁶⁰ All quotations in this paragraph from *ibid.*

⁶¹ All quotations in this paragraph from *ibid.*

give what is reasonable; neither more nor less, but, informally so far as may be, a general sense of duty will no doubt cause them to assist the governments and the Indian Department.”⁶² Indeed, by July 20, the commissioners had settled upon reserve boundaries for the Tk’emlúps, and they explained to Chief Louis and his people what they thought “would suit” the Tk’emlúps, adding summer and winter pasture to the already “ample area” of tillable lands.⁶³ However, Chief Louis was “reticent, and did not say how his heart was. He said that, after we had visited several of the neighbouring tribes, he would state his reply. All the Shuswap chiefs, he said, were of one mind. He said no more.”⁶⁴ The commissioners thus deferred making their formal assignment of lands at Kamloops, though they learned that their “offer” was far short of what the Secwépemc chiefs had agreed to demand.⁶⁵ In fact, the commissioners learned that Louis had thought the commissioners had come to make a treaty with his people about land and that their assent was necessary. However, they also learned that Louis probably would “not press for the line the Indians decided on at their meeting – an utterly preposterous line, involving the buying out of many whites, and the abandonment of the greater part of the North and South Thompson valleys to Indians” – but would probably ask for certain additions to the reserves before he would “come to a settlement.”⁶⁶

In light of the circumstances, Sproat considered “war” the likely outcome if the commissioners did not reach a settlement with the Tk’emlúps:

There must of course be a limit to acquiescence in Indian demands, but what was possible in the spring is not possible now. The alternative of not “coming to a settlement” will be continued dissatisfaction, the refusal of dealings with the Canadian Indian Agents, and then war. We are told, now, that war was the burden of most of the speakers at the late great Okinagan meeting though its proceedings have, as already stated, been kept wonderfully close. The Indians say – ‘let us fight; if you win, take the land; if we win, we will take it. What is war?’⁶⁷

⁶² *Ibid.*

⁶³ Sproat to Superintendent General (20 July 1877), Ottawa, LAC (RG 10, vol. 3653, f. 8599½); June-December JIRC Journal, *supra* note 5 at entry for 22 July 1877.

⁶⁴ Sproat to Superintendent General (20 July 1877), *supra* note 63; Sproat & McKinlay to Provincial Secretary (21 July 1877), Victoria, B.C. Archives (GR-494 at 320-321).

⁶⁵ Sproat to Superintendent General (20 July 1877), *supra* note 63.

⁶⁶ All quotations in this paragraph from *ibid.*

⁶⁷ *Ibid.*

Instead of pressing the Tk'emlúps to accept the reserve allotments, the commissioners left Kamloops without making final decisions. They decided to visit the other chiefs, “and Louis can then come to us when he is in a position to yield with a better grace.”⁶⁸ They had learned that the Secwépemc who remained within the confederation were “tiring”: those to the west, the “Deadman’s Creek” community (Skeetchestn⁶⁹), were not happy with their chief’s support of Louis, and those to the east were “inclined to settle on their own account, though they at present cannot openly withdraw from their engagements.”⁷⁰ At that point, the three chiefs of the eastern communities – Nescanthen⁷¹ of the South Thompson or Lower Shuswap people (Neskonlith Indian Band⁷²), Adrien⁷³ of the Adams Lake people⁷⁴, and Louis of the Little Shuswap Lake people⁷⁵ – all left for their lands to await the commissioners’ arrival.⁷⁶

On July 22, the commissioners travelled to Savona’s Ferry, west of Kamloops.⁷⁷ They found a telegram waiting for them from R. W. Scott, the Secretary of State for Canada, sent in reply to their July 13 telegram.⁷⁸ Scott’s telegram advised the commissioners that it was “impossible” for the Dominion to send the NWMP, and that they must advise the Indigenous people that both governments were endeavouring “to remove causes of irritation” and that “any rash move will jeopardise their own interest.”⁷⁹

⁶⁸ *Ibid.*

⁶⁹ This First Nation is the Skeetchestn Indian Band; see online: <<http://www.skeetchestn.ca/home>>, accessed 12 September 2017.

⁷⁰ Sproat to Minister of Interior (16 July 1877), *supra* note 13.

⁷¹ This chief was also called “Ne-scanthan” and “Niscanilth”.

⁷² This First Nation is the Neskonlith Indian Band; see online: <<https://www.neskonlith.org/>>, accessed 16 October 2017.

⁷³ This chief was also called “Adrienne” and “Adrain”.

⁷⁴ This First Nation is the Adams Lake Indian Band; see online: <<http://adamslakeband.org/>>, accessed 16 October 2017.

⁷⁵ This First Nation is the Little Shuswap Indian Band; see online: <<http://www.lslib.com/>>, accessed 16 October 2017.

⁷⁶ June-December JIRC Journal, *supra* note 5 at entry for 16 July 1877.

⁷⁷ June-December JIRC Journal, *supra* note 5 at entry for 28 July 1877.

⁷⁸ *Ibid.*

⁷⁹ File copy, Scott to Sproat & Anderson (undated), Ottawa, LAC (RG 10, vol. 3651, f. 8540, reel C-10114). Copy of telegram in cypher, Scott to Sproat & Anderson (19 July 1877, received 23 July 1877), Ottawa, LAC (RG 10, vol. 3651, f. 8540, reel C-10114). The commissioners had to send an “Indian messenger” back to Kamloops, overnight, to “borrow Slater’s key” from Mr. Mara in order to decipher the telegram: June-December JIRC Journal, *supra* note 5 at entry for 28 July 1877. This may explain the apparent inconsistency in dates. It also appears that the JIRC Journal, this week, is misdated by one day.

Two days later, Anderson described how the commissioners “were received very warmly by the natives” of Deadman’s Creek (Skeetchestn), who had “a house neatly prepared for our reception, with a table cleanly covered, plates, spoons, and a fine dish of freshly gathered wild raspberries for our refreshment.”⁸⁰ Sproat painted a less pretty picture. He told the Superintendent General that the commissioners had discovered that the chief, Ceciasket, wanted to bring his people to Kamloops, probably because he wanted to replace Chief Louis. However, the commissioners also discovered that the “second chief,” Pierre, and others in the community did not want to move to Kamloops. According to Sproat, “[t]his difference of view came quite to our hand, and we did all we could to widen it, jokingly telling Ceciasket that there was good land at Kamloops for himself personally, as we understood he was going to live there as Louis’ man, and that we were going to Deadman’s Creek to give a fine place to Pierre and those who liked the old ground.”⁸¹ In the end, Chief Ceciasket told the commissioners that, after much reflection and considering the commissioners’ advice, he had given up the idea of uniting himself and his people with the Tk’emlúps. Instead, he told them that he trusted them to give his people adequate reserve lands.⁸² The next day, the commissioners took a long ride with several chiefs and made a decision, giving them a considerable extension of their colonial reserve. The chiefs wanted the commissioners to extend the reserve boundary lines further, but the commissioners declined, explaining that such an extension would only “be of questionable advantage to themselves, while it would debar the settlement of whites who might wish to improve the vicinity.”⁸³ In reaching this “settlement,” the commissioners felt they had “conveyed real satisfaction to a most worthy section of this numerous family of tribes,” and also “succeeded in detaching from the league... another troublesome integer.”⁸⁴

Once back in Kamloops, the Dominion commissioners responded to the Secretary of State’s telegram. They assured him that they were continuing their work, had been well-received everywhere by Indigenous people, and, in fact, had no wish to be backed by a show of force. They believed they had “succeeded in withdrawing two tribes from the Shuswap Confederation”

⁸⁰ June-December JIRC Journal, *supra* note 5 at entry for 28 July 1877.

⁸¹ Sproat to Superintendent General (27 August 1877), *supra* note 1.

⁸² June-December JIRC Journal, *supra* note 5 at entry for 28 July 1877.

⁸³ *Ibid.*

⁸⁴ Anderson to Superintendent General (27 July 1877), Ottawa, LAC (RG 10, vol. 3651, f. 8540, reel C-10114).

– the North Thompson and Deadman’s Creek – and thought that if they could withdraw one or two more in the next two weeks – “which may be possible as the confidence of the Indians in our representations as to the justice and liberality of the governments increases” – they might be able to report substantial progress. However, they did advise that “[i]t would be quite useless to pass beyond the Kamloops branch of the Shuswap nation without a distinct expression from them that they are satisfied with our proposed assignment of lands, and, up to this time, their chief withholds any intimation of his acquiescence, though he visits our camp daily and rides about with us in a friendly manner.”⁸⁵

A few days later, the commissioners made their formal decisions about the Tk’emlúps reserves. Chief Louis, it seems, did ask the commissioners to grant further reserves, but they refused, a decision Sproat justified by saying that he was “rather glad of showing to the Indians that however kind and patient we might be in the performance of our duties, our decision arrived at after being placed in possession of all the facts, must be considered to have the solemnity of a judicial decision. Indians appreciate firmness, and the result has been useful in the present case.”⁸⁶ In the end, the commissioners allotted a large reserve, a fishing station, and a tract of woodland on the North Thompson River.⁸⁷ By this time, the commissioners felt they were getting the better of Chief Louis, who had accompanied the commissioners to visit the Skeetchestn community. With Chief Gissi-asket’s satisfaction with his newly-allotted reserves, the commissioners felt that “[t]his defection, next to that of the North Thompson chief, Louis’ two nearest neighbours, must have shown the latter that he was being outgeneralled.”⁸⁸ Louis then accompanied the commissioners when they travelled up the South Thompson River to attend to the reserves of the three chiefs – Nescanthan, Andre, and Louis – who had left Kamloops two weeks before to await the commissioners.⁸⁹ Over two weeks, the commissioners allotted reserves for the Neskonlith⁹⁰, Adams Lake⁹¹, and Little Shuswap Lake⁹² communities.

⁸⁵ All quotations in this paragraph from Sproat & Anderson to Secretary of State (27 July 1877), Ottawa, LAC (RG 10, vol. 3651, f. 8540).

⁸⁶ Sproat to Superintendent General (27 August 1877), *supra* note 1.

⁸⁷ JIRC, “Minutes of Decision, Kamloops Indians” (29 July 1877), Vancouver, Indigenous & Northern Affairs Canada (Specific Claims West) [INAC] (Provincial Collection [Prov. Coll.], vol. 3, 162).

⁸⁸ Sproat to Superintendent General (27 August 1877), *supra* note 1.

⁸⁹ June-December JIRC Journal, *supra* note 5 at entries for 1-11 August 1877.

⁹⁰ “Minute of Decision, South Thompson or Niskahnilth Indians” (13 August 1877), Vancouver, INAC (Prov. Coll., vol. 3, 174-182). See also “Minute of Decision, South Thompson or Niskahnilth Indians, Adams Lake

By the end of this part of their circuit, the commissioners felt that Nescanthan, too, had “defected,” and Sproat described the resulting situation for Louis in this way:

it was by this time evident that the faction among the Shuswap chiefs was broken by the defection of North Thompson “Andre”, Deadman’s Creek “Ceciasket”, and South Thompson “Niscanilth”. Louis of Kamloops saw his house of cards tumbling down, but as he is a man of strong character and great ability, we made matters as easy for him as possible. At talks with tribes other than his own, we gave him alone of outsiders a seat in the Council tent, as a listener.⁹³

At the conclusion of their work amongst the Secwépemc, the commissioners felt they had achieved their objective: they had succeeded in breaking up the Secwépemc confederation by allotting sufficiently large reserves to satisfy each community. The two provincial commissioners (Sproat and McKinlay) described the reserve-allotments as “not... more than a reasonable quantity of land.”⁹⁴ Tk’emlúps Chief Louis was now with the commissioners “as a friend” and told them he was willing to help them with the remainder of their work in Syilx territory.⁹⁵ In fact, he became the commissioners’ main Secwépemc ally, accompanying them for the remainder of their 1877 circuit.⁹⁶ He was so supportive of the commissioners that just a few weeks after the end of the circuit, on hearing that the JIRC might be disbanded or reconstituted, Chief Louis signed a letter (witnessed by Tait and likely written by Father Grandidier) requesting that the same commissioners continue their work:

When the Commissioners arrived amongst us, our hearts were sick. For we had been deceived so often by promises, and the settlement of our land had been so long delayed, that their coming filled us with mistrust. We wanted to see them at work, before our hearts would go to them. But after a while we saw that they had come with a sincere disposition to look after our needs, and grant us the land which we and our children will require in the future. We saw that while they protected the rights of our white brothers, they dealt justly and generously with us; we saw that their kindness

Indians and Little Shuswap Lake Indians in common” (16 August 1877), Vancouver, INAC (Prov. Coll., vol. 3, 202-206).

⁹¹ “Minute of Decision, Adams Lake Indians” (13 August 1877), Vancouver, INAC (Prov. Coll., vol. 3, 184-192).

⁹² “Minute of Decision, Little Shuswap Lake Indians” (14 August 1877), Vancouver, INAC (Prov. Coll., vol. 3, 194-200).

⁹³ Sproat to Superintendent General (27 August 1877), *supra* note 1.

⁹⁴ Sproat & McKinlay to Provincial Secretary (22 August 1877), *supra* note 3.

⁹⁵ *Ibid.*

⁹⁶ Sproat to Minister of Interior (1 November 1877), Ottawa, LAC (RG 10, vol. 3656, f. 9111).

was always the same, whether we accepted their word or rejected it. Their patience won our hearts at length, and giving our consent to their proposals, we gave up our own demands.

And here I say it in truth; All the chiefs whose reserves have been marked out, and their people are satisfied without exception with their reserves, although they are not as large as they wanted them. The Commissioners have won our hearts, our confidence, and our love. They have given us for our reserves the land where we were born, and where our fathers sleep.⁹⁷

Despite Chief Louis's apparent support for their work, the Syilx would pose a new challenge to the commissioners. In fact, the commissioners learned that "the Okanagans are annoyed that the Shuswaps should have seceded from the league and sent word we should find them quite a different people."⁹⁸

4.2 THE JIRC IN SYILX TERRITORY

Before the commissioners reached the Syilx communities, they visited the "Spallumcheen" community (Splatsin⁹⁹), the "half Shuswap, half Okanagan" people whom Tk'emlúps Chief Louis claimed as part of the Secwépemc, but with whom the head Syilx chief, Chilliheetsa, also possessed much influence.¹⁰⁰ Chilliheetsa used this influence, the commissioners thought, "with much effect to prevent a peaceable settlement of the land question."¹⁰¹ At first, the Splatsin "refused to hire their young men to [the commissioners] for work, objected to a census being taken on the plea they were not dogs, and in reply to [the commissioners'] request that the chiefs should ride round with [them] sent a message to say that as the land was theirs and they knew all about it, they did not see the object of accompanying [the commissioners]."¹⁰² Further, the Splatsin chief, Andre, said that he would accept no lands but those of two established settlers in

⁹⁷ Chief Louis to Minister of Interior (7 January 1878), Ottawa, LAC (RG 10, vol. 3641, f. 7567); underlining in original.

⁹⁸ Sproat & McKinlay to Provincial Secretary (22 August 1877), *supra* note 3.

⁹⁹ This First Nation is Splatsin; see online: <<https://www.splatsin.ca/about>>, accessed 17 October 2017.

¹⁰⁰ "Spallumcheen Village" (17 August 1877) in Blenkinsop, "Shuswap/Okanagan Censuses", *supra* note 12; Sproat & McKinlay to Provincial Secretary (22 August 1877), *supra* note 3.

¹⁰¹ "Spallumcheen Village" (17 August 1877) in Blenkinsop, "Shuswap/Okanagan Censuses", *supra* note 12.

¹⁰² Sproat & McKinlay to Provincial Secretary (22 August 1877), *supra* note 3.

the area, a position the commissioners believed had come from Chilliheetsa.¹⁰³ They dismissed Andre's request as "out of the question," since land already sold to "the whites" was not at their disposal.¹⁰⁴

To confront this lack of co-operation, the commissioners again employed a tactic they had used several months before with the Penelakut on Vancouver Island: they threatened to leave without allotting lands.¹⁰⁵ When hearing of this threat, "[t]he farming class of the community, with the second chief at their head, ... soon came to terms and the Chief for the time was set aside."¹⁰⁶ Ultimately, the commissioners reserve-allotment "gave satisfaction apparently to all, but especially to the younger and more active men, who do not profess to approve the obstinacy of the old Chief, and who are fearful lest we should decide on leaving them without assigning an extension of the present Reserve."¹⁰⁷ In fact, by the end of their visit, the commissioners interacted with the "second Chief," the "first chief" having been ousted, which Anderson described in this way:

the Indians assembled, headed by the chief. They were addressed as usual, and notified that, though our time was limited, we were prepared to listen to them patiently. Andre [the Splatins chief] began, and after a rambling oration, repeated his extreme views of yesterday. We had however, previously ascertained, that all the other Indians were adverse to his views, and so we waited quietly. Then the second Chief Thaytoonulth took up the word, and said, "the chief wants to prevent my speaking, but the people wish me to speak, and I will speak." He then went on to say that the people generally, were satisfied with our decision as a whole, but that they proposed several trivial modifications. To these we readily agreed, and a satisfactory Arrangement was concluded.

¹⁰³ "Spallumcheen Village" (17 August 1877) in Blenkinsop, "Shuswap/Okanagan Censuses", *supra* note 12. See also June-December JIRC Journal, *supra* note 5 at entry for 23 August 1877.

¹⁰⁴ June-December JIRC Journal, *supra* note 5 at entry for 23 August 1877. For a history of white settlement in the Okanagan in the 1860s and 1870s, including at Spallumcheen, see Thomson, *History of the Okanagan*, *supra* note 4 at 27-29.

¹⁰⁵ "Spallumcheen Village" (17 August 1877) in Blenkinsop, "Shuswap/Okanagan Censuses", *supra* note 12. See also June-December JIRC Journal, *supra* note 5 at entry for 23 August 1877.

¹⁰⁶ *Ibid.* There is no doubt that some of the Splatins were farmers: the JIRC census recorded 118 people, nine log & frame houses, three barns, seven stables, eight sets of harnesses, six ploughs, three harrows, three wood trucks, and four scythes, along with seventy-four horses, fourteen head of cattle, and thirteen pigs: "Spallumcheen Village" (17 August 1877) in Blenkinsop, "Shuswap/Okanagan Censuses", *supra* note 12.

¹⁰⁷ June-December JIRC Journal, *supra* note 5 at entry for 23 August 1877.

... The chief by the way, finding his perversity unsupported, left the conference as soon as the second Chief began to speak. His authority, which has been long on the wane, has now probably received its death-blow, we of course no-wise interfering.¹⁰⁸

Anderson's advice that the commissioners were not interfering in the community's affairs seem disingenuous, given other records of what the commissioners did at Splatsin. Sproat, in a private letter to the Superintendent General, gave perhaps a more truthful account, explaining that the commissioners had "to overrule" the head Splatsin chief "through his young men."¹⁰⁹ The commissioners continued their support of the second chief, Thaytoonulth, by asking him to visit their camp in a few days, when they would then give him a sketch of the final reserve.¹¹⁰ When they met him a few days later, the commissioners allotted an additional 2,000 acres of unoccupied agricultural and pasture land Thaytoonulth had requested and gave him "an official sketch of the entire reserve, [after which he] set out for home, well satisfied for himself and people."¹¹¹ In so doing, the commissioners endorsed the younger "farming class" of the community at the expense of the elders, including the long-time chief who appeared to be acting on Chilliheetsa's direction. In fact, Sproat summarized the commissioners' general approach "where tribes are under bad advice" as being "to seek for a wedge of division among them. This is generally to be found in the different views of their interests taken by the young men, and by the older men and women, after we have made our explanation and shown clearly what we can do, and what we cannot do."¹¹² He even went so far as to advise the Superintendent General that he found the young men "for the most part disposed to take a practical view of the present, when it is found to be useless to argue about the past and the irrevocable," noting that the commissioners had therefore found they could "play off the young men against the old, in this country, and thus get over difficulties which sometimes seem insuperable."¹¹³ At their next stop at the head of Okanagan Lake, the commissioners would finally negotiate with Chilliheetsa directly at the place that had been his forefathers' winter home and for which Chilliheetsa had

¹⁰⁸ *Ibid.*

¹⁰⁹ Sproat to Superintendent General (13 September 1877), Ottawa, LAC (RG 10, vol. 3612, f. 3756-13, reel C-10106).

¹¹⁰ June-December JIRC Journal, *supra* note 5 at entry for 25 August 1877.

¹¹¹ June-December JIRC Journal, *supra* note 5 at entry for 8 September 1877.

¹¹² Sproat to Superintendent General (27 August 1877), *supra* note 1.

¹¹³ *Ibid.*

negotiated with a colonial magistrate in 1861. And the following year, Sproat, as sole commissioner, would use the JIRC's tactic – the threat to leave, intended to coerce the younger men, many of whom farmed and perhaps were less interested in the ways of the past – when he met with Chilliheetsa about his lands in the Nicola valley.

The commissioners had met Chilliheetsa, the “Chief of the Great Okanagan Lake” and “a man of much influence,” two months earlier at Kamloops.¹¹⁴ He was the most powerful of the Syilx chiefs, “the high chief,” who lived in the eastern Nicola valley.¹¹⁵ As the high chief, he “represented the laws of the whole syilx at the nation level to protect the rights of the syilx. ... [He was] responsible for protecting the land, the people, the language and the syilx ways. ... [He was] overseer[] of [the people's] right as the syilx. [He had] the responsibility of territorial protection, inter-nation trading and upheld co-operation with other Nations.”¹¹⁶ Chilliheetsa had played a leading role in Indigenous-settler relations in the Okanagan valley for over fifteen years, and he had no doubt been at the Secwépemc-Syilx meeting at the head of Okanagan Lake in June.

On July 13, Chilliheetsa had visited the commissioners in their camp at Kamloops.¹¹⁷ Anderson had known Chilliheetsa for at least thirty years, since Chilliheetsa and others had guided Anderson for part of his journey in 1847 from Kamloops to the Hudson's Bay Company post at Fort Langley.¹¹⁸ In a private conversation, Chilliheetsa told Anderson that the chiefs and their followers had been wavering as to what to do, as a result of messages from American Indigenous people. Some of the young men had wanted to join the Americans in their ongoing war against white settlers, but Chilliheetsa and the other chiefs had dissuaded some and disarmed others from taking this path. Chilliheetsa spoke to Anderson privately, “for old friendship's

¹¹⁴ June-December JIRC Journal, *supra* note 5 at entry for 16 July 1877. This Chief's name is spelled in many ways, including Chilliheetza, Chileyheetza, Chiley-heetza, Chiley heetza, Chiley-heetze, Chilly.heets.sa, Chilihitzza, Chilahichan, Chelahitsa, Hilly-hitza, Sela-heetza, Seel-a-heetza, Sil-a-heetza, Silla-heetza, Shilihietza, Zelahetza, and TSELaxi'tsa. (The last spelling is from Teit, *supra* note 12 at 272. Teit's version also has a lateral line over the “T” which I was unable to replicate with word processing software.) In this thesis, I have adopted what appears to be the most common spelling: “Chilliheetsa.”

¹¹⁵ Okanagan Rights Committee & The Okanagan Indian Education Resource Society, *We Get Our Living Like Milk From the Land*, Lee Maracle et al, eds. (Canada: Theytus Books Ltd., 1993) at 8-10.

¹¹⁶ *Ibid* at 9-10.

¹¹⁷ June-December JIRC Journal, *supra* note 5 at entry for 16 July 1877.

¹¹⁸ Anderson to Meredith (21 July 1877), Ottawa, LAC (RG 10, vol. 3651, f. 8540); Nancy Marguerite Anderson, *The Pathfinder: A.C. Anderson's Journeys in the West* (Toronto: Heritage House Publishing Company Ltd., 2011) at 127.

sake,” to warn him that an “unsatisfactory feeling” existed amongst the young men.¹¹⁹ Then Chilliheetsa left the commissioners to await their arrival at the head of the lake.¹²⁰

The commissioners arrived at the head of Okanagan Lake on August 24,¹²¹ when the Inkumupulux were “much scattered, and busy with their harvest.”¹²² Although they had cultivated land since before 1861, the Inkumupulux had turned more seriously to agriculture in the 1860s.¹²³ By 1871, they had nearly 300 acres under cultivation at the head of the lake, with more people wanting to farm but lacking land.¹²⁴ By 1875, a significant number of the community had decided “to gather around the church [at the head of the lake] and build comfortable homes.”¹²⁵ When the commissioners arrived in 1877, Blenkinsop, the census taker, recorded 248 people and 585 horses, 190 head of cattle, 125 pigs, 2 work oxen, and 178 fowls, along with 16 log & frame houses, 15 stables, 9 out houses, 15 sets of harnesses, 14 ploughs, 7 harrows, 2 wood trucks, 2 corn mills, 1 set of ox chains & yokes, and 12 scythes.¹²⁶

Even after a week at the head of the lake, the commissioners still had “made very little actual progress in the settlement of the affairs here,” owing in large part to the absence of the chief, Selixt-asposum (Moses), Chilliheetsa’s cousin.¹²⁷ However, the commissioners

¹¹⁹ Anderson to Meredith (21 July 1877), *supra* note 118.

¹²⁰ June-December JIRC Journal, *supra* note 5 at entry for 16 July 1877.

¹²¹ June-December JIRC Journal, *supra* note 5 at entries for 23 and 25 August 1877. Peter Carstens discusses the JIRC’s 1877 allotments for the Inkumpulux people in Chapter 5: Peter Carstens, *The Queen’s People: A Study of Hegemony, Coercion, and Accommodation among the Okanagans of Canada* (Toronto: University of Toronto Press, 1991) at 87-102.

¹²² June-December JIRC Journal, *supra* note 5 at entry for 25 August 1877. The head of the lake is the home of the Okanagan Indian Band, who now, as in the 1870s, call themselves and the place at the head of the lake “Inkumupulux” (meaning “head of the lake”): see Okanagan Indian Band, “Our History”, online: <<https://okib.ca/about-us/our-history>>, accessed 21 September 2017. There are variants of the spelling of “Inkumupulux” in the records; to identify this group, I have used the spelling used now by the Okanagan Indian Band on their website.

¹²³ The sketch map of the reserve laid out by Magistrate Cox at the head of the lake shows gardens: sketch map enclosed with Cox to Young, Colonial Secretary (4 July 1861), Victoria, B.C. Archives (GR-1372, file 376). Duane Thomson, “The Response of the Okanagan Indians to European Settlement” (Spring 1994) 101 BC Studies 96 at 105 [Thomson, “Okanagan Response”]; Thomson, *History of the Okanagan*, *supra* note 4 at 58-59.

¹²⁴ Thomson, “Okanagan Response”, *supra* note 123 at 105.

¹²⁵ Baudre to d’Herbomez (24 January 1876), cited in *ibid* at 105.

¹²⁶ “Okanagan Tribe – Main Village” (10 September 1877) in Blenkinsop, “Shuswap/Okanagan Censuses”, *supra* note 12.

¹²⁷ June-December JIRC Journal, *supra* note 5 at entry for 1 September 1877. Blenkinsop wrote his Indigenous name as Chil.kay.poos.man: “Okanagan Tribe – Main Village” (10 September 1877) in

recognized that it was particularly important to arrive at “a patient and satisfactory decision” at “the headquarters of the Okanagan tribes,” just as it had been important to do so with the Tk’emlúps community, “as well to do justice to the local occupants, as to obviate the probability of similar delay elsewhere.”¹²⁸ By September 8, the commissioners had managed to meet with the Inkumupulux several times without Selixt-asposum and had concluded that the reserve was “entirely too limited,”¹²⁹ lacking agricultural and pasture land in particular.¹³⁰

Finally, Selixt-asposum arrived at the camp on the evening of September 10 and, the next evening, came to “pay his respects” to the commissioners. He told them that “he had thought it prudent to leave home some time ago, and stationed himself outside the boundary-line [the Canada-US border] among his relatives there, his avowed object having been to check any disposition on the part of the Okanagans of British Columbia to join the insurgents on the Columbia River, in accordance with invitations which had been covertly sent by insurgent Chiefs.”¹³¹ The following day, Chilliheetsa and other “headmen,” no doubt including Selixt-asposum, came to speak with the commissioners and began by declaring that they would not accept any presents from the commissioners or any government officer.¹³² Sproat understood their refusal to accept presents, just as they had refused them from Powell in 1874, as “some strange objection to any such supposed compromising acceptance on their part.”¹³³ The commissioners, in reply, said they had no presents to offer.¹³⁴ Then, although the commissioners tried to engage Chilliheetsa and the others on “the Land and Census Question,” the Syilx leaders

Blenkinsop, “Shuswap/Okanagan Censuses”, *supra* note 12. Anderson, in the JIRC Journal, recorded his name as “Selixt-asposum.” He also gave either a translation of this word or an alternate English name: “Five hearts,” in June-December JIRC Journal, *supra* note 5 at entry for 18 September 1877.

¹²⁸ June-December JIRC Journal, *supra* note 5 at entry for 1 September 1877; see also entry for 8 September 1877.

¹²⁹ June-December JIRC Journal, *supra* note 5 at entry for 8 September 1877.

¹³⁰ Sproat to Superintendent General (3 October 1877), *supra* note 1.

¹³¹ June-December JIRC Journal, *supra* note 5 at entry for 12 September 1877; underlining in original.

¹³² Sproat to Superintendent General (3 October 1877), *supra* note 1.

¹³³ Superintendent Powell had requested and received authority in 1874 to distribute “presents” as a way to distribute money and goods to British Columbia Indigenous people outside of a treaty agreement, since “it is assumed that the Government does not contemplate giving the Indians of British Columbia any compensation for their lands as has been done with the Indians of the North West”: PC 1874-0582; Sproat to Superintendent General (3 October 1877), *ibid.*

¹³⁴ Sproat to Superintendent General (3 October 1877), *supra* note 1.

told the commissioners that “important talks had first to take place.”¹³⁵ They wanted to discuss a matter that they said had an important bearing on relations between settlers and Indigenous people in the province: relationships between white men and Indian women, abuse within those relationships, and financial support once they broke down.¹³⁶ While the commissioners listened carefully and gave some advice, they ultimately referred the chiefs to Dominion Superintendent Lenihan, who was travelling with the commissioners at that point, because the concerns did not relate to land.¹³⁷

The chiefs next went to speak to Lenihan, without the commissioners, but left their meeting with him extremely angry, according to Sproat:

Silla-heetza [Chillaheetsa] accordingly went to have an interview with Mr Lenihan, and all that I personally know about the matter is that the old chief by and bye returned to our camp kitchen fire shaking with emotion and anger. We made no inquiries not wishing to be mixed up in matters we could not control, but we learned afterwards that the Indians were having constant talk about this occurrence which seems to have wounded the young as well as the old men and lamentably wounded the amour propre [self-respect] of old Silla-heetza.¹³⁸

Chilliheetsa and Selixt-asposum eventually requested another interview with the commissioners to discuss their meeting with Lenihan. Sproat described what the chiefs told the

¹³⁵ *Ibid.*

¹³⁶ June-December JIRC Journal, *supra* note 5 at entry for 12 September 1877.

Indian Superintendent Powell wrote of this problem in February 1874, when he explained that, “Another area of complaint exists in the fact, that a large proportion of the white settlers of the interior have [possessed?] themselves with native women and after years of concubinage, these women [have?] thrown back upon the Tribe to which they formerly belonged either by the death or more often by the [base?] desertion of the offender”: Powell to Minister of Interior (4 February 1874), Ottawa, LAC (RG 10, vol. 3605, f. 2813).

Duane Thomson provided some of the history of this problem in *History of the Okanagan*, *supra* note 4 at 84-93, describing how, in 1866-67, “the chiefs then claimed the right to recover their stolen women from the homes of white men, by force if necessary, under the authority of the village council, as they had done the previous winter” (at 85). Thomson described an accord reached between the local missionary and the Justice of the Peace concerning this problem and the broader jurisdictional conflict between church-appointed Indigenous village councils (that Thomson calls “Indian courts”) and colonial Justices of the Peace. Another of Thomson’s conclusions (at 89), which also informs the chiefs’ bringing the matter to the JIRC, was that,

The unsuccessful efforts [c. 1876] to further widen the powers of the courts reveal the limits to the Indian courts’ powers. The Indian courts achieved no authority over the two areas which involved white settlers – liquor sales and concubinage of Indian women. In the Okanagan at least, there were two parallel systems of law. This demarcation was made on the basis of race. The principle was that no white person could be tried in an Indian court.

¹³⁷ June-December JIRC Journal, *supra* note 5 at entry for 12 September 1877.

¹³⁸ Sproat to Superintendent General (3 October 1877), *supra* note 1.

commissioners: “the two emptied their minds as they termed it, to which of course we had patiently to listen, or we might have bidden farewell to our land Settlement. They said in short that they had been repulsed by Mr. Lenihan who had cut the old chief short, and in doing so had conveyed to all present the idea that their women were “cultus”[,] a Chinook opprobrious epithet.”¹³⁹ The chiefs concluded by telling the commissioners what their own people were saying to them:

“you tell us about the law; we have not shot these men [the white settlers mistreating the Indigenous women] because we have believed the law was good and have been expecting [the commissioners] to come and this other chief. Now, [the commissioners] tell us [they] have only to do with land and the other chief repulses us and says our women are no good (this of course is only the Indians story), So what are we to do[?]”¹⁴⁰

By this date, Chilliheetsa had made a strong impression on Sproat, who described him as

a subtle, politic, able and eloquent man of about 60 -- familiarly described by the settlers as the “biggest liar” in the country, [who] is chief of the tribe at Nicola Lake 100 miles distant, but owing to his personal character and being eldest nephew of the locally famous chief Nicola, Silla-heetza has a considerable say among the Okanagans here; indeed he has been their spokesman in our talks.

Sproat knew that Chilliheetsa was “the most influential chief in Okanagan” and felt that he had been “confused by his experiences with Dr. Powell some years ago and now with Mr. Lenihan. He does not understand a superintendent who does not superintend, and the young men at their meetings say ‘we do not understand this: we may as well go back at once to the ways of our forefathers.’” Sproat told the Superintendent General: “[t]o say the truth, the Indians have the best of the argument. We can only say to them that we for ourselves have only to do with land, and that we know the Queen wishes that they should be well and justly treated.”¹⁴¹

By mid-September the commissioners had been nearly three weeks with the Inkumupulux without really getting into the details of reserve-allotments, yet Sproat nonetheless felt that they were laying useful groundwork. He knew that, “[f]rom the Shuswap district it was

¹³⁹ *Ibid.* “Cultus” meant “worthless” or “good for nothing”: George Gibbs, *Dictionary of the Chinook Jargon, or, Trade Language of Oregon* (New York: Cramoisy, 1863).

¹⁴⁰ Sproat to Superintendent General (3 October 1877), *supra* note 1.

¹⁴¹ All quotations in this paragraph from *ibid.*

like passing into a new country to come to Okinagan, that is to say, we had new chiefs to meet, who could not be expected all at once to give us their confidence.” He also knew that, “[t]his place, the head of Okinagan Lake, is to the whole of the Okinagan district what Kamloops was to the whole Shuswap district. A good settlement here will help us in every place as we move forward.”¹⁴²

The most difficult land issue facing the commissioners at the head of the lake was the conflict between the Inkumupulux and two settlers, O’Keefe and Greenhow, over the settlers’ pre-emption of over 2,500 acres of land.¹⁴³ Much of the land had been within the large reserve allotted sixteen years before by Magistrate Cox but reduced a few years later by a subsequent colonial government.¹⁴⁴ It was the best agricultural land in the area, much of it contiguous to the existing Indian reserve, and the Inkumupulux wanted it back.¹⁴⁵ Sproat was dubious about the legitimacy of most of O’Keefe’s and Greenhow’s land holdings, and their responses to the commissioners’ inquiries pushed Sproat’s patience to its limits. In particular, he was furious that O’Keefe would not agree to any settlements the commissioners proposed.¹⁴⁶ As Sproat told the Superintendent General, he felt the commissioners were justified in pushing both Indigenous people and settlers to comply with “the law,” depending on the circumstances. He compared the commissioners’ coercion of the Penelakuts at Chemainus (the site of the fishing reserve with the contentious fences on what the commissioners decided was settlers’ land) with the

¹⁴² All quotations in this paragraph from Sproat to Superintendent General (13 September 1877), *supra* note 109.

¹⁴³ *Ibid.* Cole Harris discusses the O’Keefe & Greenhow matter in some detail in *Making Native Space*, *supra* note 7 at 125-129. Duane Thomson discusses this matter in *History of the Okanagan*, *supra* note 4 at 133-134. Peter Carstens discusses this matter in Chapter 4: Carstens, *supra* note 121 at 67-86.

The local Justice of the Peace, Charles Vernon (the CCLW’s brother), had written to Superintendent Powell in April 1876 about the volatility of the dispute between O’Keefe and the Syilx people living at the head of the lake at that point, before the reserve commissioners’ appointment. In the face of O’Keefe’s proposed construction of a dam, which the Syilx opposed, Vernon reported, “That great dissatisfaction exists at the present time between the Indians and Mr. O’Keefe with regard to their Lands, Mr. O’Keefe (as you are probably aware) owning a pre-emption of 160 acres almost in the centre of the Indian Reserve, and that about a month ago an Indian by name “Hilly-hitza” [Chilliheetsa], without the knowledge or consent of Mr. O’Keefe, cut timber on the land, and constructed a fence right through the centre of his claim. This appeared to me a most uncalled for act on the part of the Indians, and I have therefore ordered the Indians off the land.”: Vernon to Powell (27 April 1876), Ottawa, LAC (RG 10, vol. 3638, f. 7346).

¹⁴⁴ Sproat to Superintendent General (13 September 1877), *supra* note 109.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

commissioners' attempted coercion of O'Keefe and Greenhow through the allotment of the greater part of their land holdings as Indian reserve lands:

If I see no further reason against the views I now hold, we will run the Indian reserves to the extent required across the lands occupied by these settlers, which really, though fenced and cultivated, will according to my judgment be vacant Crown Lands. It is a hard thing to do, but we cannot in performing our duties make things comfortable for all, and having made the Indians at Chemainus and elsewhere pass under the yoke when they were in the wrong, we will do the same with the whites, carefully avoiding of course any unnecessary pressure or severity, so long as the claims of law and justice are strictly satisfied.¹⁴⁷

After several days in which commissioners and the chiefs rode around, examining available land, Selixt-asposum and Chilliheetsa sent the commissioners a message, "asking for a private interview."¹⁴⁸ Anderson took detailed notes of this meeting – conducted through an interpreter and attended only by Chilliheetsa, Selixt-asposum, and one elder of the community – appearing to note Chilliheetsa's words almost verbatim at times.¹⁴⁹ Chilliheetsa, acting "as chief spokesman," told the commissioners they had come "privately":

in order to talk of bygone things, and of matters as they now stand. He referred to the late chief Nicholas, who as we well know, had always been the firm friend of the whites, and who, by all the white chiefs, including some of ourselves, had been regarded as a brother. That Nicholas on his deathbed had spoken to Selix-asposum his son, and to him Seel-a-heetza his nephew, urging upon them the observance of the same friendly line of conduct, and told them that when they looked at these medals at any time of difficulty, they must recall his dying words (here he produced two medals, one a very beautiful work of art, having on the obverse the head of King George III, on the reverse the arms of the Hudson's Bay Company; the other a coronation medal of her present Majesty). That this recommendation of the departed Chief they had never neglected, and in all things had striven to obey. That on more than one occasion their influence had been successfully exercised; for that the young men, many of whom were hot-headed and difficult to restrain, had been greatly exasperated. That especially during the last spring a dangerous feeling had arisen, which they had succeeded in delaying only by referring to the approaching arrival of the commissioners at Kamloops, the intelligence of which had reached them in advance:

"for", said he[,] "while you white Chiefs have your paper writing to speak from afar, we too have our writing, but it is the tongue that writes, and our intelligence travels fast, and we now tell you, Selixt-asposum and I, that it was well for peace that

¹⁴⁷ *Ibid.*

¹⁴⁸ June-December JIRC Journal, *supra* note 5 at entry for 18 September 1877.

¹⁴⁹ *Ibid.* Cole Harris describes this meeting in *Making Native Space*, *supra* note 7 at 125.

your coming among us was not deferred; for though our words with the young men have weight, they are words only, and however well-directed, have not always power to restrain. Do not think that what I now say and what I say or the words of Selixt-asposum as well - is overstated, for however in small things he or I might talk lightly or without reflection, in great matters, such as we now talk of, our words are weighed. And this we tell you was a great matter, for it was a question of peace or of tumult.

You yourselves may have noticed, that on your arrival here, the young men were reserved, and especially reluctant as to being counted, for they had been told by Lawrence (a settler we are informed in the neighborhood) that this act of taking the census was only preliminary to the removal of the Indians to common reserves, after the fashion among the Americans. But since then your words and actions have convinced the Indians of your kind intentions, and they confide in you. The waters which before were disturbed and cloudy have regained their clearness etc. etc.”¹⁵⁰

Chilliheetsa spoke of the former large reserve allotted by Magistrate Cox in 1861 and “of the subsequent cutting down of the reserve by Mr. Haynes [in 1865], which, he contended, was done without the consent, and only with the partial knowledge of the Indians.” He reminded the commissioners of their having seen the contested land of the Cox reserve, pointing out that they “could see that while the finest portions had been appropriated by the whites, the portions assigned by Mr. Haynes to the Indians consisted, with small exceptions, of barren soil and rocks with little pasture.”¹⁵¹ Chilliheetsa continued:

That they had no desire to exclude the whites, and were even willing that they should share certain pastures in common, to a fair extent. That, however, their attention was now strongly directed to the raising of cattle, and they desired room for expansion in that branch, and also to increase their land culture. But all they asked was a fair share of the country which God had given to their fathers and to them, so that they might by future industry improve in life, and obtain a subsistence from resources which their fathers did not know. But, this done, they asked no more, the whites were welcome to the rest. That they asked for no annual presents, such as were made by the United States government, or other eleemosynary aid, but would trust to their own energy for support when once the present obstacles were removed.¹⁵²

Chilliheetsa then spoke again of “the woman question” he had raised a few weeks earlier and of Lenihan’s disappointing reaction. Selixt-asposum spoke more briefly, but to the same effect, and the elder apparently did not speak. The commissioners deferred their reply to the chiefs and the men had some “some friendly conversation on various outside topics.” Just before

¹⁵⁰ June-December JIRC Journal, *supra* note 5 at entry for 18 September 1877.

¹⁵¹ All quotations in this paragraph from *ibid.*

¹⁵² *Ibid.*

leaving, Chilliheetsa asked the commissioners for tobacco, something the commissioners perceived as a good sign, “the chiefs having intimated that they and their people were averse to accepting anything in the shape of a gratuity until their land question was in train of settlement.” The commissioners immediately gave Chilliheetsa and his companions some tobacco, and the chiefs reportedly left “in great good humour.”¹⁵³

By September 21, the commissioners felt that they were making progress with the Inkumupulux. The chiefs were “most friendly” and “the feeling of disquietude among the Indians” seemed to have subsided.¹⁵⁴ One of the reasons for the better feelings was that the commissioners were making headway with Greenhow, one of the settlers whose claimed land included one of the Inkumupulux’s principal locations.¹⁵⁵ The Inkumupulux, in fact, still occupied the land and had prevented Greenhow from using it, “as they say the land is theirs, and that no one has a right to take it from them.”¹⁵⁶ The commissioners eventually arrived at a settlement of the dispute. They drafted and signed an “Award,” terming themselves “Arbitrators” appointed by “the Government of British Columbia, the Okanagan Indians and by Thomas Greenhow,” under which the Inkumupulux were to acquire the disputed 160-acre parcel as a reserve and Greenhow was to receive 420 acres in return.¹⁵⁷

However, the commissioners could not settle the O’Keefe dispute so easily. On September 28, Anderson took the “depositions” of two Christian Indigenous men, Basile and Aleck (perhaps Chilliheetsa’s sons¹⁵⁸). The men deposed – through the interpreter Gregoire, by indicating their marks on a paper in the presence of Anderson and McKinlay – “that Mr. O’Keefe, or any agent of his, has never lived upon the land which he has enclosed and seeks to claim, at the head of Okanagan Lake.”¹⁵⁹ The commissioners eventually did allot some of

¹⁵³ All quotations in this paragraph from *ibid.*

¹⁵⁴ Anderson to Superintendent General (21 September 1877), Ottawa, LAC (RG 10, vol. 3653, f. 8701).

¹⁵⁵ Sproat & Anderson to Wood (25 September 1877), Ottawa, LAC (RG 10, vol. 3612, f. 3756-22).

¹⁵⁶ *Ibid.*

¹⁵⁷ Anderson, McKinlay & Sproat, “Award” (27 September 1877), Victoria, B.C. Archives (GR-868, box 3, folder 4).

¹⁵⁸ “Alexander” and “Bazile” are two of Chilliheetsa’s sons recorded by Blenkinsop on his 1878 census: “Upper Nicola tribe occupying two Villages on the Nicola & Douglas Lakes – Chilliheetsa’s camp” (18 September 1878) in George Blenkinsop, “Indians inhabiting portion of New Westminster, Yale and Coast Districts, 1878-1879”, Ottawa, LAC (RG 10, vol. 10012A).

¹⁵⁹ “Deposition of Basile and Aleck” (28 September 1877) in British Columbia, *Sessional Papers* (Session 1878) at 724.

O’Keefe’s claimed land as Indian reserve, but O’Keefe hired lawyers to fight the commissioners’ decision, beginning a contentious dispute that would outlast Sproat’s tenure as reserve commissioner.¹⁶⁰

Finally, on October 1, the commissioners invited the Inkumupulux chiefs to an “interview” at which they communicated their reserve decisions.¹⁶¹ Dominion Commissioner Anderson, at least, believed that the commissioners had “settled satisfactorily” with this important community.¹⁶² However, Sproat was characteristically less upbeat than Anderson, writing that he did not “think that the Indians here are thoroughly satisfied,” though the commissioners had given them “a fine reserve.”¹⁶³ Sproat explained: “[w]hat with the floating ideas of original possession which they have; the extravagant annulled grants of Mr. Cox; the cutting down by Mr. Haynes; the delays; the want of superintendence and friendly trustful conversation with the whites; the effect of the war across the border, it is not possible to satisfy them.”¹⁶⁴

Sproat also knew that the commissioners’ actions, “though strictly within the law and within the agreement between the Governments and within our instructions,” had caused local settler comment and, in some cases, complaint. Though he usually found settlers “kindly” when their own interests were not involved, he also found that “when the pull comes, the settlers take similar views blinded by old prejudices and by the effect of the unusual obligation of regarding the Indians as equal before the law, in practice, as well as theory.”¹⁶⁵ Harkening to his previous comments about the commissioners requiring both Indigenous people and settlers to pass “under the yoke” of the law, Sproat responded to complaints that the commissioners had been too generous in their reserve-allotments by asserting that, “neither Government could wish to protect whites or Indians who had placed themselves outside the law, and that kindness to the white might mean injustice to the Indian, and vice versa, and this rule would be applied in action,

¹⁶⁰ JIRC to O’Keefe, “Letter A” (1 October 1877) in *ibid* at 724-725.

¹⁶¹ June-December JIRC Journal, *supra* note 5 at entry for 29 September 1877.

¹⁶² June-December JIRC Journal, *supra* note 5 at entry for 6 October 1877.

¹⁶³ Sproat to Superintendent General (3 October 1877), *supra* note 1.

¹⁶⁴ *Ibid.* For a brief discussion of the reserves laid out by Magistrate Cox and reduced, in this case, by Magistrate Haynes, see discussion, *supra* note 36.

¹⁶⁵ All quotations in this paragraph from *ibid.*

consistently.”¹⁶⁶ Sproat believed that the commissioners had to be firm in their decisions, even if they upset settlers: the whole British Columbia land matter, he said, “has to be settled with an iron hand, or it will be settled sooner or later in blood.” Referencing the threat of an “Indian war” just a few months before, Sproat told the Superintendent General that he had neither seen nor heard anything to make him doubt that “there was imminent danger of an outbreak in this country, and, security does not now exist.” He concluded: “[t]he Indians, in short, it is perfectly clear to my mind, from a mass of direct and circumstantial evidence, were resolved in this part of the country to take the matter into their own hands, and I cannot say that I blame them. It was the only way to get a settlement, whoever has been to blame.”¹⁶⁷

From Sproat’s summary of the situation at Inkumupulux, his steadfast conviction to apply “the law” equally to the settlers and to Indigenous people is evident. However, for the first time, one also can see his humanitarian sentiments strengthening as when, siding generally with the Inkumupulux, Sproat told the Superintendent General:

this place has been one of the most difficult places in which we have carried on our work. I found that the Indians were much dissatisfied, and that they had reasons for being so. Their reserves were insufficient, and they have been waiting for many years for an adjustment and have seen white settlers obtaining possession of adjacent lands which the Indians wished to get and considered were necessary to their comfort and welfare.¹⁶⁸

The commissioners left for the next community, at Penticton (the foot of Okanagan Lake), on October 6.¹⁶⁹ Sproat and Mohun (the surveyor) travelled down the east side of the lake to allot several fishing stations for the Inkumupulux.¹⁷⁰ The other two commissioners, accompanied by Selixt-asposum, the Inkumupulux chief, took the west side.¹⁷¹ Partway through their first day of travelling, Selixt-asposum invited the two commissioners into his house, as he wished to speak to them privately. Through the interpreter, he spoke “of the general condition of affairs, both before and since [the commissioners’] arrival, and at the present time,” in a

¹⁶⁶ *Ibid.*

¹⁶⁷ All quotations in this paragraph from *ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ June-December JIRC Journal, *supra* note 5 at entry for 6 October 1877.

¹⁷⁰ June-December JIRC Journal, *supra* note 5 at entries for 6 and 15 October 1877.

¹⁷¹ June-December JIRC Journal, *supra* note 5 at entry for 6 October 1877.

discussion similar to the one Chilliheetsa and Selixt-asposum had had with the commissioners a few weeks earlier.¹⁷² Selixt-asposum gave the commissioners this assurance:

that the minds of the people were now tranquil and satisfied. That there had existed a very bad feeling in the early part of the summer, which a mere trifle would have sufficed to bring to a climax. That the reports from the American side, and the messages they had received from their connections there, had excited the young men very much. This feeling the expectation of the coming of the commissioners had restrained; and that our patient and kindly treatment of their land claim since, had removed whatever bad feeling had previously existed. That he and Seel-a-heetza [Chilliheetsa] had throughout done their best, and have now sent down messages in advance of us, to prepare the Indians near the line for our coming, and to explain their own satisfaction at our proceedings.¹⁷³

Selixt-asposum also told the two commissioners that he had rebuffed recent efforts by Indigenous peoples on the American side of the border to get his people to join in their fight against the white settlers.¹⁷⁴ After the discussion, the two commissioners smoked “a pipe or two” with Selixt-asposum and rejoined their party.¹⁷⁵

The commissioners reached Penticton on October 19, although their formal interview was deferred several days while the community gathered to meet the commissioners.¹⁷⁶ Sproat observed that “[t]hese Indians at the foot of the Lake are apparently civil, well behaved men and the chief is a vigorous, sensible fellow, who comes to business without much palaver.”¹⁷⁷ He

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ June-December JIRC Journal, *supra* note 5 at entry for 24 October 1877.

¹⁷⁷ Sproat to Minister of the Interior (27 October 1877), Ottawa, LAC (RG 10, vol. 3656, f. 9063). Duane Thomson, in *History of the Okanagan*, *supra* note 4 at 56, gives an account of the missionaries’ influence over the Okanagan people in general and the Penticton community in particular which may account for Sproat’s appreciation of their civility and good behaviour:

Regularized conduct meant being monogamous, industrious, sober and obedient and it was this social behaviour which meant so much to the Oblates. Baudre reported on the Penticton band with considerable pride:

[A]ll are given up to morning and evening prayers and before long public disorders will have disappeared. The sauvages of our neighbourhood are no longer backward. They come regularly to mass. Their prayers are said together in each hut morning and evening, with only a few showing indifference. [OMI, reel 705, Baudre to d’Herbomez, February 1874]

Baudre was describing the prescribed daily routine of village life, enforced by the priest and the village hierarchy. Monastic rules were in force in each village. The church bell awoke them, then summoned them to prayer and dismissed them for breakfast. Again in the evening it summoned them

further explained that the Chief “makes no bones about admitting that some of his young men, on the invitation of the American Indians, did go across the frontier and proceeded so far to join Joseph, but thinking better of it, they returned.... This fact is therefore now, established beyond all doubt.”¹⁷⁸ While in Penticton, Sproat penned a long letter to the Minister of the Interior in which he updated the Minister on the continual messengers from American Indigenous groups, the relationships between the American and Canadian Syilx communities, and Chilliheetsa’s importance in the region:

You are aware that messengers have been constantly coming during summer and autumn from the American Indians to the chiefs of the Okanagans and other Canadian Indians in British Columbia. Their presence in the country, like the doings of the Indians in many matters, is entirely unknown and unsuspected by the people here who might most be expected to know it. The Indians move in a world of their own, in the midst of our white civilisation.

It would appear that Chiley-heetza, the Nicola chief already mentioned to you, is supposed by the American Indians to be, for their purposes, the most influential chief near the frontier, at least many messages are sent to him. I am sorry we cannot settle this season with Chiley heetza at his own place, Nicola, owing to the approach of winter, but we have made his acquaintance and had ample experience of his ingenuity, pertinacity and powers of speech at the head of Okinagan Lake which we lately left.

On our way down, at our first encampment, a messenger rode up, unmistakably an American Indian. We learned that he was a messenger to Chileyheetza.

At our fourth encampment, on Trout River, we learned that two Indian messengers had passed our camp on the way to Chileyheetza's place. We did not see them. Two days ago two American Indians entered our camp and were well received. We have with us as a friend the important Kamloops chief Louis, who seems to be known everywhere and to know every stream and encampment within 150 miles on this side of Kamloops. In case of anything ever occurring in this quarter, he would be the actor in it, though Chileyheetza might be the schemer. The American Indians remained two days and then went away. Since their departure we have ascertained that they were brothers and were the two last mentioned messengers to Chiley-heetza sent by Chief Moses -- well known to the American Indian Department across the line -- chief, I believe, of a remnant of Spokanes -- in order to inform Chiley-heetza that a rising might take place in the spring, and asking his cooperation. ... It appears that Chiley heetza, who had just left us after prolonged discussions at the head of the Lake, did not favourably receive the message and proposal, but said that the affairs of the

to prayer and then announced the curfew, at which time lights were extinguished. The purchase of a clock in 1877 by the Penticton band takes on considerable significance when one considers the regimentation which it imposed on family and village life.

¹⁷⁸ Sproat to Minister of the Interior (27 October 1877), *supra* note 177.

Indians were being attended to on this side of the line, and they did not see their way to better themselves by rash measures.¹⁷⁹

By early November, the commissioners had had several interviews with the Penticton community and had ridden over a large extent of country examining lands they could allot¹⁸⁰; however, they delayed allotting the Penticton reserves until their return journey.¹⁸¹ The commissioners continued south to Osoyoos, arriving on November 5.¹⁸² The next day, “the Indians came in state to shake hands,” and the commissioners “had an informal interview with the headman on friendly topics.”¹⁸³ After that, the commissioners had more formal meetings and also toured the countryside. In all, they spent about ten days at Osoyoos and assigned “an extensive tract of excellent pasture, including some agricultural land, in addition to the old reserve.”¹⁸⁴ The commissioners later allotted another reserve and a fishing station reserve which two Osoyoos men pointed out to the commissioners on their journey back to Penticton.¹⁸⁵

Because of the lateness of the season, the commissioners decided they could not settle land matters in the Similkameen valley, to the west of Osoyoos, but that it was nonetheless important that a commissioner visit the Syilx community there.¹⁸⁶ Anderson and Gregoire, the interpreter, went to the valley and took an alternate route back to Penticton. Although the Keremeos chiefs were away in the mountains, Anderson left a note for them and later received a message from the senior chief of Similkameen, “expressing great regret that after Mr. Anderson had taken the trouble to come so far, he and his people should not have been at home to receive him.”¹⁸⁷

Back in Penticton, the commissioners allotted reserves after some further interviews, but the Penticton people and the commissioners were eager to be on the move because of poor winter

¹⁷⁹ Sproat to Minister of the Interior (1 November 1877), *supra* note 96.

¹⁸⁰ June-December JIRC Journal, *supra* note 5 at entry for 1 November 1877.

¹⁸¹ JIRC, “Minutes of Decision, Penticton” (24 November 1877), Vancouver, INAC (Prov. Coll., vol. 3).

¹⁸² June-December JIRC Journal, *supra* note 5 at entry for 6 November 1877.

¹⁸³ *Ibid.*

¹⁸⁴ June-December JIRC Journal, *supra* note 5 at entry for 16 November 1877.

¹⁸⁵ JIRC, “Minutes of Decision, Osooyos” (16 and 21 November 1877), Vancouver, INAC (Prov. Coll., vol. 3, 248-252); June-December JIRC Journal, *supra* note 5 at entry for 16 November 1877.

¹⁸⁶ June-December JIRC Journal, *supra* note 5 at entry for 20 November 1877.

¹⁸⁷ *Ibid.*

weather.¹⁸⁸ Francois, the Penticton chief, was particularly anxious to get to Keremeos to have his wheat ground at a mill for his winter supply of flour.¹⁸⁹ The commissioners left immediately for the mission on the east side of Okanagan Lake, which they reached on November 24, just in time to avoid travelling through snow.¹⁹⁰ They left the Okanagan Mission a few days later and reached Kamloops on December 3, their “last two days march being forced, including under necessity the Sunday, in order to escape the heavy-falling snow.”¹⁹¹ They encamped about a mile from Kamloops and prepared for their departure for Victoria. While at Kamloops, they had “interviews with several of the Chiefs, in connection with the business of their reserves and other topics.”¹⁹²

In concluding their work in the Shuswap and Okanagan, Anderson expressed himself satisfied with the JIRC’s work that year but worried about the effect of Indigenous unrest in the United States on the Secwépemc and Syilx. Several chiefs had reassured Anderson privately and the JIRC publicly that “satisfied as they now are,” they would not “be misled by any invitations that may come to them from their connexions on the American side.” Nonetheless, despite believing in the sincerity of these assurances, Anderson was still anxious about “whether the kindly and loyal feeling now in existence shall continue.”¹⁹³

Clapperton, the Nicola valley Justice of the Peace, wrote to Sproat in early December to ask when the commissioners would visit Nicola, where Chilliheetsa lived. He knew the season was too late for the commissioners to settle land matters there, but he wondered if the commissioners might at least travel back to the coast by way of the Nicola valley:

The Indians here, and indeed many of the whites are dissatisfied at being left over till another year, without even being assured that then the question will be settled.

It is not my place to dictate what you should do, but I know that your travelling through the valley would help all parties to be patient.

¹⁸⁸ JIRC, “Minutes of Decision, Penticton” (24 November 1877), Vancouver, INAC (Prov. Coll., vol. 3).

¹⁸⁹ June-December JIRC Journal, *supra* note 5 at entry for 24 November 1877.

¹⁹⁰ *Ibid.*

¹⁹¹ June-December JIRC Journal, *supra* note 5 at entry for 5 December 1877.

¹⁹² *Ibid.*

¹⁹³ Anderson to Superintendent General (7 January 1878), Ottawa, LAC (RG 10, vol. 3653, f. 8701).

The actions and movements of the commissioners are so important in the eyes of the Indians that since you left Osoyoos there is scarcely a camp you have made that was not announced here a day or two after.¹⁹⁴

Though the commissioners did not go to the Nicola valley, Chilliheetsa rode “40 miles through the snow” to meet the commissioners on their way back to the coast.¹⁹⁵ According to Sproat, “[w]e shake hands, but cannot promise him anything. He is quite friendly, as he knows we could not work in the snow.”¹⁹⁶ In turn, Sproat “rode 20 miles out the Nicola trail with Chiley-heetze, one of the Nicola Chiefs. The ground was covered with snow, and he of course knew that we could do nothing.”¹⁹⁷

In 1927, James Teit, informed by Chief Alexander Chelahitsa and others, described Chilliheetsa’s pivotal role in preventing a war between Indigenous people and settlers in the 1870s:

About 1875 and 1876, when there was great dissatisfaction among the interior Salishan tribes in British Columbia because of white settlement on their lands and the failure of the government to make treaties and proper agreements with them regarding their land and hunting rights, etc., *TSELaxi'tsa* calmed the other chiefs and repressed the people, telling them the Queen would eventually see to it that the Indians would be dealt with fairly. He was friendly to the settlers and did not try to run them off. He simply asked them questions and let them understand that they were trespassing on land still possessed by the Indians. About this time an alliance was formed by most of the Shuswap and Okanagan chiefs for the purpose of a combined attack upon all white settlers.¹⁹⁸

By 1877, according to Teit:

there only remained the word of Chief *TSELaxi'tsa* [Chilliheetsa] to set the country aflame. He stood out against all the others and advocated a peaceful policy. Through his efforts a serious Indian war was avoided. The Indians were appeased shortly afterwards by the arrival of Mr. Sproat and the apparent desire of the Government to

¹⁹⁴ Clapperton to Sproat (5 December 1877), Victoria, B.C. Archives (GR-494 at 362-363).

¹⁹⁵ Sproat to Meredith (7 December 1877), *supra* note 52.

¹⁹⁶ *Ibid.*

¹⁹⁷ Sproat to Superintendent General (10 December 1877), Ottawa, LAC (RG 6, G 1, vol. 667, f. 1878(3)).

¹⁹⁸ Teit, *supra* note 12 at 272-273. Teit’s informants for “The Genealogy of the Okanagan Chiefs” were Chief Alexander Chelahitsa (probably one of Chilliheetsa’s sons or grandsons) and “several other Indian informants”: Teit, *supra* note 12 at 263.

acknowledge the rights of the Indians. However, considerable dissatisfaction remained among many.¹⁹⁹

The evidence suggests Teit was correct on all counts. Chilliheetsa and, indeed, other “senior” chiefs like Selixt-asposum and Louis appear to have engaged in remarkable diplomacy that summer. They encountered pressure, on the one hand, from younger men who wished to fight and, on the other hand, from those who wished to take what they could get from the reserve commissioners and get on with farming and stock-raising. Moreover, the senior chiefs had to manage their community-members while also attempting to secure land from a reserve commission for whom Indigenous interests in land were only one consideration. In this respect, the senior chiefs may have had to achieve compromises within their own communities – between going to war, pursuing the lands their people had traditionally used and occupied, and seeking the farming and pasture lands some of the younger generation wanted and the reserve commission was inclined to give – while remaining cognizant of and pushing against the commissioners’ disinclination to countenance the dispossession of white settlers. The chiefs’ skills in managing their people is all the more extraordinary, given the reserve commissioners’ consistent attempts to undermine them.

4.3 THE JIRC’S APPROACH TO RESERVE-ALLOTMENT IN ITS SECOND CIRCUIT

At the end of the JIRC’s Secwépemc and Okanagan circuit, Sproat delivered year-end reports to the Dominion (in December) and the province (in January).²⁰⁰ Both reports describe the JIRC’s approach to reserve-allotment, an approach Sproat would largely follow as sole reserve

¹⁹⁹ *Ibid* at 272-273. Thomson similarly concluded that, “Only on Chief Chilliheetsa’s intervention and with his permission, was a settlement reached” in 1877 with the JIRC: Thomson, *History of the Okanagan*, *supra* note 4 at 69.

²⁰⁰ Sproat to Superintendent General, “Second Condensed Report by the Joint Commissioner appointed by the Governments of Canada and British Columbia” (1 December 1877), Ottawa, LAC (RG 10, vol. 3612, f. 3756-16), also reproduced in Parliament, “Special Appendix E” in *Sessional Papers*, No. 10 (1878) [Sproat’s Dominion Report (December 1877)]; Sproat and McKinlay to Provincial Secretary (6 February 1878), enclosing “Second Condensed Report of the commissioners acting for the Province” (1 January 1878), Victoria, B.C. Archives (GR-494 at 488-549) at 527 [Sproat’s Provincial Report (January 1878)]. Sproat sent subsequent letters to the Dominion enclosing lengthy excerpts from his later provincial report on “arable lands,” “requirements of the Indians,” “how to judge of a Reserve,” “grazing lands,” and “fishing places”: Sproat to Superintendent General, “Arable and Grazing Lands” (4 February 1878), Ottawa, LAC (RG 10, vol. 3657, f. 9360), and Sproat to Superintendent General, “Fishing Places” (4 February 1878), Ottawa, LAC (RG 10, vol. 3657, f. 9361).

commissioner. In the provincial report, Sproat described the significant “Progress of the Indians as cultivators.”²⁰¹ He concluded that this “progress” would no doubt continue: “[i]t would be contrary to experience to anticipate that this progress will soon stop, and that a people will fall back into savage ways of living, after having to some extent adapted civilized habits, and acquired a taste for the better food which the cultivation of the land now enables them to enjoy. They may die out in time, but it is extremely improbable that they will recede.”²⁰² These observations reflected ideas Sproat had held for many years – for example, his theory of “natural decay” that he described in *Scenes and Studies of Savage Life*²⁰³ – and ideas he was still developing about the type of “progress” he expected of and hoped for Indigenous people.

Despite Indigenous progress in cultivation, Sproat thought that the future for settlers and Indigenous peoples in the interior lay in stock-farming because of the lack of water for crops.²⁰⁴ He advised that since Indigenous people now appreciated “the facts” of stock-farming – the economics of ranges, the value of different ranges, etc. – “what they seem to have been asking for really has been a fair share of the natural advantages of the country for the exercise of the only industry open to them above the occupation of a laborer.”²⁰⁵ Indeed, many of the Secwépemc and Syilx were already large stock-owners by this time: the combined livestock totals for the two nations (excluding the Similkameen), according to Blenkinsop’s census, were 1,426 cattle, 3,629 horses, 324 pigs, and 1,243 fowl.²⁰⁶

²⁰¹ Sproat’s Provincial Report (January 1878), *supra* note 200 at 511.

²⁰² *Ibid* at 511-512.

²⁰³ Gilbert Malcolm Sproat, *Scenes and Studies of Savage Life* (London: Smith, Elder and Co., 1868) at 275-276.

²⁰⁴ In 1874, as well, after a visit to the southern interior of the province to try to quell Indigenous anger over land issues, Superintendent Powell reported that, “Many of these Indians have of late become extensive cattle owners and although Reserves have been laid aside for them, these lands are not now nearly sufficient for their grazing purposes. ... When Reserves were originally laid aside here there were no Indian cattle owners for whom, as they knew nothing of agriculture, the average quantity intended to be allowed each, of four acres, was then sufficient for their purposes. The case is now however, quite different, for the interior Indians in addition to considerable progress in raising cereals, are very generally the possessors of cattle horses sheep pigs etc.”: Powell to Minister of Interior (4 February 1874), *supra* note 136. Duane Thomson gave a detailed history of Indigenous and white settler stock-raising in the Okanagan in *History of the Okanagan*, *supra* note 4 at 248-294.

²⁰⁵ Sproat’s Dominion Report (December 1877), *supra* note 200; Sproat’s Provincial Report (January 1878), *supra* note 200 at 507.

²⁰⁶ “Abstract of Census and Inventory of Live Stock” (1 February 1878) in Blenkinsop, “Shuswap/Okanagan Censuses”, *supra* note 12. See also Thomson, *History of the Okanagan*, *supra* note 4 at 291, where Thomson concludes: “Livestock production had assumed considerable importance in the Indian economy by the time of

Sproat also reported on the commissioners' process for allotting reserves, revealing how the pursuit of agricultural and grazing land dominated the JIRC's reserve-allotments in the southern interior. First, the commissioners considered what portion of the intended land was "unavailable from rocks, lakes, streams or very wet swamps." Next, they considered what portion of it was arable, with and without irrigation. After that, they considered what portion of it was "natural hay land"; what portion "woodland, for buildings, fences and fuel"; what portion was No. 1, No. 2 and No. 3 grazing land; and, lastly, what portions of the grazing land would be classed as summer grazing and as winter grazing.

The commissioners then considered how much land to allot to each community. In terms of acreages, it "seemed reasonable" to them that "the number of male adults should be considered in estimating the quantity of arable land, and the number of animals in estimating the quantity of grazing land." They then allowed for a probable increase of both figures, basing this allowance not on any "theory," but, rather, "upon the facts of the industrial progress and present condition of the people." Yet, these estimates gave only "a line of direction" rather than "a principle of action to be rigidly or universally applied." The commissioners also had to consider the "very powerful controlling considerations" of "the nature of the country, limited as it is in its arable and grazing capabilities; its now being and having to be the habitat of intermingled white settlers and Indians; the existing legal rights and fair expectations of white settlers as regards both their own lands and the portions of the public domain which they have customarily enjoyed; [and] the avoidance as far as possible, of what might check future white settlement."²⁰⁷

Despite being alive to Indigenous needs, the commissioners never lost sight of their instructions nor the respect for settler interests those instructions demanded in carrying out the task of reserve-allotment. In fact, in summarizing the difficult work facing the Commission given the settler-centric colonial and provincial land policies, Sproat provided this synopsis of the commissioners' approach:

Under these circumstances, the commissioners have had to make the best compromise they could effect, looking to their instructions and to the general object of their

the Indian Reserve Commission's census in 1877; livestock formed a major medium of exchange for Indians who traded for vegetable products and imported provisions from the missionaries and from local traders such as Lequime, Krueger and O'Keefe."

²⁰⁷ All preceding quotations in this paragraph from Sproat's Provincial Report (January 1878), *supra* note 200 at 508-510.

appointment... The country is extensive, but the tracts, naturally suitable for cultivation and winter grazing, are, as above shown comparatively limited. The white men possess some of these tracts almost exclusively in some localities: and the Indians are the principal possessors in other localities. To make the Dominion Government absolutely safe, as trustees, against all Indian requirements, by the assignment of lands naturally suitable in their disunified characteristics for all the future purposes of the people, would have demanded the alienation from the Province of immense tracts of partly occupied and partly unoccupied land -- would have made an Indian domain in fact of this part of the country-- This, however, was not required by the spirit of the Agreement between the two Governments, and would not have been in accordance with sound principle or expediency, for the Indians, like the whites, must prepare to meet the time when every inch of water for irrigation must be husbanded, and when food must be produced to support stock in winter.

...

What the commissioners have done has been to regard, and study, on the spot all matters affecting the questions before them, from the points of view of the white settlers, and the Indians, also of the provincial community in general, and of the two Governments -- which of course have no interest but in the well being of all classes of the people -- and having done this they have then, by their decisions, struck an average, according to the best of their judgment, and without fear or favor. They specially secured to the Indians their old homes or settlements and fishing places and, then, as regarded the principal area of their reserves they decided on that, after considering the number of the people, their stock, as well as their numerical and industrial prospects in the not distant future, together with the nature of the land and the usefulness of portions of it for tillage, by irrigation, also for summer and for winter pasture.²⁰⁸

4.4 SPROAT AND THE “HUMANITARIAN CIVILIZING” OF INDIGENOUS PEOPLE

In the JIRC’s second circuit, Sproat expressed similar thoughts about the “humanitarian civilizing” of Indigenous peoples to those he had expressed on the first circuit: he hoped for and worked towards the “civilization” of Indigenous peoples, but he felt strongly that to achieve this goal, the government would have to give them advice and protection and not attempt to “civilize” them too quickly. Sometimes, Sproat used the degree of Indigenous “civilization” to highlight a governmental advantage, as when he told the Minister of the Interior: “[e]very Indian you partially civilise, or enable or stimulate to get property, immediately becomes a contributor to the general revenue.”²⁰⁹ Other times, Sproat used the degree of Indigenous “civilization” to deny Indigenous rights, as when he advised the province that “the provincial commissioners” (of

²⁰⁸ Sproat’s Dominion Report (December 1877), *supra* note 200.

²⁰⁹ Sproat to Minister of Interior, “Confidential” (27 August 1877), Ottawa, LAC (RG 10, vol. 3653, f. 8702).

which he was one) had objected to allotting numerous small fishing spots as reserves, since “the Indians really did not require these small fish, having plenty of salmon, and using, now, largely the common food of civilized men.”²¹⁰ Similarly, Sproat defended a colonial magistrate’s reduction of the Indian reserve at the head of Okanagan Lake by noting that “10 or 12 years ago, the Indians had shown no disposition to adopt civilised pursuits, and a very well judging mind would have been then required to foresee the future wants of the people.”²¹¹ Yet Sproat also displayed his humanitarianism when he noted, of this same reserve, that now that the Inkumupulux had “fenced and cultivated a very fair portion of their land” and had 560 horses and 187 cattle, the commissioners “had to find more agricultural land and to find also suitable summer and winter pasture.”²¹²

Sproat criticized governmental policy, particularly in British Columbia, for coddling Indigenous people, and he urged the Minister to stop giving “presents” to Indigenous people:

Why should hard working men in Quebec and Ontario pay for ploughs &c. for Indians here, who can become producers and accumulate wealth if they will? Let them work like other men: stop all this charity business. Stimulate their self reliance; help the education of their children: devise means by the Indian Act, or an Amended Indian Act, to push them toward citizenship; provide asylums for the infirm; and give them the benefit of a compact, organised, skilful administration by active, competent officers under a master's eye and you will get the maximum of results at the minimum of expenditure.²¹³

Sproat displayed the harsher aspects of governmental “civilization” of Indigenous peoples when, in a private letter to the Minister of the Interior about how to improve “Indian administration” in the province, he recommended the duties an agent could undertake. He expressed again how he believed governmental assistance and even compulsion might be necessary in order to ensure that Indigenous peoples would “progress” towards “civilization”:

The Agents would... put the Indians on their pride, explain to them the unmanliness of begging, and the need and duty of their paying money from their own earnings for

²¹⁰ Sproat’s Provincial Report (January 1878), *supra* note 200 at 537-538.

²¹¹ Sproat to Superintendent General (3 October 1877), *supra* note 1.

²¹² *Ibid.* See also Sproat’s newspaper article, “The Indian Question Explained,” where Sproat explained that the interior was “a country in which both white settlers and Indians have to find a living by industry and civilized pursuits”: Sproat, “The Indian Question Explained” (20 October 1877), Ottawa, LAC (RG 10, vol. 3612, f. 3756-16), and also in Parliament, “Special Appendix E” in *Sessional Papers*, No. 10 (1878) at ixv.

²¹³ Sproat to Minister of Interior, “Confidential” (27 August 1877), *supra* note 209.

hospitals, homes for the aged and schools. From time to time the Commissioner, on his circuit, would watch when the time for lopping, or severing had in particular cases arrived. It is preposterous that a system should exist under which men may drink and gamble, and neglect the common duties of life, and then be helped out of the mire by a paternal government. What the Government should do is to give them, as imperfect citizens, the protection and advice of honest and thoughtful officers, of civilised brains in fact -- to point out the ways of improving their well being. If they refuse persistently to walk in these ways, they must, like white men, be taught by suffering. The Indians may fairly claim some help, given in the right way, say for schools or to pay nurses in hospitals on reserves, built by themselves, or for medicines, perhaps, because they pay a sum to the treasury probably exceeding the cost stated in the foregoing which, without any consent of political representatives of their own is used by the general government for public purposes.²¹⁴

In this letter from the fall of 1877, one can see certain ideas – “their paying money from their own earnings for hospitals... and schools” – that the Nlha7káp̄mx would incorporate into their controversial Rules in the summer of 1879.

²¹⁴ Sproat to Minister of Interior, “Appendix F” (27 October 1877), *supra* note 177.

Chapter 5: Sproat and Indian title

Despite the fact that the governments created the Joint Indian Reserve Commission (JIRC) without reference to Indian title, it nonetheless played a critical role in the JIRC's operations, particularly in the summer of 1877. In August, David Mills, the Minister of the Interior and Dominion Superintendent General of Indian Affairs (Superintendent General), emphasized to the commissioners that the Dominion would wield Indian title as a sword against the province if the commissioners did not satisfy Indigenous people with respect to their land complaints by allotting large Indian reserves.¹ For Sproat, the Minister's correspondence confirmed that Indian title was important in the delicate land arrangements the commissioners were attempting to make, and it made him all the more eager to find compromises: between Indigenous demands for lands and governmental land policy, between Indigenous and settler claims to particular parcels, and between the Dominion and provincial positions concerning the recognition and extinguishment of Indian title. In this chapter, I discuss the integral role that the spectre of Indian title played in the JIRC's operations and Sproat's thinking about Indigenous land.

5.1 THE JIRC'S SECOND CIRCUIT, 1877

On August 30, 1877, while the commissioners were at the head of Okanagan Lake, Sproat received a letter dated August 3 from Minister of the Interior David Mills, which he shared with his fellow commissioners. Mills wrote in reply to Sproat's long July 16 letter advising of the Indigenous confederation in the Shuswap and Okanagan, reviewing the state of land matters generally in the B.C. interior, and providing further justification for requesting the North West Mounted Police.² In his letter, Mills expressed the Dominion position concerning Indian title in

¹ Mills to Sproat (3 August 1877), Ottawa, LAC (RG 10, vol. 3597, f. 1353, reel C-10103). Foster discusses this letter briefly in Hamar Foster in "Letting Go the Bone: The Idea of Indian Title in British Columbia, 1849-1927" in Hamar Foster and John McLaren, eds., *Essays in the History of Canadian Law, Volume VI: British Columbia and the Yukon* (Toronto: University of Toronto Press for The Osgoode Society for Canadian Legal History, 1995) 28 at 64 and quotes from it in Hamar Foster, "Roadblocks and Legal History, Part II: Aboriginal Title and S. 91(24)" (July 1996) 54:4 *The Advocate* 531 at footnote 40.

² Joint Indian Reserve Commission, "Journal of the Proceedings of the Commission for the settlement of the Indian Reserves in the Province of British Columbia, continued from Vol. 1" (27 June 1877), Ottawa, Library and Archives Canada [LAC] (RG 10, vol. 1284, reel 13902), and Victoria, B.C. Archives (GR-1965) [June-December JIRC Journal] at entry for 1 September 1877. Cole Harris suggests that David Mills raised the issue

a way that no other federal official had done before, but that encapsulated how the Dominion could reconcile its extensive, multi-year treaty negotiation efforts to extinguish Indian title in the areas east of the Rocky Mountains with the lack of such a program in British Columbia.³ The

of Indian title in Ottawa: Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: UBC Press, 2002) at 122 [C Harris, *Making Native Space*]. That is technically true, since Mills wrote his letter from Ottawa; however, Mills's letter was in reply to Sproat's July 16 letter (Sproat to Minister of Interior (16 July 1877), Ottawa, LAC (RG 10, vol. 3651, f. 8540). Mills opened his letter by stating, "I have the honor to acknowledge receipt of your letter of the 16th ult. which was forwarded to me by His Honor the Lieut. Gov. of British Columbia on the 21st ult.": Mills to Sproat (3 August 1877), *ibid*. Anderson wrote in the JIRC Journal that Mills's letter was in reply to Anderson's and Sproat's joint letter of July 16: June-December JIRC Journal, entry for 1 September 1877. However, since Mills addressed his letter only to Sproat, it seems most likely that he was replying to Sproat's letter to him and not to the jointly-authored letter.

For Mills's interesting background, including the conclusion that on becoming Minister of the Interior in 1876, "Mills saw the government as the protector of the Indians and their rights," and a brief discussion of Mills's 3 August 1877 letter to Sproat, see S. Barry Cottam, "Indian Title as a 'Celestial Institution': David Mills and the St. Catherine's Milling Case" in Kerry Abel & Jean Friesen, eds, *Aboriginal Resource Use in Canada: Historical and Legal Aspects*, Manitoba Studies in Native History (Winnipeg, Manitoba: University of Manitoba Press, 1991) 247 at 251. For a brief discussion of this correspondence (in addition to the discussions by Cole Harris in *Making Native Space* and Foster in "Letting Go the Bone", *supra* note 1, which I reviewed in Chapter 1), see also Robin Fisher, "Joseph Trutch and Indian Land Policy" (Winter 1971-72) 12 BC Studies 3 at 26-27 and 31-32.

³ Mills to Sproat (3 August 1877), *supra* note 1. Mills had sent a similar telegram and letter to Superintendent Powell on August 2: Mills to Superintendent Powell, telegram (2 August 1877), and Mills to Superintendent Powell, letter (2 August 1877), both of which are in Ottawa, LAC (RG 10, vol. 3651, f. 8540, reel C-10114). Tennant adverts briefly to the chronology of the so-called "Numbered Treaties" east of the Rocky Mountains, in Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989* (Vancouver: UBC Press, 1990) at 46; and Foster quotes from Mills's telegram to Powell in Hamar Foster, "Roadblocks and Legal History, Part I: Do Forgotten Cases Make Good Law?" (May 1996) 54:3 *The Advocate* 355 at footnote 43, and in Hamar Foster, "Aboriginal Title and the Provincial Obligation to Respect It: Is *Delgamuukw v. British Columbia* 'Invented Law'?" (March 1998) 56:2 *The Advocate* 221 at footnote 5.

Mills's telegram to Powell read as follows:

Indian rights to soil in BC have never been extinguished. Should any difficulty occur steps will be taken to maintain the Indian claims to all the country where rights have not been extinguished by Treaty. Don't desire to raise the question at present, but Local Government must instruct commissioners to make reserves so large as to completely satisfy Indians. Present condition necessary consequent of British Columbia's policy. Write you today. Send Governor Richards copy of this telegram.

Mills's letter to Powell appears to be a file copy, in the hand of the Deputy Superintendent General, with various insertions and corrections. However, the letter indicates "(signed) David Mills, Min of Int.," suggesting that this is the version that was sent to Powell. Further, it appears to have been the practice of the Minister of the Interior's office to prepare a draft and keep the corrected draft as the file copy of the letter.

Mills's letter is consistent with that sent to Sproat, though in a more familiar tone. It opens with Mills's explaining that his telegram was meant to indicate "the line which I believed the Government of Canada would feel themselves obliged to take if the Land commissioners do not deal with the Indians of British Columbia in the most liberal spirit, completely satisfying them as to the extent of land set apart as reserves." He further opined that, "Should anything so disastrous as an Indian war overtake the Province of British Columbia, I do

Dominion's lack of ownership or control over the land of the province, as they had in the territories between the Rockies and Ontario, was a fundamental factor underlying the difference in Dominion position.⁴

Mills first addressed the Dominion's refusal to send the NWMP, justifying it on the basis that, "should anything so disastrous as an Indian war occur," the Canadian government would be "obliged to content itself with the effort to exclude supplies from the Indian country until the Indians were peaceably disposed and prepared to treat for the surrender of the territory, to the Provincial Government on such terms and conditions as the Indians would be willing to accept, and the Provincial Government would be able to fulfil."⁵ In other words, Mills acknowledged the significant role the provincial government would have to play, not the least because he understood that any Indigenous "surrender of the territory" would be to the provincial government, not the Dominion. In a similar vein, Mills blamed Indigenous discontent on the province's policy "that the Indians have no rights in the soil to extinguish," a policy "wholly at variance with that which has been hitherto pursued by the Crown in dealing with the aboriginal population of this Continent." After recounting British recognition of Indian title in North America, Mills asserted that "British Columbia is the only one [of the former colonies] which has undertaken to deal with the Territory without the Indian title having first been extinguished by treaties with the different native tribes."

Mills then turned to the Dominion's authority and role with respect to Indian title in the province. He declared that since the *British North America Act* placed Indians and lands reserved for the Indians under Dominion control, the Dominion had "the legal right to interfere

not believe that the Provincial authorities would be permitted to deal with any portion of the lands claimed by the Indians until the Indian title had been first extinguished by [illegible]ing them reasonable compensation."

Barry Cottam quotes from another similar letter from Mills, also dated 3 August 1877, to Edward Blake, then two months out of office as Canada's Minister of Justice: Cottam, *supra* note 2 at 252.

⁴ In any comparative analysis such as this, it is important to note that the boundaries of the provinces were much different in the 1870s than they are now. See, for example, the historical maps showing the province boundaries at various dates at "Maps of Treaty-Making in Canada," <<http://www.aadnc-aandc.gc.ca/eng/1100100032297/1100100032309>>, accessed 16 February 2018.

⁵ All information from this paragraph until the paragraph containing the next footnote is from Mills to Sproat (3 August 1877), *supra* note 1. Mills would remain integrally involved in the issue of Indian title and Dominion and provincial rights to land even after he was no longer the Minister of the Interior. He was a key player in the first major Canadian case concerning Indian title, the *St. Catherine's Milling* case, ultimately decided by the Privy Council as *Reference re: British North America Act, 1867, s.109 (Ont.)* (1888), 14 App. Cas. 46: see Cottam, *supra* note 2.

and prevent the Provincial Government from dealing with any public land the Indian title to which has not been extinguished, and they have the right, also, as such guardians, to be present at any negotiation which takes place between the Indian population and the Provincial authorities in order that Indian interests may be adequately protected.” No agreement between the Dominion and the province – and he here referred explicitly to the British Columbia Terms of Union – “could affect the right which in this particular the Crown has always recognized the Indian population as having in the soil.” He further asserted that the Dominion could “neither divest itself of its authority [under the *British North America Act*] nor take away the just claim of the Indian population by failing to question the assumption of the Province to the absolute property of the soil.” Yet, despite this last assertion, Mills told Sproat:

The Canadian Government were not disposed to raise the question of the general rights of the Indian population to the soil of British Columbia, so long as the Indians were contented. They would prefer not to do so now, but they cannot fail to perceive that there is great danger of an Indian war growing out of the land policy of the Provincial Government.

In order that the question may not be raised, and war avoided, it is of the utmost consequence that the commissioners, in setting apart reservations for the Indians, should make them so ample as to avoid the necessity, if possible, of raising the question.

Thus, to avoid an “Indian war,” Mills urged the commissioners “the propriety of meeting every reasonable demand on the part of the Indians, both as to the extent and locality of their Reservations.” He pointed out that since the Secwépemc and the Syilx had to now become stock-farmers, the commissioners must allot them reserves that were no less in size than what the “white population” could obtain. Further, since British Columbia’s Indigenous people would not receive the “considerable annuities for the extinguishment of their Title to lands placed at the disposal of the Government for occupation and settlement” that the communities east of the Rockies received, and the province was not going to be required to “pay anything for the extinguishment of Indian claims,” Mills urged that it was “therefore of all the more consequence in a country so extensive, containing so small a white and so large an Indian population that the Indians should not be made dangerous and discontented by being cooped up on small reservations.” Mills concluded his letter by observing that, “[i]t is only by doing justice that peace can be maintained and friendly relations continued between the two populations of that

distant Province, and the white people and the Government of British Columbia have it in their power to obtain the most perfect security for their lives and their property, by agreeing to what is but a small measure of justice to the Indian population.”⁶

Sproat and McKinlay immediately forwarded a copy of Mills’s letter to the Provincial Secretary.⁷ Sproat also wrote to the Provincial Secretary, referring to Mills’s discussion of Indian title, which Sproat thought had been “drawn forth by the view of present circumstances entertained by the Government of the Dominion.”⁸ Sproat assured the province that Indian title was not a central issue in the Commission’s work, either for Indigenous people or for the commissioners:

The Indians, so far, have only mentioned the subject indirectly and not pressingly on one or two occasions, and without taking up the question, the commissioners have in these, as in all cases, endeavoured to satisfy the Indians by giving them suitable reserves.

The Indians not having raised the question, neither Mr. Anderson nor I have had occasion to write anything to Ottawa upon the subject. It is one which we all have been careful to avoid. The letter of the 16th July to which the Minister's is in reply did not mention it.⁹

Sproat, as well, likely not knowing of Mills’s correspondence directly to Powell, sent Powell a copy of Mills’s August 3 letter, describing it as one in which the Minister expressed “his view of the question of the Indian title to the soil, in case that mighty question should be forced by events to the front.”¹⁰ Finally, Sproat also sent a copy of Mills’s letter to the Lieutenant Governor, the Dominion’s representative in Victoria, whom he similarly advised:

The Indians, so far, have not raised the question of their title to the soil, though they have been encouraged to speak their minds freely to the commissioners as their friends, and I am in hopes that we may be able to satisfy them by such sufficient land grants as shall make it unnecessary for them to raise this weighty question.

⁶ *Ibid.*

⁷ Sproat & McKinlay to Elliott, Premier and Provincial Secretary (31 August 1877), Victoria, B.C. Archives (GR-494 at 329-331).

⁸ Sproat to Provincial Secretary (31 August 1877), Victoria, B.C. Archives (GR-494 at 343-344).

⁹ *Ibid.*

¹⁰ Sproat to Powell (2 September 1877), Ottawa, LAC (RG 10, vol. 1021, reel T-1459).

One or two chiefs have spoken incidentally to the effect that the Indians were in the country before the whites, and that all the land was theirs, but they seemed to be satisfied on our explaining to them the advantages which their people derived from intermixture with an energetic, industrious race like the whites, and with our assurance the Queen looked on all her subjects with the same eye, and wished white men and red men to live together in peace under a just and impartial administration of the law.

The question of title was not mentioned in our instructions from either Government, and I do not consider the above letter of the Minister as an amended instruction, but as an intimation of his opinion on a matter of great magnitude and importance, in case events should bring it to the front.¹¹

Before the commissioners left the head of Okanagan Lake, Sproat received a letter from Premier Elliott,¹² denouncing Mills's position and his interference with the JIRC's operation.¹³ He even threatened that the province might "reject the result of the labours of the commissioners":

If the Hon. the Minister of the Interior - at a distance of thousands of miles from the scene, and without any knowledge of the merits of the question or of the facts connected therewith - presumes first to charge to the policy of the Provincial Government the discontent of a portion of Indians of British Columbia and also undertakes to place a definite minimum on the amount of land to be apportioned to the native race, it obviously follows that the necessity for the Commission has ceased to exist.¹⁴

What Elliott perceived as Mills's direction to allot a minimum acreage of reserve land – a matter that had caused an initial three-year impasse between the two governments, resolved only by their agreement to establish a commission that did not operate on the basis of fixed acreages – must have been Mills's direction that "it is of the utmost consequence that the commissioners, in setting apart reservations for the Indians, should make them so ample as to avoid the necessity, if possible, of raising the question [of Indian title]."¹⁵ Playing the devil's advocate, Elliott told

¹¹ Sproat to Lieutenant Governor (2 September 1877), Victoria, B.C. Archives (GR-495, box 1, file 1).

¹² Elliott was Premier between 1 February 1876 and 25 June 1878: Elections British Columbia, "An Electoral History of British Columbia, 1871-1986" (1988), online: <http://www.elections.bc.ca/docs/rpt/1871-1986_ElectoralHistoryofBC.pdf>, accessed 20 September 2017, at 545.

¹³ Elliott to Sproat (27 September 1877), Ottawa, LAC (RG 10, vol. 3597, f. 1353, reel C-10103). Shankel discusses this letter in George Shankel, *The Development of Indian Policy in British Columbia* (PhD dissertation, University of Washington, 1945) [unpublished] at 134.

¹⁴ Elliott to Sproat (27 September 1877), *supra* note 13.

¹⁵ Mills to Sproat (3 August 1877), *supra* note 1.

Sproat that if the province were now to give the commissioners amended instructions regarding a *maximum* acreage limit – “and that an absurdly small one,” suggesting that he felt that Mills’s minimum limit was absurdly large – there would be a deadlock if the commissioners attempted to carry out both sets of governmental instructions.¹⁶ Elliott went on to assure Sproat that the province wished British Columbia’s Indigenous people to be “dealt with not only justly but generously,” and he suggested that the province’s instructions to its commissioners proved that fact. But Elliott also pointed out that “at the same time justice requires that the interests of the old settlers of the Province should not be sacrificed.” Finally, Elliott defended the province’s history of Indigenous relations, asserting that contrary to Mills’s version, “[t]he history of the Province however tells a very different tale, and it is undoubtedly the case that in no portion of Her Majesty’s dominions has the native race benefited so much by contact with the whites as in this Province.” In fact, Elliott blamed the Dominion for the “discontented” Indigenous people, linking their discontent directly to Governor General Dufferin’s reference in his September 1876 Victoria speech to the need to extinguish Indian title in the province: “[b]efore Confederation a discontented Indian could hardly be found in British Columbia; and the Indian title question, as you are aware, had no existence until raised during the past year by His Excellency the Governor General.”¹⁷

Sproat, in his reply to Elliott, assured the premier that he did not consider Mills to have provided the commissioners with revised instructions, either with respect to reserve acreages or Indian title, and that he would respect his instructions as well as settlers’ vested rights.¹⁸ In fact, in what would become a pattern for Sproat, he wrote a letter which hewed closely to what he knew the province wanted to hear, telling the premier that the commissioners’ “difficulties” at the head of Okanagan Lake were “owing to what the commissioners unanimously considered to be excessive demands on the part of the Indians based upon their ideas of original possession and upon the grants of Mr. Cox,” the colonial magistrate who had allotted large reserves (that a later magistrate had reduced).¹⁹ This was rather a different tone than he had taken in his letter to the Superintendent General just two days previously, when he had been much more sympathetic to

¹⁶ Elliott to Sproat (27 September 1877), *supra* note 13.

¹⁷ *Ibid.*

¹⁸ Sproat to Provincial Secretary (5 October 1877), Victoria, B.C. Archives (GR-494 at 352-355).

¹⁹ *Ibid.*

the Indigenous position.²⁰ Sproat also assured the premier that while there may have been land-related wrongs committed by the colony against Indigenous people, the commissioners had “protected” the provincial government “from the effect of these ... by adjusting them where necessary.”²¹ Finally, Sproat explained that “in all cases we try to get, and have hitherto succeeded in getting a distinct expression by the Indians of satisfaction with our work.”²²

In continuing his precarious tightrope walk between opposing masters, Sproat forwarded Elliott’s letter to Mills, advising the Dominion Minister that when he had previously forwarded Mills’s letter to Elliott, he had not made any comments about Indian title “beyond stating what I believed to be your view, namely, that I was not expected to consider your letter for the present, as an amended instruction, in the sense of obliging the commissioners to change their principles of acting and procedure in the work which they had in hand.”²³ Similarly, Sproat told Mills that he did not believe that Elliott’s letter affected the commissioners’ work.

Anderson, the Dominion Commissioner, had also given his views to his fellow commissioners about the impact of Mills’s letter. He viewed Indian title as looming toweringly in the background, particularly with the key Inkumupulux community, whose reserve-allotments they had not yet made. In light of the state of affairs on the ground, the commissioners’ statements to Ottawa, and now “the broad question raised by Mr. Mills with his stringent recommendations,” Anderson urged that it would be “very impolitic” to leave the head of Okanagan Lake “without having satisfied the Indians.” He thought the commissioners should make concessions to the Inkumupulux demands for reserve lands, considering that ostensibly, such concessions would be “an act of grace,” but in reality, they would be “an act of justice, all things considered.”²⁴

In interpreting this correspondence, Cole Harris concludes that “[f]or the commissioners in the field, however, nothing changed, except that, in the midst of their own intricate land dance, they had some exogenous prompting to adopt a reserve policy much like Douglas’s in his later

²⁰ Sproat to Superintendent General (3 October 1877), Ottawa, LAC (RG 10, vol. 3612, f. 3756-22, reel C-10106).

²¹ Sproat to Provincial Secretary (5 October 1877), *supra* note 18 at 352-355.

²² *Ibid.*

²³ Sproat to Superintendent General (24 October 1877), Ottawa, LAC (RG 10, vol. 3651, f. 8540).

²⁴ Anderson, “Memo submitted to the Provincial and Joint commissioners” (4 October 1877), Ottawa, LAC (RG 10, vol. 3641, f. 7571, reel C-10112).

years.”²⁵ However, I think something important had changed. Sproat in particular continued to consider Indian title and to write about it to both governments. While he did not advocate or negotiate for the extinguishment of Indian title through treaties, he did consider that the land settlements upon which he was deciding served to end Indigenous claims based on Indian title. Further, he would explain, at the end of his tenure, that achieving a compromise between the two governmental positions on Indian title was one of his most important tasks.

At the end of the 1877 circuit in the interior, Sproat addressed Indian title in his year-end reports to the governments. In comparing the two reports, one can immediately sense Sproat’s attempt to tell each government what he thought it wanted to hear. To the province, Sproat only touched on the question of Indian title. He “presumed” that one result of the commissioners’ work would be “to lay to rest in the districts visited what is known as the ‘Indian title question’, and also the old Indian claims under the grants of Mr. Cox.” The commissioners had “heard much of these grave questions, but, as provincial commissioners, declined to recognize them, further than to agree that the adjustment of the reserves on the basis of the actual requirements of the people, should be a final adjustment of all Indian Land questions, subject of course to the provisions of the agreement between the two governments as to increase or decrease of reserves hereafter.”²⁶ Sproat was reporting in a manner that fulfilled his role as a provincial appointee to the JIRC, knowing the province’s position on Indian title.

To the Dominion, Sproat provided a more considered and thoughtful report that engaged with the issue of Indian title. For example, he wrote about the “[s]tate of feeling among the Indians,” making explicit reference to unextinguished Indian title: “[t]here were some circumstances, which as you are aware, made the work of the commissioners in this part of the country especially anxious and difficult -- These circumstances were partly historical, and partly of the present time -- The question, according to the contention of the Dominion Government, of the unextinguished title of the Indians to the soil was one of them.”²⁷ Sproat also concluded that

²⁵ C Harris, *Making Native Space*, *supra* note 2 at 124.

²⁶ Sproat and McKinlay to Provincial Secretary (6 February 1878), enclosing “Second Condensed Report of the commissioners acting for the Province” (1 January 1878), Victoria, B.C. Archives (GR-494 at 488-549) at 537-538 [Sproat’s Provincial Report (January 1878)].

²⁷ Sproat to Superintendent General, “Second Condensed Report by the Joint Commissioner appointed by the Governments of Canada and British Columbia” (1 December 1877), Ottawa, LAC (RG 10, vol. 3612, f. 3756-16), also reproduced in Parliament, “Special Appendix E” in *Sessional Papers*, No. 10 (1878) [Sproat’s Dominion Report (December 1877)].

the “settlements” the commissioners had made with the Secwépemc and Syilx provided them with fewer benefits than the treaties the Dominion’s numbered treaties east of the Rocky Mountains (most recently, Treaty 7 in September 1877²⁸): “the thoughtful student of Canadian Indian Affairs will not fail to notice the extraordinary difference between the advantages which it is hoped will satisfy the British Columbian Indians, and the bountiful provision in lands and money made by the government for the Blackfoot and other Indians east of the Rocky Mountains.”²⁹

In a similar though even more candid vein, Sproat wrote what seems to be a personal letter to Deputy Minister Meredith about Treaty 7 just a few days after penning his Dominion report, telling the Deputy Minister that he had learned recently that local elected officials intended to strongly oppose the commissioners’ decisions in the provincial legislature. Sproat continued:

Such opposition will be irrational but it will be made. If the Minister thinks we have succeeded[,] as I know, in standing between Canada & a horrible war, yet as an old politician I would recommend not too much being said thereon as the Province would thus say “Why; this Commission has been managed altogether in the Dominion interest.” But after all read the Blackfeet Treaty and think then of what we have worked upon! “all the world against a China orange”³⁰

This passage requires parsing. First, when Sproat recommended that the Dominion not crow too much about the JIRC’s success in avoiding war, he did so because the commissioners had achieved that outcome by allotting provincial land as reserve land – and likely more land than they might have allotted without the Indigenous confederation and the associated threat of a war. Sproat worried that the province might claim that it had borne the burden of avoiding war. Second, when Sproat referred to “the Blackfeet Treaty,” he was referring to Treaty No. 7, which the Dominion and Indigenous people concluded while the commissioners were at the head of Okanagan Lake. Finally, “[a]ll the world against a China orange” is a derivation of a 19th-

²⁸ Keith Smith compares and contrasts the Dominion’s approach to resolving Indigenous land claims in the Shuswap and Okanagan, on the one hand, and in the Treaty 7 area in Alberta, on the other, in Keith D. Smith, *Liberalism, Surveillance, and Resistance: Indigenous Communities in Western Canada, 1877-1927*, The West Unbound: Social and Cultural Studies Series (Edmonton: AU Press, Athabasca University, 2009).

²⁹ Sproat’s Dominion Report (December 1877), *supra* note 27. For the acreages, see Sproat to Superintendent General (29 January 1878), Ottawa, LAC (RG 10, vol. 3612, f. 3756-16).

³⁰ Sproat to Meredith (7 December 1877), Ottawa, LAC (RG 10, vol. 3656, f. 9111).

century saying that describes a bet wagering a great deal – “all the world” – against an almost valueless object – the “China orange.”³¹ Although Sproat’s intent in using this phrase is somewhat opaque, it seems likely that he felt that the JIRC had succeeded in doing what “the Blackfeet Treaty” had done – resolving Indigenous claims to land, based on unextinguished Indian title – but at a fraction of the cost, particularly to the Dominion, which had provided neither land nor money (for example, in the form of treaty annuities).

Sproat concluded his year-end report to the Dominion with an extensive discussion of Indian title. He advised that, in light of all the circumstances he had reviewed in his report, the commissioners had endeavoured:

to calm the minds of the Indians, and to secure for the two Governments some return of their alienated confidence by observing the requirements of candour, patience and courtesy in intercourse with the Indians. The commissioners, afterwards, tried to lead their minds to sensible views of the present facts of their lives and surroundings generally -- Old questions, and claims such as the “title” question and the claims under old Colonial Govt grants, it was considered, might perhaps be adjusted by a liberal compromise -- The Indians were recommended not to brood over what was past, though it may in some cases have been a past of unfortunate misunderstandings and mistakes, but now, frankly, to accept the liberal share of the public lands, and also the somewhat privileged position which the two Governments offered and confirmed to them, and to make a manly effort to take their places, or to fit their children for taking their places, by and bye, as full citizens in a community governed by equal laws-- No attempt was made either to cajole or pet the Indians, or to deal with them otherwise than according to the best tradition of the Canadian Indian Department-- The commissioners talked about their land business to them in a respectful, candid way, and not without submitting, occasionally, some wholesome truths for their consideration. These efforts were, I am glad to say, successful to some extent. After a time, many of the Indians showed proof of an amended state of feelings, the younger men, as a rule, exhibiting this first. I am disposed now to think that those tribes of the southern interior of the Province who have been dealt with by the commissioners, since June last, are considerably reassured, and are satisfied with their Reserves.³²

Thus, for Sproat, “Indian title” constituted an uncertain interest in or about land, an uncertainty that he sought to remove from government land policy and replace with the more

³¹ This saying is a derivation of the saying, “Lombard Street to a china orange,” used figuratively in the 19th-century to mean anything of minimal value. It describes a bet that wagers the wealth that is available in Lombard Street’s banks against the almost valueless orange and conveys the idea of the longest possible odds, or, in other words, something that is an absolute certainty: Jonathan Green, *Green's Dictionary of Slang* (London: Abecedary Limited, 2010, online 2011), online: <<https://greensdictofslang.com/entry/b4wflra>>, accessed 6 October 2017.

³² Sproat’s Dominion Report (December 1877), *supra* note 27.

certain Indian reserve interest. Probably because it fit with his task of allotting reserve lands but also because it fit with his beliefs about the desirability of Indigenous “progress,” he encouraged Indigenous peoples “not to brood over what was past... but now, frankly, to accept the liberal share of the public lands, ... and to make a manly effort to take their places, or to fit their children for taking their places, by and bye, as full citizens in a community governed by equal laws.” This sentence captures Sproat’s objective that Indigenous peoples and their lands become “civilized” within settler society.³³

5.2 A LEGAL OPINION ON INDIAN TITLE, JANUARY 1878

In the midst of corresponding with the two governments about Indian title in the fall of 1877, Sproat and his fellow commissioners were engaged at the head of Okanagan Lake. In their detailed attention to individual, parcel-specific Indigenous and settler complaints, Indian title still played a significant role in the commissioners’ decisions. While the O’Keefe and Greenhow holdings at the head of Okanagan Lake constituted the focal point of Indigenous-settler conflict, the commissioners also had to deal with many other conflicts. One of those concerned an Indigenous man named Francois and the Vernon brothers – Charles, the local Assistant Land Commissioner, and Forbes, the province’s Chief Commissioner of Lands & Works (CCLW).

The Vernon brothers held a large tract of land near Kalamalka Lake (then Long Lake), near Okanagan Lake. Between their land and Long Lake was a small parcel where Francois, who had died the year before, had lived. Sproat had traced Francois’s occupation of the land back to at least 1861, although Francois’s son told Sproat that Francois had been there for at least thirty years. Sproat described Francois’s occupation to the Superintendent General in this way:

³³ Previous scholarship has expressed the idea of “civilized” land in several ways. Douglas Harris has nicely summarized it in this way: “Within the colonial state, life was civilized (propertied); beyond, it was savage (not or insufficiently propertied)”: Douglas Harris, *Landing Native Fisheries: Indian Reserves and Fishing Rights in British Columbia, 1849-1925* (Vancouver: UBC Press, 2008) at 20. Nicholas Blomley, a geographer, has expressed the idea in reference to that which is within and beyond the “frontier”: “Inside the frontier lie secure tenure, fee-simple ownership, and state-guaranteed rights to property. Outside lie uncertain and undeveloped entitlements, communal claims, and the absence of state guarantees to property. Inside lies stability and order, outside disorder, violence, and ‘bare life’ (Agamben 1998)”: Nicholas Blomley, “Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid” (2003) 93:1 *Annals of the Association of American Geographers* 121 at 124.

It was his camping place and afterwards he cultivated and fenced it. During his lifetime, he was often urged to leave and go to the head of the large lake some miles distant, where his tribe lived, but he said the white men might kill him: he would die where he was. It was his place. You can understand how confused the old man's mind must have been, when urged to leave again and again by white men in the position of Chiefs. It is said that finally he said that after his death, his children might go. The chief of the tribe, no one knows under what influence, told the sons on the old man's death they must come to the tribal headquarters and they went, and the eldest son has a little farm and more cattle and horses than any other man in the tribe.³⁴

Now that Francois was dead and his children had gone to live at Inkumupulux, the land was unoccupied. However, Francois's children told the commissioners they had not abandoned their father's land. Instead, they had heard of the commissioners' pending arrival and had waited for them to make a decision about the land. The Vernon brothers also wanted the land: "Mr. Vernon[,] the resident[,] applied to Mr. Vernon, his brother the Chief Commr. for leave to purchase this piece. ... The Chief Commr. of Lands & Works replied to his brother that nothing could be done with his application to purchase until the Reserve Commrs had passed."³⁵ Nonetheless, Sproat believed the Vernons had pressed Francois to leave, and now that his children had gone, they pressed the commissioners to declare the land abandoned so that they could acquire it.

Sproat and his fellow commissioners visited Francois's land and found "two windowless log houses, the quarter of a mile of fence, the patches where he grew his oats and potatoes, the wooden crosses over graves of his children." On this basis, they concluded that the land was an "Indian settlement" and declared it a separate Inkumupulux reserve in their allotments for the community.³⁶ However, Sproat also requested an opinion from the JIRC's legal advisor, J.F. McCreight, as to the rights of Francois's heirs to the land. The commissioners had appointed McCreight as their legal advisor before beginning their first circuit.³⁷ McCreight had been the

³⁴ Sproat to Superintendent General (13 October 1877), Ottawa, LAC (RG 10, vol. 3641, f. 7567).

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Sproat & McKinlay to Elliott (Attorney General) (1 October 1876), Ottawa, LAC (RG 10, vol. 1273, 59, reel C-13900).

first Premier of British Columbia, October 1871-December 1872.³⁸ He continued to sit in the Provincial legislature as an elected member until 1875, when he returned to private practice as a lawyer.³⁹

McCreight's opinion in reply to Sproat's questions is dated January 14, 1878, so Sproat received it after sending his year-end report to the Dominion but before sending one to the province.⁴⁰ The commissioners appear to have asked McCreight – the questions are missing – for his opinion on a number of matters relating to Francois's land, including, "[w]hat legal status do the heirs of Francois have in respect of Francois's land? Does Indian title give them any legal rights to this land?" McCreight gave this opinion:

I think the heirs of Francois have no legal status except that during the continuance of the settlement the land can't be preempted or sold over their heads. The Local Government I think could at any time evict them, strictly speaking, except as far as their agreement with the Dominion Government, morally precludes them from so doing. I don't understand that the "Indian title" means more than a moral claim, such as a civilised Government cannot prudently ignore.

In the investigation of titles no intending purchaser or mortgagee thinks of doing more than ascertaining that he can trace his title to a Crown Grant. He never enquires whether the supposed Indian title or claim has been extinguished, and although both the Duke of Newcastle and Governor Douglas recognise the native title (see p.89 and 90 of papers connected with the Indian Land question) I presume they do so as a moral claim, in contradistinction to a legal or equitable right properly so called. Her Majesty or Her predecessors have owned British Columbia, and Vancouver Island, I believe for more than a century, and having regard to the [illegible ... trespass occurred] I don't see how a few natives, not even settled on any specific piece of land, could ever claim any, as their own, against the Crown, by what is called adverse possession or otherwise.⁴¹

McCreight's opinion was that Indian title did not confer an interest in land on Francois's heirs. At most, it constituted a "moral claim" – but not a legal or an equitable right – against the Crown. Yet McCreight's use of the word "civilized" to describe a government that could not ignore a claim based on Indian title is intriguing. Tina Loo has argued that it was the rule of law

³⁸ Tina Loo, "McCreight, John Foster," in *Dictionary of Canadian Biography*, vol. 14, University of Toronto/Université Laval, 2003–, online: <http://www.biographi.ca/en/bio/mccreight_john_foster_14E.html>, accessed May 15, 2017.

³⁹ *Ibid.*

⁴⁰ J.F. McCreight, "Opinion" (14 January 1878), Ottawa, LAC (RG 10, vol. 1273, 403-405, reel C-13900).

⁴¹ *Ibid.*

that denoted, for the new *British* British Columbians, their “civilized” status.⁴² She explains, in her “Bute Inlet Stories,” how the colonists had to extend the rule of law to Indigenous people to maintain their own “civilized” identity. If McCreight were right, it is difficult to see how the province – or even the Dominion in 1877 in British Columbia – could have considered itself as “civilized,” since both, for all intents and purposes, did ignore Indian title.

Although Sproat never referred to McCreight’s advice on Indian title in any correspondence, in his year-end report to the province, he implicitly incorporated its analysis: Indian title did not give Indigenous people legally-recognized property rights in land.⁴³ Sproat set aside a whole section of his report to address “Mr. Allison’s case,” because it “might have the effect of raising the question what an “Indian settlement” is.” Mr. Allison, a settler on the west side of Okanagan Lake, had pre-empted land and wished to buy land adjoining it. According to Mr. Allison, a few Syilx men had come to the area two years before, and he employed them as labourers on his farm. They had built houses on and cultivated the “unoccupied Crown lands” that Mr. Allison wished to buy, and they wanted to remain there permanently. In the fall of 1877, the commissioners had refused to set aside the subject lands as a reserve “and told the Indians that they must go upon the Reserves either at the head or at the foot of the Okanagan Lake, where land would be provided for them.” The Syilx, however, refused to move. Mr. Allison was now in a quandary as to whether he could declare, in his application to purchase the land upon which the Syilx resided, that there was no “Indian settlement” on the land.

Based on McCreight’s opinion, Sproat gave the province a detailed analysis of what an “Indian settlement” was and what rights the province had to land on which an “Indian settlement” was located.⁴⁴ He advised that if Indigenous people occupied land, then there was likely an “Indian settlement” that a settler could not pre-empt and or buy. Despite this, he concluded, somewhat cryptically, that “it probably would be considered by the provincial government” that the Syilx had no *legal* interest in the land on which they were living. He further advised, in accordance with McCreight’s advice, that the province therefore could evict the Indigenous people for being “squatters”:

⁴² Tina Loo, “Bute Inlet Stories: Law, Crime, and Colonial Identity,” in *Making Law, Order, and Authority in British Columbia, 1821-1871* (Toronto: University of Toronto Press, 1994) at 151.

⁴³ All quotations in this paragraph from Sproat’s Provincial Report (January 1878), *supra* note 26.

⁴⁴ All quotations in this paragraph from *ibid.*

in strictness, the provincial government, as in the case of any squatters, whether whites or Indians, on Crown Land would at any time have a legal right to evict the Indians, except so far as the agreement of the provincial government with the Dominion government, morally precluded them from so doing, and unless the long acquiescence of the Crown in this practice of forming settlements on the part of the Indians, and the special legislative protection thrown over “settlements” entitled the Indians to plead that the Crown had practically agreed not to exercise its right to it or at least not to do so without fair notice and compensation.⁴⁵

However, Sproat noted that the “moral claim” of the Syilx in this case “is weakened by the fact that the place in question is not a place with which the Indians have old associations.”⁴⁶

Implicitly, then, as McCreight had advised, Indian title did not confer on Indigenous peoples any property rights in the land, just a “moral claim.” Had the Syilx been on the subject lands for a long time, according to Sproat, their moral claim to the lands would be stronger. In this case, however, the only restraints on the province were its agreement with the Dominion – presumably that establishing the JIRC – and its practice and legislation in respect of preserving “Indian settlements” for Indigenous peoples. In the end, McCreight’s opinion was probably in line with Sproat’s thoughts about Indian title and likely confirmed his practice of using Indian title for its force as a threat the Dominion could wield against the province but not as a basis upon which to assert exclusive Indigenous land ownership or an interest in land that the Crown had to extinguish before alienating land.

5.3 SPROAT’S FIRST SOLO CIRCUIT, 1878

After finishing the two reports on the JIRC’s second circuit in December 1878 and January 1879, Sproat continued to contemplate the issue of Indian title and what it meant for the reserve commission to allot Indian reserves without treaties. From Mills’s August letter, Sproat now understood that the Dominion, “as the trustees and guardians of the Indians, claim[ed] the right of being present by a representative, at the settlement of the land question with every tribe, and of agreeing to, or refusing, such settlement, so that they may be assured that the Indians have a sufficient quantity of land assigned to them.”⁴⁷ He further believed

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Sproat to Lieutenant Governor (12 January 1878), Victoria, B.C. Archives (GR-494 at 379).

that the Canadian Government leave it to be inferred, that, if a satisfactory adjustment can now be made, they [the Canadian Government] will not open the question of the extinguishment of the Indian title to the soil by direct payments, trusting that this question will be dealt with, practically, in the land allotments, nor will they rip open past dealings of the Colonial Government with the Indians, in connection with such grants as those of Mr. Cox, or otherwise.⁴⁸

In other words, the commissioners' role, as Sproat understood it, was to find a compromise with the Indigenous people of the province with respect to the actions of the Colonial government and Indian title – without specifically addressing either matter. Sproat felt that this was “a practical view of a question surrounded by difficulties.”⁴⁹ Indeed, it was the line he had suggested to the Minister of the Interior in his 1876 memorandum on Indian title and Indian reserves in the province, when he suggested that he would have recommended that the commissioners “said nothing about treaties or full title to the Indians, and then ... go straight ahead & endeavour to please the Indians by liberal reserves, without reference to any particular principle.”

At the end of December 1877, the JIRC returned to Victoria amidst questions about whether it would continue. However, even as the governments dissolved the three-man JIRC, Indian title continued to be an important consideration not only for Sproat, who continued as sole commissioner, but also for McKinlay, who had been the province's appointee. When McKinlay left his position as Indian reserve commissioner in March, he told Premier Elliott that although Indigenous people had “frequently alluded” to the “vested rights of the Indians to the soil,” he had found them quite willing to “waive” their claims; they had expressed a desire, he claimed, “to be treated exactly on the same footing as their white neighbors.” McKinlay recommended making “all the necessary arrangements with the Indians whilst they are in this frame of mind.”⁵⁰

Sproat became the sole Indian reserve commissioner in March.⁵¹ In May, before he left Victoria for his first solo circuit, he became increasingly concerned about the province's inattention to unresolved matters from the previous year, and he penned an angry letter to the

⁴⁸ *Ibid* at 378-381.

⁴⁹ *Ibid* at 381.

⁵⁰ McKinlay to Elliott (13 March 1878), Victoria, B.C. Archives (GR-494, 566-577 at 569).

⁵¹ The Dominion appointed Sproat as the sole commissioner in March 1878: PC 1878-0170. See also Sproat to Lieutenant Governor, accepting the position as sole commissioner (16 March 1878), Victoria, B.C. Archives (GR-494 at 606).

provincial CCLW concerning the province's delay in taking action against O'Keefe, the settler at the head of Okanagan Lake.⁵² Sproat threatened that if the province did not comply with and facilitate the commissioners' decisions, the Dominion would assert Indian title.⁵³ He told the CCLW that even if the province felt O'Keefe had "a legal right to the land by provincial law," the Inkumupulux still required arable land, and so the provincial government, obliged under the Terms of Union to provide land for Indian reserves, would have to buy O'Keefe's pre-emption for the Inkumupulux.⁵⁴ There is no indication that Sproat had anything other than Mills's August 1877 letter on which to base this threat, but he asserted that if the province did not deal justly with the Inkumupulux, "the Dominion government according to the view they take of the equitable rights of these people, would have to raise in Okanagan, the question of their prior title to the soil." He also explained that "[t]he policy of the Dominion government while maintaining this claim, has been as you are aware not to raise it unnecessarily, hoping that the efforts of the Indian reserve commission to adjust land matters among the Indians would prevent the necessity for its being raised," and he advised that "[o]ne of the happiest results of the past labors of the commissioners has been in the districts visited by them to effect this object – by a judicious compromise." That is, Sproat felt that the commissioners had succeeded in adjusting land matters in a way that avoided the need to resolve the differing Dominion and provincial views on Indian title.

However, Sproat also reported recently learning that, in the territory the commissioners had covered during the summer and fall of 1877, "the Indians are freely and broadly raising in their councils the question of the Queen's authority to dispose of their lands without having extinguished their title to the soil, and it is therefore to be feared that some of the good effects of the work of the Commission in 1877 have already passed away." He ascribed the growing agitation to many factors, including the Commission's delay in resuming work in the interior and the province's delay in resolving the conflict with Mr. O'Keefe. Sproat again threatened that "[i]f the Indians distinctly raise the question the Dominion government must entertain it."⁵⁵

⁵² Sproat to CCLW (4 May 1878), Vancouver, Indigenous & Northern Affairs Canada (Specific Claims West) [INAC] (Provincial Collection [Prov. Coll.], vol. 1: Letterbook #2, 70-72).

⁵³ Cole Harris mentions this threat in C Harris, *Making Native Space*, *supra* note 2 at 152. Hamar Foster also adverts to it in Foster, "Roadblocks and Legal History, Part II", *supra* note 1 at footnote 58.

⁵⁴ All quotations from here until the next footnote are from Sproat to CCLW (4 May 1878), *supra* note 52.

⁵⁵ *Ibid.*

A few days later, Sproat provided the Provincial Secretary with the same information about Indigenous discontent: “[s]everal of the tribes, whose land questions were adjusted last year, and whom the commissioners left in good humour, have refused presents from the Dominion government, and freely discuss the right of the Queen to give away land to White settlers without having extinguished the Indian title.”⁵⁶ Similarly, in a letter to the Superintendent General about Vancouver Island matters, Sproat again referred to “the general ‘Indian title’ question,” noting that it “may perhaps not be raised in this province practically unless absolutely necessary.”⁵⁷ It is clear that Sproat continued to think hard about the role that Indian title had played during his work as commissioner in 1877 and that it remained a prominent issue for him as he undertook his work as sole commissioner.

In May, Sproat began his first circuit as the sole commissioner at Yale and made his way up the Fraser Canyon. Even as he addressed countless new matters, he was also dealing with the fall-out of the Commission’s decisions from the previous year, including the O’Keefe matter. O’Keefe had retained lawyers to fight the JIRC’s allocation of some of his pre-empted land to the Inkumupulux. Sproat now expressed his concerns to the Superintendent General about the province’s inaction concerning and settler opposition to the JIRC’s decisions in the Okanagan. He worried about how the inaction and opposition would impact his future decisions, particularly those affecting Chilliheetsa, with whom the commissioners had made “the Okinagan settlement” and whose own land Sproat would have to consider at the end of the summer. He anticipated that when he reached the Nicola valley, he would meet “perhaps the greatest difficulties” yet, and that Chilliheetsa’s first remark to him would be: ““Your Okinagan settlement is no settlement; white men act as usual; what is the use of your coming to Nicola.”” Sproat urged the Superintendent General that “[i]t might be well if the Dominion Govt made their views again quite clear to the Provincial Government, as regards the Indian Title, and its bearing on such cases as O’Keefe and several other similar ones that will arise.”⁵⁸

As Sproat encouraged the Dominion government to wield Indian title as a sword against the province, he continued to do as much himself. He again pressed the provincial government,

⁵⁶ Sproat to Provincial Secretary (6 May 1878), Vancouver, INAC (Prov. Coll., vol. 1: Letterbook #2, 81-83).

⁵⁷ Sproat to Superintendent General (6 May 1878), Ottawa, LAC (RG 10, vol. 3662, f. 9756, pt. 1).

⁵⁸ Sproat to Superintendent General (30 May 1878), Ottawa, LAC (RG 10, vol. 3612, f. 3756-17).

tying the O’Keefe matter explicitly to Indian title and threatening that if the JIRC-fashioned “compromise” were not “to hold good”:

the question of the extinguishment of the Indian title to the soil of Okanagan will come up, according to the views already stated by the Dominion government to the provincial government.

The raising of the question there may practically mean the raising of it everywhere, and the ruin of the attempt at compromise now being laboriously undertaken.

The effect of the delay in dealing with this question of O’Keefe has been very bad upon the Indian mind, from Kamloops to the frontier, and seriously embarrasses my work this year. The Indians cannot understand that white men should trespass upon and cultivate land given to them by the commissioners.

...

There will be no end to difficulties if the principle of compromise in the Indian matters is once abandoned.⁵⁹

I discuss Sproat’s first solo circuit over the spring, summer, and fall of 1878 in more detail in the following two chapters. Although Sproat did not write directly about Indian title during the circuit – he was pre-occupied with the pressing problems he faced on the ground – when he returned to the coast in October 1878, he again turned to Indian title. Sproat received reports from the Nicola valley, which he had just left, that a settler had denied an Indigenous man irrigation water from a river. Sproat wrote to Clapperton, the justice of the peace for the Nicola valley, to express his disbelief that the settler could have acted in that way, since Sproat thought “that gentleman has too much good sense not to appreciate that the whole Indian adjustment in Nicola is entirely a compromise on the give-and-take principle.”⁶⁰ Sproat pointed out that the settler’s own water record would be invalid “if rights were pressed.” Further, he pointed out that “it should be remembered that in Nicola until I visited the valley the Indians, both by provincial and Dominion law[,] had superior claims to all lands on which they had settlements which they had not consented to abandon and for which they have not been compensated.”⁶¹ The reference to provincial law points to the long-standing colonial and then

⁵⁹ Sproat to CCLW (30 May 1878), Vancouver, INAC (Prov. Coll., vol. 2: Minutes of Decisions, Correspondence no. 1278/78).

⁶⁰ Sproat to Clapperton (19 October 1878), Vancouver, INAC (Prov. Coll., vol. 1: Letterbook #2, 279-281).

⁶¹ *Ibid.*

provincial legislation that allowed the pre-emption only of land that was not, among other things, an “Indian settlement.” The reference to Dominion law and the “lands... for which they have not been compensated” points to the Dominion policy on Indian title.

The day before Sproat wrote this letter, Sir John A. Macdonald had become prime minister for the second time, as the Member of Parliament for Victoria, B.C.⁶² He also became the Minister of the Interior and, consequently, Canada’s Superintendent General of Indian Affairs. A few days later, Sproat sent his year-end report to Macdonald, now Superintendent General, once again referencing British Columbia’s Indigenous peoples’ anomalous position with respect to the extinguishment of Indian title. He pointed out that if he

should succeed in effecting a satisfactory adjustment of land questions in British Columbia, without any necessity for the Indian title to the soil being extinguished by money payments, there will be a broad difference between the position of the British Columbian Indians, and the Indians in Canadian territory east of the Rocky mountains -- that is to say, fully one third of the total Indian population of Canada will be in an exceptional position.

The British Columbian Indians will not have received any cash for the surrender of their territorial rights, and they will not enjoy the annuities which are payable under treaties, to the Indians in other parts of Canada.⁶³

However, instead of ruing the lack of treaties and their attendant benefits, Sproat suggested that British Columbia’s Indigenous peoples would be better off without them. He noted that “at first sight,” it “may seem a hardship to the Indians of British Columbia,” but “in reality,” he did not think this would be the case. He favoured the British Columbian system because it did not create a dependence on government, which “would tend to weaken the feeling and pride of independence largely possessed by the Indians in British Columbia from nature, and early training.”⁶⁴ Thus, although Sproat continued to think about Indian title, he had begun to

⁶² Canada, Privy Council Office, *Guide to Canadian Ministries since Confederation* (Ottawa: Privy Council Office, 14 October 2009), online: < <http://www.pco-bcp.gc.ca/mgm/lst.asp?lang=eng&=1>>, accessed 16 September 2017. Macdonald was knighted in June 1867, an honour announced on 1 July 1867, the date of the confederation of Canada’s first four provinces: J. K. Johnson and P. B. Waite, “Macdonald, Sir John Alexander,” in *Dictionary of Canadian Biography*, vol. 12, University of Toronto/Université Laval, 2003–, online: <http://www.biographi.ca/en/bio/macdonald_john_alexander_12E.html>, accessed 19 September 2017.

⁶³ Sproat to Superintendent General (26 October 1878), Ottawa, LAC (RG 10, vol. 3612, f. 3756-18, reel C-10106).

⁶⁴ *Ibid.*

link the non-recognition and non-extinguishment of Indian title to his developing ideas about the kind of Indigenous progress for which he hoped. From this point of view, Sproat felt:

the accident of the British Columbian Indians remaining in the exceptional position of “non-treaty” Indians may prove, ultimately, not to be a subject of regret. It may save a heavy, useless expenditure, and, under judicious arrangements, may have the effect of keeping the Indians on the upgrade, with advantage to themselves, and with additional credit, in the long run, to a branch of Canadian administration of which the Canadian people, already, have reason to be proud.⁶⁵

Sproat continued writing in this vein in his correspondence with the Dominion. On the one hand, he worried about the disadvantages for British Columbia’s Indigenous people of not having their Indian title extinguished through treaties; on the other, he saw advantages in their not having treaties, so long as the “Indian administration” in the province was carried out in a certain way. His concern to minimize the disadvantages and maximize the advantages he perceived of not having treaties is evident in a November 1878 letter to the Deputy Minister of the Interior. Sproat opposed proposed federal fishery regulations that would hinder Indigenous salmon fishing on the basis that, had the Dominion signed treaties with Indigenous people, the treaties would have protected their fisheries. In emphasizing that the Dominion had to meet the needs of Indigenous peoples, he referred again to the “compromise” he had made concerning Indian title in British Columbia:

In all matters affecting the Indians of this province, there is one special consideration which extends in all directions. They have had no treaties made with them, and I have been trying, so far with success, to compromise all matters without treaty-making, and its obligations and costs. Had treaties been made, stipulations as to the salmon would have been in the front.

It is, in the absence of treaties, all the more necessary to recognise the actual requirements of the people.⁶⁶

5.4 SPROAT’S REMAINING CIRCUITS, 1878-1880

In May 1879, Sproat again urged the Dominion to administer its “Indian policy” in the province in a way that was both sensitive and generous to Indigenous peoples, given the absence of

⁶⁵ *Ibid.*

⁶⁶ Sproat to Buckingham, Deputy Minister of Interior (6 November 1878), Ottawa, LAC (RG 10, vol. 3662, f. 9756, pt. 1).

treaties. In a letter to the Superintendent General about the power of the provincial government to make roads through Indian reserves without compensation, as he claimed it had been doing, Sproat argued: “[i]t is one thing to make a road through a white man’s land consisting of 160 or 320 acres, and quite another to make it through several Indian farms of from 5 to 15 acres each, hemmed in by white men’s lands, and therefore incapable of enlargement except by purchase.”⁶⁷ Sproat pointed out that this intrusion would constitute “grievous hardship” to individuals,

whose limited plots of ground, as they are to get no presents nor amenities from the Dominion Government, nor any money from the Provincial Government in extinguishment of what has been called the ‘Indian title’, constitute their principal property, as well as being the only means or lever by which under judicious management the Dominion Government may hope to break the power of the chiefs and wean the people from idleness and unthrift.⁶⁸

A year later, in describing his visit to the northeast coast of Vancouver Island, Sproat gave a clear account of what he told Indigenous peoples about their claims to land based on Indian title:

The people, while pointing out to the Commissioner as a matter of historical information, the limits of the old ‘country’ claimed by them, soon get hold of the idea that the land is the Queen’s and not theirs, and that they may hunt on unoccupied lands anywhere, and they understand the security given by an allotment by the Queen of their favourite village sites and resorts.

...

Sir James Douglas, as long ago as 1851, in regard to the Queackars and Quakealth people - thorough coast tribes inhabiting an unpromising coast - caused to be done what is objected to above - he told these Indians what they were to have and what they were not to have, and the undersigned has not heard of any difficulties consequent upon that transaction.

The arrangement was effected by a money payment and the difference between that policy of Sir James Douglas and the action of the reserve commissioner is that the latter explains to the Indians that the equivalent must now be sought by them in the advantages of a settled government preventing tribal wars, and a special administration of their affairs by officers appointed to advise and help them. No cash will be paid.⁶⁹

⁶⁷ Sproat to Superintendent General (24 May 1879), Ottawa, LAC (RG 10, vol. 3692, f. 14,171).

⁶⁸ *Ibid.*

⁶⁹ Sproat to [Superintendent General], enclosing “report on an extract from ... Powell’s report on the Coast tribes” (18 February 1880), Ottawa, LAC (RG 10, vol. 3700, f. 16,692, pt. 2).

Thus, although Sproat does not appear to have believed that his actions extinguished Indian title, he does seem to have considered that his arrangements resolved all the competing claims to land, including those based on Indian title.

Sproat considered the “compromise in regard to the large question of the Indian title to the soil which, under easily conceivable circumstances, the Dominion Government, following their own policy, might insist that the Province should extinguish” to be “one of [his] principal duties, though least understood by the public.”⁷⁰ But if the public did not understand Indian title or the attendant compromise, Sproat and his fellow commissioners also did not fully understand Indian title – unsurprising, given their intense focus on legal interests in land but the lack of detail surrounding Indian title as a legal interest or an interest capable of impacting a legal interest in their time. The JIRC reserve commissioners, for example, felt they knew of Britain’s and Canada’s policies concerning the extinguishment of Indian title – indeed, they had discussed Indian title with Dufferin in 1876 and had listened as he referred explicitly in his public speech to Canada’s policy of recognizing Indian title. They also had Minister Mills’s correspondence from the summer of 1877. Yet, they did not fully understand either the power or the limits of Indian title: not for a lack of attention, but simply because at the time, the concept was not one usually parsed in the detail they required. For this reason, Sproat sought a legal opinion on the weight Indian title carried for the commissioners’ decisions. Sproat must have been unsurprised that McCreight advised him that Indian title was “a moral claim” which a prudent government ought not to ignore. But what to do with a government that did ignore it? This was the problem facing Sproat and his fellow commissioners.

Perhaps above all else Sproat was a pragmatist. He was intelligent and thoughtful, and perhaps even a visionary and an idealist, but he sought immediate, workable solutions to conflicts. Therefore, the Mills approach – satisfy Indigenous peoples’ land claims (whatever the basis for their claims) through the allotment of large reserves, so that the Dominion does not have to directly resolve the Indian title impasse with the province – would have seemed to Sproat a reasonable one, and perhaps the best one in the circumstances. Sproat did not see Indian title as giving Indigenous people property rights in land, and McCreight’s legal opinion confirmed

⁷⁰ Sproat to Superintendent General (10 November 1879), Ottawa, LAC (RG 10, vol. 3663, f. 9801).

this view. Indian title was a claim to be leveraged for property rights in land recognized under the settler legal system and perhaps for other benefits. In other parts of Canada, those other benefits were annuities; in British Columbia, Sproat believed the benefits to be Indigenous people's lack of dependence on the government, their advantage arising from the government's keeping the peace between Indigenous peoples, and the government's assignment of an Indian agent to advise and help them.

Assessing the role of Indian title in Sproat's considerations as reserve commissioner is not straightforward. I agree with Hamar Foster that Sproat was neither an advocate nor an opponent of the doctrine that Indian title gave Indigenous people rights to the soil which the Crown ought to extinguish. Sproat criticized the province for ignoring this "moral claim"; he also criticized the Dominion, at least initially, for highlighting the claim to Indigenous peoples. Throughout, Sproat acknowledged the possibility of Indian title but wanted to leave it in the background, hoping to do his job of assigning reserves without having to reconcile the provincial and Dominion positions on Indian title and without including Indian title in the future Indigenous "landscape" in British Columbia. However, as I suggested in Chapter 1, while Foster recognizes Sproat's ambivalence about – or perhaps his recognition of the two-sided nature of – Indian title and does consider portions of Mills's August 1877 correspondence, he has not canvassed in detail the role of Indian title in Sproat's work as an Indian reserve commissioner.⁷¹

Cole Harris has gone further, explicitly considering the effect of Mills's August 1877 letter to Sproat and the resulting correspondence on the commissioners' work. Harris concludes that this correspondence did not much affect the commissioners, and I agree with him to a certain extent. By the time the commissioners received Mills's letter suggesting that they allot large reserves in order to placate Indigenous peoples with respect to their land claims so that the Dominion did not have to force its position on Indian title with the province, they had already established that approach to reserve-allotment, albeit for different reasons: the commissioners were attempting to prevent an "Indian war." On Sproat's next circuit in 1878 up the Fraser and Thompson Rivers, he could not follow Mills's directions because of geographical constraints and

⁷¹ Foster considers the Mills correspondence, as set out above in notes 1 and 3, in Foster, "Letting Go The Bone", *supra* note 1 at 64-65; Foster, "Roadblocks and Legal History, Part I", *supra* note 3 at footnote 43; Foster, "Roadblocks and Legal History, Part II", *supra* note 1 at footnote 40; and Foster, "Aboriginal Title and the Provincial Obligation", *supra* note 3 at footnote 5.

existing settler holdings. From this perspective, then, one could conclude that Mills's raising of Indian title had little effect on the commissioners.

However, from Sproat's appointment as the joint commissioner to the end of his tenure as sole reserve commissioner, Indian title held an important place in his thinking about Indigenous peoples and their lands. While he did not base any of his reserve-allotment decisions explicitly on Indian title, he did become a determined advocate for Indigenous land rights, in large part because of his frustration with the province's position on all Indigenous land matters, including Indian title. Sproat was equally determined to use the Dominion's recognition of Indian title against the province in order to secure more certain property interests – Indian reserves – for Indigenous peoples. Indian title was a means to an end: it was one lever by which Sproat and the Dominion could secure sufficient Indian reserve land, and this land base was a key component of Sproat's "humanitarian civilizing" project.

Chapter 6: Sproat and reserve-allotments

Sproat became the sole Indian reserve commissioner in March 1878.¹ As such, he undertook four circuits: the Fraser Canyon and Thompson, Nicola, and Similkameen valleys (May-October 1878); the lower Fraser River, from Yale to the mouth of the Fraser (October 1878 to August 1879); the mainland coast north of the 1876-77 circuit (January 1879); and further north on the mainland coast and the east coast of northern Vancouver Island (August 1879 to January 1880). During Sproat's first circuit, he worked out and documented his approach as sole commissioner. I focus on that circuit in this chapter, because it provides the most insight into the motivations for his decisions. On his first circuit, Sproat encountered the Nlha7kápmx, and he re-encountered Chillihetsa's community, part of the Syilx people with whom the commissioners had dealt the previous summer.² Analyzing Sproat's approach in Nlha7kápmx and Syilx territories in 1878 sheds much light on his decision-making as sole commissioner and his broader beliefs about the "civilization" of Indigenous peoples.

6.1 SPROAT IN NLHA7KÁPMX TERRITORY

Just before Sproat embarked on his first solo circuit, he self-published a booklet detailing his approach to allotting Indian reserves in the District of Yale, which encompassed much of the southern interior of British Columbia and included the area in which the Joint Indian Reserve Commission (JIRC) had worked the previous summer and in which he would be working in 1878.³ Sproat extracted the booklet's material from the provincial report he had written at the

¹ The Dominion appointed Sproat as the sole commissioner in March 1878: PC 1878-0170. See also Sproat to Lieutenant Governor, accepting the position as sole commissioner (16 March 1878), Victoria, B.C. Archives (GR-494 at 606).

² Cole Harris canvasses the first part of Sproat's Nlha7kápmx circuit through the Fraser Canyon as well as his 1879 attendance at the Nlha7kápmx meeting in detail in Cole Harris, "The Fraser Canyon Encountered," in Cole Harris, *The Resettlement of British Columbia: Essays on Colonialism and Geographical Change* (Vancouver: UBC Press, 1997) 103 at 118-129, originally published as Cole Harris, "The Fraser Canyon Encountered" (Summer 1992) 94 BC Studies 5 at 15-23 (hereafter cited to the latter) [Harris, "Fraser Canyon"].

³ Gilbert Malcolm Sproat, *Memorandum on Indian Reserves in the District of Yale* (Victoria: Colonist Steam Presses, 1878), Victoria, B.C. Archives (NW 970.52 S771) [Sproat, *Memorandum on Indian Reserves*].

end of the second JIRC circuit,⁴ indicating on the cover page that he sought “any suggestions or comments thereon from those who are acquainted with the subject, to assist him in performing his duties satisfactorily as far as may be, both to the white settlers and the Indians.”⁵ Sproat’s approach, as the JIRC’s, was to focus on reserving arable and grazing land, because it was what Indigenous people asked for and also because it was what he thought they needed.⁶ However, despite this intention, in most of the territory through which he travelled that summer, he was not able to find what he considered to be sufficient land.

Sproat left Victoria for Yale in the Fraser Canyon on May 13.⁷ His first stop was Spuzzum, the birthplace of his interpreter, “Michel.”⁸ Recommended by Lenihan in 1876, Michel had been the JIRC interpreter on its first circuit around the south coast. Sproat described him as “a very intelligent Indian from Yale, conversant with all the varied dialects of the neighbouring Coast, and talking English fluently, [who] has given great satisfaction throughout, and greatly aided the operations of the commissioners.”⁹ Sproat considered Michel to be able to speak English “remarkably well,” no doubt because he had “lived for 9 years as a servant with Mr. O’Reilly, the magistrate” in Victoria.¹⁰

⁴ Sproat and McKinlay to Provincial Secretary (6 February 1878), enclosing “Second Condensed Report of the commissioners acting for the Province” (1 January 1878), Victoria, B.C. Archives (GR-494 at 488-549) [Sproat’s Provincial Report (January 1878)]. See discussion above, in section 4.3: “The JIRC’s approach to reserve-allotment in its second circuit.”

⁵ In 1880, Sproat told the Superintendent General that, despite sending this memorandum “to the Provincial Ottawa representatives, the members of the Provincial assembly, to all the newspapers in the Province, and to the majority of the settlers in the districts which the Commission was about to visit,” he had never received “any intimation of dissent from the principles of adjustment laid down in that Report” – neither “from the government of Mr Elliott, nor from that of Mr Walkem” nor “from any quarter whatsoever”: Sproat to Superintendent General, “Appendix A” (30 January 1880), Ottawa, Library and Archives Canada [LAC] (RG 10, vol. 3707, f. 19,307).

⁶ Sproat, *Memorandum on Indian Reserves*, *supra* note 3.

⁷ Sproat to Superintendent General (13 May 1878), Vancouver, Indigenous & Northern Affairs Canada (Specific Claims West) [INAC] (Provincial Collection [Prov. Coll.], vol. 1: Letterbook #2, 110).

⁸ For Michel’s name, I have used the spelling Sproat used, though it is occasionally spelled differently in the records.

⁹ All information in this paragraph from JIRC to Minister of the Interior, “Report of the proceedings of the Joint Commission for the settlement of the Indian Reserves in the Province of British Columbia” (21 March 1877), Ottawa, LAC (RG 10, vol. 3645, f. 7936) [JIRC’s Dominion Report (21 March 1877)]. The JIRC sent a similar Memorandum to A.C. Elliott, Provincial Secretary (undated), Victoria, B.C. Archives (GR-494 at 220).

¹⁰ All quotations from here until the next footnote are from Sproat, “Extract from [Spuzzum] Field Notes” (23 May 1878), enclosed with Sproat to CCLW (4 June 1878), Vancouver, INAC (Prov. Coll., vol. 2, Correspondence no. 1300/78) [Sproat, “Spuzzum Field Notes”].

At Spuzzum, the Nlha7káp̓mx had two principal complaints: they did not have enough land, and settlers had taken “their old tribal homestead,” Shwimp. Sproat concluded that the Spuzzum people had lived at Shwimp “from time immemorial.” He knew that “[i]n British Columbia, the winter residence is always the tribal home. The Spuzzums were, and are, accustomed to move up the Fraser, for a few miles in summer, to fish salmon at good places, but, merely, from temporary camps on these expeditions.” At Shwimp, he found evidence of winter habitation: “numerous disused ke-kwilly (dugout, earth covered) houses.”¹¹ “Kee-kwilly” was the Chinook word for a semi-subterranean Indigenous winter dwelling used in the interior, sometimes called a “pit-house” in English.¹² In the year-end report for 1877, Superintendent Lenihan reported it to be:

more like a root house than a human habitation. It is constructed in the following manner: - A large hole is dug of about 12 or 15 feet square, which is then lined with boards, which also form the roof. In the latter a large opening is left for the double purpose of a chimney for the escape of smoke and as a way of ingress and egress for the occupants, which is effected by an almost perpendicular ladder. The top is covered with a heavy coat of sods. Around the walls are rows of sleeping berths, a large fire in the centre of the pit warms it thoroughly.¹³

Lenihan indicated that many Indigenous people preferred this type of winter dwelling to European-style houses but said that he had “very properly condemned these holes in the ground as unfit for human beings to occupy - and ... expresse[d] a hope that the Indians may be induced to abandon the use of them.”¹⁴ In his field notes, Sproat explained the relevance of the kee-kwilly winter residences for his decisions:

I have no intention of laying down any such rule as that the traces of ke-kwilly houses alone suffice to show what are Indian settlements, according to the intention of the law, which protects them from being preempted. Any such rule would be entirely out of the question. These disused houses are found in many parts of the country where

¹¹ *Ibid.*

¹² George Dawson explains that “kee-kwilly” was a Chinook word for these houses. He provides their Indigenous names, along with an explanatory drawing and further discussion in George M. Dawson, “Notes on the Shuswap People of British Columbia” in *Transactions of the Royal Society of Canada* (Section II, 1891) 3 at 7. George Gibbs, in *Dictionary of the Chinook Jargon, or, Trade Language of Oregon* (New York: Cramoisy, 1863) at 8, defines “Keé-kwil-lie” as “low; below; under; beneath; down.”

¹³ Canada, Department of Interior, *Report of the Deputy Superintendent General of Indian Affairs for 1877* (Ottawa, Department of Interior, 1877) at 17.

¹⁴ *Ibid.*

Indians do not now live. At such a place as Spuzzum, however, the very marked traces of these houses assist one's mind in coming to conclusions supported by other facts and evidence. I had to consider whether, Shwimp had ever ceased to be a settlement, or, had been a settlement within a reasonable period, or, whether, it was merely one of those old traditional residences of Indians, not much appreciated by them even from a sentimental point of view, which, frequently I have to exclude from my consideration. The conclusion I came to was, that, if there was an "Indian settlement" in the country, within the protection of the Land Ordinances and Acts, that place was Shwimp.¹⁵

After questioning several Spuzzum people "very carefully on this subject -- after warning them to speak the truth, and [taking] separately and alone the evidence of the head Chief and other respectable Indians," Sproat concluded that a settler, Biesta, had wrongfully pre-empted Shwimp.¹⁶ However, since Biesta had left the country, Sproat wrote to the Chief Commissioner of Lands and Works (CCLW) and to the Government Agent at Lytton, Mr. Teague, asking them to cancel Biesta's pre-emption record so that he might allot the lands as part of the Spuzzum reserves.¹⁷ In what would prove a rare instance of decisive action following a request from Sproat, the CCLW instructed Teague to cancel Biesta's record and to so inform Sproat.¹⁸

All the way up the Fraser Canyon to Lytton, Sproat employed a common method: he pushed aside settlers without proper records; he confirmed and sometimes enlarged colonial reserves; he made new reserves based on village or fishing sites; he allotted each community in the Canyon grazing lands in common in the Nicola District; and he allotted other interests he thought the Nlha7káp̓mx needed, such as "a right of access to and of encamping on a strip of land on the left bank of Fraser River ... for the purpose of capturing and drying their fish in their accustomed way."¹⁹ By the end of May, Sproat had "dealt with the land questions of between

¹⁵ Sproat, "Spuzzum Field Notes", *supra* note 10.

¹⁶ *Ibid.*

¹⁷ Sproat to CCLW (4 June 1878), *supra* note 10; Sproat to Teague (4 June 1878), Vancouver, INAC (Prov. Coll., vol. 1: Letterbook #2, 145-146).

¹⁸ See marginalia on Sproat to CCLW (4 June 1878), *supra* note 10.

¹⁹ Sproat, "Minute of Decision, Boston Bar Indians, Hell's Gate" (4 June 1878), Vancouver, INAC (Prov. Coll., vol. 6: Minutes of Decision, 17).

Cole Harris and Douglas Harris have both provided detailed accounts of Sproat's circuit through the Fraser Canyon, including examples of his actions: see Cole Harris, "Fraser Canyon," *supra* note 2; Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: UBC Press, 2002) at 140-144; and Douglas Harris, *Landing Native Fisheries: Indian Reserves and Fishing Rights in British Columbia, 1849-1925* (Vancouver: UBC Press, 2008) [Harris, *Landing Native Fisheries*] at 43-57.

500 and 600 Indians”; he felt they had “saved much trouble by stating their wishes fully, and then leaving the adjustment in my hands.”²⁰ However, he regretted having to leave several questions unresolved, because of unresponsiveness or indecisiveness from the province. Further, he was angry at the former colonial government’s actions and inactions, including its failure to assign water for irrigation to the reserves.²¹

Sproat continued his work in Nlha7káp̓mx territory through July, by then believing he had addressed the land matters of more than 2,000 people. The Nlha7káp̓mx, according to Sproat, had continued to co-operate: they had not “place[d] obstacles” in his way and had “behave[d] very well.”²² He had “used great efforts to effect a compromise that would prevent any necessity for going into old affairs, and in the case of about two-thirds of these Indians,” he felt he had succeeded.²³ He described his reserve-allotments in the Fraser canyon in this way:

One of the most puzzling questions I have had to deal with ... was the condition of that large portion of the Nekla kap a muks living in the gorges of the Fraser. I did the best I could for them -- securing them their cherished spots & fisheries, and getting such bits of neighbouring land as it was possible to find, and I am now pressing the Provincial Government about water for them to use in irrigation.

I have additionally, taken the somewhat bold step of finding what I could for many of the people in Nicola Valley and its lateral valleys, securing for them mainly pasture land, but also some agricultural land, to relieve the pressure upon the limited area of agricultural land in the Fraser gorges. I saw at a glance that the physical conditions of progress did not exist there, at least as regards farming industry, and I wanted to get the young women away from the waggon road.²⁴

Despite these accomplishments, Sproat did not feel able to resolve what he viewed as intractable land issues around Lytton itself, the home of about 500 Nlha7káp̓mx, arising from the colonial and provincial governments’ handling of matters relating to Indigenous land and the fact that settlers now held much of the land.²⁵ Upon explaining the situation to the Nlha7káp̓mx at

²⁰ Sproat to Superintendent General (30 May 1878), Ottawa, LAC (RG 10, vol. 3612, f. 3756-17).

²¹ *Ibid.*

²² Sproat to CCLW (17 July 1878), Vancouver, INAC (Prov. Coll., vol. 2: Correspondence no. 1657/78).

²³ *Ibid.*

²⁴ Sproat to Deputy Superintendent General (20 September 1878), Ottawa, LAC (RG 10, vol. 3666, f. 10,213).

²⁵ Sproat to CCLW (17 July 1878), *supra* note 22. Cole Harris describes how the problems Sproat encountered everywhere in the Canyon intensified around Lytton: Indigenous people “had lost old sites and fisheries. Reserves were non-existent or too small. There was insufficient water. People were deprived of land they had previously cultivated”: C Harris, *Making Native Space*, *supra* note 19 at 141.

Lytton, Sproat indicated that they “agreed to wait feeling assured that the Govt of the Dominion would see them righted with as little delay as possible.”²⁶ However, despite these good intentions, when Sproat left office in 1880, he had to leave his decisions concerning the Lytton area as “interrupted work” and his reserves as “temporary.”²⁷

On leaving Lytton in 1878, Sproat described to the Superintendent General of Indian Affairs (Superintendent General) the send-off the Nlha7kápmx gave near his departure from Lytton as evidence of the good relationship he had established with the Nlha7kápmx:

15 chiefs and over a hundred representatives from all the tribes between Yale and Lytton appeared on horseback at my camp, without notice, and carrying their flags, to say goodbye. They made 15 speeches, and then suddenly raised their flags and gave three hearty cheers for the Queen. They said they knew the Queen's mind now, and pointing to the flags said some were Catholics and others Protestants, but they wished me to mention to Lord Dufferin that they were all as one for the Queen.²⁸

While in Lytton, Sproat met with Reverend John Booth Good, a missionary amongst the Nlha7kápmx at Lytton²⁹, whom Sproat complimented for

the good effect of your missionary work among the Indians in this district. It has been a pleasure to me to be among good Indians and to notice their good behaviour, their self-respect yet respectful bearing and the promptings - I might almost say - the aspirations of many of them towards a more civilized life - Those only who know what uncivilized men are can appreciate what the change which is visible here means.³⁰

Sproat's support for those Indigenous people who displayed “aspirations... towards a more civilized life” would intensify the following year, when he attended the Nlha7kápmx meeting at

²⁶ Sproat to Superintendent General (17 July 1878), *supra* note 22.

²⁷ See Sproat's note that, “The decisions for the Lytton proper group of Indians, as interrupted work, are contained in a separate book”: Sproat (undated), Vancouver, INAC (Prov. Coll., vol. 5: Interrupted Work Book No. 1, 78). See also, Sproat's memorandum concerning “a few notes... with respect to lands temporarily reserved pending adjustment of water questions around Lytton, and provision of a suitable entire area of arable land”: Sproat, “Memorandum” (undated), Vancouver, INAC (Prov. Coll., vol. 5: Interrupted Work Book No. 1, 23).

²⁸ Sproat to Superintendent General (17 July 1878), *supra* note 22; underlining in original.

²⁹ Brett Christophers analyzes Reverend Good's career and beliefs in Brett Christophers, *Positioning the Missionary: John Booth Good and the Confluence of Cultures in Nineteenth-Century British Columbia* (Vancouver: UBC Press, 1998).

³⁰ Sproat to Reverend Good (18 June 1878), Ottawa, LAC (RG 10, vol. 3611, f. 3755); underlining in original. For an analysis of Reverend Good's missionary work, especially amongst the Nlha7kápmx, see Christophers, *ibid.*

which they created self-government rules for themselves under the *Indian Act*, which I discuss in Chapter 7.

Reverend Good seems to have had a similarly good impression of Sproat. He reported to the Superintendent General “that by his admirable tact, judgment and ready business capacity, the present Indian reserve commissioner, Mr. Sproat, has so largely succeeded in redressing and quieting our long standing Indian land grievances and has thereby greatly encouraged our people to show themselves worthy of the attention and consideration bestowed upon them by the Crown.”³¹ Reverend Good also laid out a proposal for educational institutions for Indigenous people, in respect of which the Superintendent General later sought Sproat’s comments. Sproat generally supported Good’s ideas but reiterated his own urging measured and thoughtful government support of Indigenous “civilization”:

The whole question is one of administration -- a little help here and a little help there, suitable to the circumstances of a helpless uncivilised people, but so as not to weaken their self reliance -- some instruct[ion in how] to hold a plough, and manage cropping -- how to irrigate successfully -- some aid for the old and sick, and finally what to do in the great matter of education -- and how to repress indulgence in intoxications these are the main points, and perhaps I should add that an agent should see that the Indians get fair play at law.

The interpreter told me the other day that the younger men of the three divisions of the people -- Lower Fraser[,] Thompson and Shuswap [--] had been talking among themselves, that as soon as they got land, they would have a friendly emulation as to which would make most progress in agriculture. A few implements given to or rather lent to, some of the poorer tribes would be a boon and a fair expenditure.³²

This letter reveals much about Sproat and how he approached and understood his work as reserve commissioner. He felt Indigenous people were “uncivilized,” but making “progress.” To continue their “progress,” they needed some instruction and aid, but only when necessary. They also needed guidance to avoid vices and protection to ensure they received fair treatment under the law. Moreover, the government should focus its attention on “the younger men,” who, Sproat believed, were thinking about a future in which agriculture featured prominently.

³¹ Reverend Good to Superintendent General (26 July 1878), Ottawa, LAC (RG 10, vol. 3611, f. 3755).

³² Sproat to Superintendent General (17 August 1878), Ottawa, LAC (RG 10, vol. 3611, f. 3755).

As he continued up the Thompson River from Lytton, Sproat dealt with lands for the Nicomin, Cook's Ferry, Oregon Jack Creek, Cornwall, and Bonaparte communities.³³ In the end, he had to leave many of his decisions in this area as "interrupted work," because, "[t]he whole question of Indian reserves from Cooks Ferry to and including the Bonaparte people is really a water question," a question that the Dominion and provincial governments had not resolved, despite Sproat's repeated requests.³⁴ In mid-August, Sproat finally reached the Nicola valley. One of his first acts was to allot a grazing reserve for the "Mixed Indians of Spuzzum, Boston Bar, Boothroyd & Siska, and Upper Similkameen" – all communities who did not live in the Nicola valley but who had no such suitable lands and had "been charged by the principal Nicola chiefs for this privilege of grazing, a practice which," Sproat decided, "must now come to an end."³⁵ The two Nicola chiefs who had charged others for winter grazing were Na-weese-is-ti-kun, a Nlha7kápmx chief, and Chilliheetsa, the Syilx chief.³⁶

In dealing with the lands for Na-weese-is-ti-kun's people, Sproat came up against another settler's pre-emption claim that included an occupied kee-kwilly. On the disputed land, "Teen-melst, a Na-weese-is-ti-kun Indian with many children, who has long lived there during the habitable part of the year (according to Indian custom)," had stables, a corral, and a kee-kwilly where he sometimes wintered.³⁷ Teen-melst, according to Sproat, was "one of the most enterprising Indians in the Interior[,] a man well known to many of the oldest settlers. This Indian has 18 children and possesses 104 good horses and 13 cattle and is still in the prime of his life."³⁸ As at Spuzzum, Sproat thought the settler's claim invalid but hoped he might be able to achieve some sort of compromise so that the settler would not be left with nothing:

³³ Sproat, "Memorandum – Bonaparte Indians" (undated), Vancouver, INAC (Prov. Coll., vol. 5: Interrupted Workbook #3, 35).

³⁴ *Ibid* at 49-50.

³⁵ Sproat, "Nekla-kap-a-muk Indians – Nicola River – Mixed Indians" (26 August 1878), Vancouver, INAC (Prov. Coll., vol. 4: Field Minutes, 2); Sproat, "Minutes of Decision – Coldwater River, Nicola Valley – Lower Nicola Indians with mixed Indians of Spuzzum, Boston Bar, Boothroyd and Siska, and Upper Similkameen" (11 September 1878), Vancouver, INAC (Prov. Coll., vol. 6: Minutes of Decision, 109).

³⁶ Sproat, "Nekla-kap-a-muk Indians – Lower Nicola – Potatoe Gardens" (20 August 1878), Vancouver, INAC (Prov. Coll., vol. 4: Field Minutes, 2).

³⁷ Sproat, "Nekla-kap-a-muk Indians – Lytton Group – Hamilton's Creek" (30 September 1878), Vancouver, INAC (Prov. Coll., vol. 4: Field Minutes at 3) [Hamilton's Creek Field Minute]. "Teen-melst" is sometimes spelled as "Teen-nelst" in the records. I have kept all references consistent with the version most often used.

³⁸ Sproat to CCLW (11 August 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 370).

I should be very glad could a compromise be effected between Teen-melst's claims and those of Mr. Anderson, otherwise there must unfortunately be a question, as the Dominion government could not consent to the overriding of Teen-melst, and such questions are inconvenient, and if Teen-melst's rights were established, which I think would be the case from all the information before me, Mr. A's preemption as including an "Indian settlement" would be invalid. These questions are very important.³⁹

Sproat refused to recognize settler arguments on Anderson's behalf that Teen-melst did not occupy the kee-kwilly for the whole year. Instead, Sproat understood that Teen-melst followed "the customs of his people in living in different but regularly visited places, and kee-kwilly, or mat, or tent houses." He concluded that there was "reasonable evidence to show that this Indian, who is a well-known man, has for 10 years had a 'settlement' there fairly within, I should think, the meaning of the law excluding such places from preemption or purchase."⁴⁰ In the end, Sproat proposed that Anderson and Teen-melst divide the disputed land between them, and the land with Teen-melst's kee-kwilly, corral, and stable would become part of an Indian reserve.⁴¹ However, when Anderson would not agree, Sproat decided that "[t]he Dominion Govt certainly cannot permit Teen-a-melst's rights to be overridden. I have ascertained from many old settlers that the place is his in the full sense in which having reference to the habits of the people, a stock raising place can belong to an Indian."⁴² He instructed the surveyor, Mohun, to survey the lands so as to include Teen-melst's kee-kwilly, corral, and stable in the reserve, which Mohun did.⁴³

In another instance, Sproat secured a written agreement with Joseph Guichon that, "as to the claims made by the Indians of the tribe of Na.weese.us.ti.kun to lands and fishing stations at Mameet Lake[,] the arrangement is that the Indians are to have, as they always have had, the undisturbed right of fishing in Mameet River and Mameet Lake, with right of access thereto."⁴⁴

³⁹ Hamilton's Creek Field Minute, *supra* note 37 at 3; underlining in original.

⁴⁰ *Ibid* at 5.

⁴¹ Sproat, notes (15 February 1880), appended to Hamilton's Creek Field Minute, *ibid* at 10.

⁴² Sproat to Mohun (11 August 1878), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 371-372).

⁴³ Sproat, notes (15 February 1880), appended to Hamilton's Creek Field Minute, *supra* note 37 at 10.

⁴⁴ Sproat to Guichon (14 September 1878), Vancouver, INAC (Prov. Coll., vol. 1: Letterbook #2, 258); Sproat, "Nekla-kap-a-muk Indians – Nicola-Mameet Reserve" (5 September 1878), Vancouver, INAC (Prov. Coll., vol. 4: Field Minutes at 10-11) [Nicola-Mameet Field Minute]; Guichon to Sproat (undated), Vancouver, INAC (Prov. Coll., vol. 1: Letterbook #2, 259). Douglas Harris discusses Sproat's arrangement with Guichon in Harris, *Landing Native Fisheries*, *supra* note 19 at 54.

Sproat arranged, however, that Na-weese-is-ti-kun's people were only to walk on foot "through the lands of white men," not go on horseback. Further, they were not to camp on a white man's lands.⁴⁵

With another settler named Gillie, Sproat arranged a land swap so that he could allot Gillie's pre-empted land as a reserve, a result that he reported "gave great pleasure to all the Indians by replacing the heirs of old Na-wees-is-ti-kun's brother on a portion of the land from which they had been displaced, and giving a much prized right of entry for roots along the frontage of the lake to be enjoyed by all these Indians."⁴⁶ Some months later, Sproat replied to a letter from Gillie to say he was glad to hear that Gillie was getting along well with Na-wees-is-ti-kun's people. Sproat continued: "[t]he truth is that equitably they have a claim to the land you occupy only it is unnecessary and would be very tedious and expensive to proceed to establish an equitable right and it would be hard on you an innocent holder to attempt to do this. The compromise I think is fair enough but I do not think more hill land could be given."⁴⁷ Once again, Sproat's focus on compromise and a satisfactory outcome is evident. Sproat sought to resolve conflict; the merits of the claims were less important. If anything, Sproat sympathized with (to use his words) "innocent holders" – settlers – even where he thought they had the weaker claim.

However, Sproat was not able to satisfy Na-weese-is-ti-kun's people concerning all their claims. In respect of one parcel, where "there is little doubt that the disturbance of the Indians at that place was inequitable," and Sproat "found a stronger feeling amongst the Indians on this matter than I have noticed in any part of the country," he nonetheless felt himself unable to do anything "in respect of lands which had passed through three hands."⁴⁸ On his informing Na-weese-is-ti-kun's people of this, "they shrieked and galloped about like madmen."⁴⁹

⁴⁵ Sproat to Guichon (14 September 1878), *supra* note 44. See also Nicola-Mameet Field Minute, *supra* note 44 at 10-11.

⁴⁶ Sproat, "Memorandum of arrangement in the matter of the questions between Lower Nicola Indians and Paul Johnston Gillie..." (10 September 1878 [likely drafted c. 15 March 1880]), Ottawa, LAC, (RG 10, vol. 1274, 214-216); Nicola-Mameet Field Minute, *supra* note 44 at 24.

⁴⁷ Sproat to Gillie (4 March 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 80). See also Sproat to Gillie (19 February 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 45).

⁴⁸ Nicola-Mameet Field Minute, *supra* note 44 at 22-23.

⁴⁹ *Ibid* at 23.

After Na-weese-is-ti-kun's people, Sproat was to meet with Chilliheetsa, and he remained worried about Chilliheetsa's reaction to O'Keefe's refusal to move from the land at the head of Okanagan Lake and the province's refusal to implement the JIRC's decision to allot an Indian reserve. Sproat sent the CCLW a telegram just days before arriving at Chilliheetsa's lands to ask "what I have to say to Nicola Chief respecting O'Keefe's matter at Okanagan."⁵⁰ There is no evidence of a reply. However, Sproat did meet with Chilliheetsa and his people in September, and when he did, he made decisions that exemplify his focus on the "humanitarian civilizing" of Indigenous people.

6.2 CHIEF CHILLIHEETSAS

Chilliheetsa, the Syilx head chief was a nephew of and the successor to Chief Nicola who, in turn, was the son of Pelkamu'lôx, both of whom were Syilx head chiefs.⁵¹ Although

⁵⁰ Sproat to Murray for telegram to CCLW (20 August 1878), Vancouver, INAC (Prov. Coll., vol. 1: Letterbook #2, 214); original telegram at Sproat to CCLW (21 August 1878), Vancouver, INAC (Prov. Coll., vol. 2, Correspondence no. 1914/78).

⁵¹ James A. Teit, "The Salishan Tribes of the Western Plateaus", ed. Franz Boas, *Forty-Fifth Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution (1927-1928)* at 265. Secwépemc scholars Marianne Ignace and Ronald Ignace largely support Teit's account of the genealogy of the Secwépemc, parts of which were common with the Syilx genealogy in the earlier generations: Marianne Ignace & Ronald E Ignace, *Secwépemc People, Land and Laws: Yeri7 re Stsq'ey's-kucw*, McGill-Queen's Native and Northern Series 90 (Montreal & Kingston: McGill-Queen's University Press, 2017), especially chapters 8, 9, and 10. See also Okanagan Rights Committee & The Okanagan Indian Education Resource Society, *We Get Our Living Like Milk From the Land*, Lee Maracle et al, eds. (Canada: Theytus Books Ltd., 1993) at 9-10.

Marie Brent, the granddaughter of Chief Nicola and an Irish settler, Captain Charles Houghton, relays this same history in a 1966 article, "Indian Lore." Although it is clear that she had read and relied, in part, on Teit, she also added considerably more detail to the genealogy, as she was the "one sober child with a good memory" whom her Indigenous community trained "to remember the story of their family and their ancestors." Brent's Indigenous mother, Sophie N'kwala [Nicola], a granddaughter of Chief Nicola, died while she was young; she was raised by Chief Nicola's sister, her great aunt: Marie Houghton Brent, "Indian Lore" (1966) 30 *Okanagan Historical Society Annual Report* 105 at 105, 106, 111. Brent's article, published the year before she died, when she was 96 years old, was "compiled by" a Mrs. Harold Cochrane. (For Brent's age and year of death, see Memory BC, "Marie Houghton Brent fonds", online <<https://www.memorybc.ca/marie-houghton-brent-fonds>>, accessed 17 December 2017. Given Brent's age and Cochrane's apparent role in recording Brent's stories, Brent's recollections ought to be accepted somewhat cautiously. For another account of Brent's memories, see also Elsie G Turnbull, "Recollections of Marie Houghton Brent" (1984) 18:2 *British Columbia Historical News* 21.

Peter Carstens relays the Pelkamu'lôx/Nicola/Chilliheetsa genealogy in Peter Carstens, *The Queen's People: A Study of Hegemony, Coercion, and Accommodation among the Okanagans of Canada* (Toronto: University of Toronto Press, 1991) at 16-23; his discussion rests primarily on Teit. Carstens, in his second chapter, "The Beginnings of White Hegemony," analyzes fur trade's arrival in the Okanagan and what

Peikamu'lôx had lived much of the time in what is now American Syilx territory, Peikamu'lôx's brother was Kwoli'la, the chief of the Tk'emlúps community, and his mother was from Inkumupulux at the head of Okanagan Lake.⁵² Kwoli'la eventually persuaded Peikamu'lôx to settle in the Nicola valley.⁵³ They agreed to spend their summers in neighbouring areas in the Nicola valley, with Peikamu'lôx wintering at Inkumupulux at the head of Okanagan Lake and Kwoli'la wintering at Kamloops.⁵⁴ After many years, Peikamu'lôx's group split into two, one wintering more often in the Nicola valley instead of at Inkumupulux. However, at least as late as 1927, the group in the Nicola valley considered themselves part of the Inkumupulux people.⁵⁵

When Peikamu'lôx was dying, he charged his brother, Kwoli'la, with the guardianship of his son, Hwistesmetxe'qen, better known today as Nicola.⁵⁶ Peikamu'lôx was buried at Inkumupulux.⁵⁷ Nicola, Nicolas, or Nkwala', after whom the Nicola valley, River, and Lake are named, became even more well-known than his father,⁵⁸ and the fur-traders at Kamloops

Carsten's calls "a new kind of Okanagan political leader..., the double chief, of which Nkwala [Nicola] was the proto-type" (at 37-38). Carstens's book has been criticized for, among other things, "the author's cavalier use of source material, and the determinism that underlies his view of Okanagan history": Elizabeth Vibert, "Review Article: Determining Okanagan History", Book Review of *The Queen's People: A Study of Hegemony, Coercion, and Accommodation among the Okanagans of Canada* by Peter Carstens, (Winter 1992-93) 96 BC Studies 110 at 100. See also Noel Dyck, Book Review of *The Queen's People: A Study of Hegemony, Coercion, and Accommodation among the Okanagans of Canada* by Peter Carstens, (1992) 34:2 Anthropologica 285, and Stanley R. Barrett, "Peter Carstens (1929-2010)", (2010) 52:2 Anthropologica 389 at 390. I agree with some of the criticisms of Carsten's study. For my purposes, however, Carstens provides some useful summaries of the primary sources.

⁵² Brent, *supra* note 51 at 106. Marianne Ignace and Ronald Ignace note that Peikamu'lôx and Kwoli'la were half-bothers, sharing a father but having different mothers: Ignace & Ignace, *supra* note 51 at 290-291.

⁵³ Teit, *supra* note 51 at 265-266. Teit gave a fuller account of the history of the Nicola valley, and its occupation by Tinneh, Secwépemc, Nlha7kápmx, and Syilx peoples in Franz Boas, "Fifth Report on the Indians of British Columbia" in *Report of the Sixty-Fifth Meeting of the British Association for the Advancement of Science* (Ipswich, 1895) at 553. There Teit informed a report by Franz Boas that, "shortly before the arrival of the whites the Okanagan [people] commenced to make permanent settlements in the neighbourhood of Douglas Lake on account of the good grazing in that region."

⁵⁴ Marianne Ignace and Ronald Ignace discuss this agreement, known today as the "Fish Lake Accord," in Ignace & Ignace, *supra* note 51 at 289-291.

⁵⁵ Teit, *supra* note 51 at 266.

⁵⁶ Teit, *supra* note 51 at 267. Marianne Ignace and Ronald Ignace put this event in Secwépemc cultural context in Ignace & Ignace, *supra* note 51 at 338-339. Dawson provided a similar version of this story in Dawson, *supra* note 12 at 26-27. One of Peikamu'lôx's daughters married Donald McLean, the man in charge of the Hudson's Bay Company post at Kamloops. McLean had a second wife, who was part Secwépemc, with whom he had three sons, Alan, Charles, and Archibald. These three – the "McLean Brothers" – were hanged for murder in 1881: see Teit, *supra* note 51 at 267.

⁵⁷ Brent, *supra* note 51 at 107.

⁵⁸ Teit, *supra* note 51 at 268.

recognized Nicola as the most powerful and influential chief in the interior of British Columbia.⁵⁹ Just as his father Pełkamu'łôx had done, Chief Nicola usually wintered at Inkumupulux.⁶⁰ The Syilx first met white men during Nicola's lifetime, and the emigration of non-Indigenous people into Syilx territory changed Syilx ways of life irrevocably.⁶¹ Nicola set a mediative tone for relations between Indigenous and non-Indigenous people in the Okanagan, Shuswap and Nicola valleys. He repeatedly refused to join an American "Indian war" against white settlers, "claiming that he was with King George and the Queen. He was an ally of the latter and wore the medals the Queen and King has presented to him. Having his territory controlled by the Queen, he expected to be dealt fairly with, for the Queen and her subjects, the fur traders, had always been fair with the Indians."⁶²

Chief Nicola had many children. One son, Selixt-asposum, became the chief of the Syilx at the head of Okanagan Lake, the Inkumupulux.⁶³ Known in English and French also as "Moses," "Moise," "Five hearts," and "Cinq-Coeur," it was he with whom the commissioners would negotiate when they reached the head of Okanagan Lake.⁶⁴ Chief Nicola also had an adopted son, his nephew, Chilliheetsa, whose mother had died at his birth.⁶⁵ Chilliheetsa's birth father was Syilx, from the Keremeos area.⁶⁶ Chief Nicola died in 1859⁶⁷, and he too was buried

⁵⁹ *Ibid* at 269-270.

⁶⁰ *Ibid*.

⁶¹ Many sources report that it was Pełkamu'łôx who first met fur traders in the early 1800s: Ignace & Ignace, *supra* note 51 at 426; Brent, *supra* note 51 at 106-107; Teit, *supra* note 51 at 269; and Dawson, *supra* note 12 at 26-27.

⁶² Teit, *supra* note 51 at 269-270. Citing various sources, David Wyatt discusses Nicola in David Wyatt, *The Indian History of the Nicola Valley, British Columbia* (PhD dissertation, Brown University, 1972) [unpublished] at 204-208.

⁶³ Joint Indian Reserve Commission, "Journal of the Proceedings of the Commission for the settlement of the Indian Reserves in the Province of British Columbia, continued from Vol. 1" (27 June 1877), Ottawa, LAC (RG 10, vol. 1284, reel 13902), Victoria, B.C. Archives (GR-1965) [June-December JIRC Journal] at entry for 18 September 1877. Duane Thomson concluded, based on colonial governmental correspondence, that Magistrate Haynes appointed Selixt-asposum as chief of the community at the head of the lake in December 1865 "in a successful effort to co-opt this chief and gain his acquiescence on the land issue": Duane Thomson, *A History of the Okanagan: Indians and Whites in the Settlement Era, 1860-1920* (PhD dissertation, University of British Columbia, 1985) [unpublished] at 126-130 [Thomson, *History of the Okanagan*] at 120; see also 52, 70. Thomson points out (at 71) that the head of the lake had been Chief Nicola's winter home, and the people had looked to him as their band chief. Thomson's explanation supports Chilliheetsa's continued influence over the head of the lake community but also Selixt-asposum's role.

⁶⁴ June-December JIRC Journal, *supra* note 63 at entry for 18 September 1877.

⁶⁵ Teit, *supra* note 51 at 268.

⁶⁶ Teit, *supra* note 51 at 271.

at Inkumupulux.⁶⁸ Chilliheetsa succeeded Chief Nicola, becoming the recognized head chief of the Syilx on the Canadian side of the border and the most prominent chief in the British Columbia interior.⁶⁹ As his uncle, Chilliheetsa “was noted as an all-round good man,” had great faith in the Queen and the Queen’s laws, and expected his people to be dealt with by the government in the fairest manner regarding the rights they claimed in their territories.⁷⁰ A letter Chilliheetsa sent in 1861 to Governor Douglas evidences his respect for the Queen and her laws and his concern that his people be dealt with fairly by the government. The letter, written in French by a missionary, protests the settler lynching near Osoyoos of a Syilx man alleged to have killed a French miner:

I do not come to argue and I will not ever argue or plead the cause of the guilty but my heart is heavy on seeing the manner in which justice is delivered to us. If the

⁶⁷ Mary Balf, “Hwistesmetxe’qen,” in *Dictionary of Canadian Biography*, vol. 8, University of Toronto/Université Laval, 2003–, online: <http://www.biographi.ca/en/bio/hwistesmetxe_qen_8E.html>, accessed 18 September 2017. In reliance on Balf, Carstens also places Nicola’s death in 1859: Carstens, *supra* note 51 at 47.

⁶⁸ Brent, *supra* note 51 at 110.

⁶⁹ Teit, *supra* note 51 at 272. One of Chilliheetsa’s duties, as chief, appears to have been providing food for the Syilx people. One account notes that in 1859-60, “chief Chilahichan [Chilliheetsa], ... had gathered up a band of one hundred and fifty horses which he drove from camp to camp throughout his country, leaving a few at each rancherie... to be slaughtered for food”: Thomson, *History of the Okanagan*, *supra* note 63 at 247, citing from Turner et al., “Ethnobotany of the Okanagan-Colville Indians of British Columbia and Washington,” in *Occasional Papers of the British Columbia Provincial Museum* 21 (Victoria: British Columbia Provincial Museum, 1980) at 47.

Chilliheetsa and his territory in the Nicola valley are widely identified as Syilx or Okanagan in the ethnographic and historical literature: see Wyatt, *supra* note 62 at 213; Dawson, *supra* note 12 at 4-6; and Thomson, *History of the Okanagan*, *supra* note 63 at 21. This territory is still included within the Syilx/Okanagan territory: see online: <https://www.syilx.org/wp/wp-content/uploads/2017/01/ON_Territory.pdf>, accessed 17 September 2017.

Marie Houghton Brent, Chief Nicola’s granddaughter, provided an interesting account of Chief Nicola’s son, also named Nicola, being made chief upon the former’s death, something that none of the other sources describe. According to Brent, *supra* note 51 at 110-111:

Before Old Chief N’kwala died in Grand Prairie enroute to a council, he called his people to him and made his youngest and favorite son Chief. This son was to rule in his place after his death. There were three sons. One had died, the oldest and youngest were left. He chose the youngest son for Chief. It was his people he was thinking about and for some reason of his own he chose the youngest son. This was my mother’s father. He had helped to take care of the Old Chief. Young Chief N’Kwala and wife, G-pee-cha (Suzette, priest’s name for her) were grandfather and grand- mother of Marie Houghton Brent and Edward Houghton. Young Chief N’kwala ruled but a short time as Chief. He was killed by his older half brother, jealous because the younger brother was made Chief.

It is unclear from Brent’s account whether the “older half brother” was Chilliheetsa, whom Teit describes as Chief Nicola’s nephew.

⁷⁰ Teit, *supra* note 51 at 272-273.

guilty man had been taken by authorities, judged according to the rules, the entire camp would have learned a lesson at the gallows; but men without a warrant apprehend us and execute us without a trial when Mr. Cox, your representative, is here and he has not even prepared a trial.⁷¹

In opposition to views that this petition represented only the missionary perspective, Reuben Ware framed the situation in much the same way as Douglas Harris frames the 1879 Nlha7kápmx meeting⁷²: namely, as an Indigenous effort to have the Queen's people obey the Queen's laws. Ware argued in 1978 that this petition reveals Indigenous people's testing the rhetoric about British justice and the Queen's benevolence, and he observed the predicament for Indigenous chiefs in the decades after white settlement, especially in the face of increased settler immigration:

Indian leadership was faced with a complicated crisis in the 1860s. A leader had to accommodate himself to aspects of colonial rule, confront it where appropriate or feasible, mitigate its worst effects on his people or at least his extended family and maintain his position in the tribal power structure. Some like Silhitza [Chilliheetsa], Spintlum of Lytton and Luquitun of Yale had some success in dealing with this intricate political question. ... Silhitza's petition should be seen as an Indian expression and an Indian political initiative to the social and racial crisis of colonial British Columbia.⁷³

In 1861 as well, Chilliheetsa negotiated with Magistrate Cox for the allotment of reserve lands at the head of Okanagan Lake.⁷⁴ In February that year, Cox reported, "Zelahetza

⁷¹ Reuben Ware, "Silhitza's Petition to Governor James Douglas" (1978) 42nd *Okanagan Historical Society Annual Report* 53 at 56. The translation comes from Ware; his article also provides a photograph of the original petition in French. The missionary was Father Pandosy, a Roman Catholic of the Oblates of Mary Immaculate, who arrived in the Okanagan in 1859, before white settlement there: Thomson, *History of the Okanagan*, *supra* note 63 at 37-44 and at 77-78.

⁷² Douglas Harris, "The Nlha7kápmx Meeting at Lytton, 1879, and the Rule of Law" (Winter 1995-96) 108 *BC Studies* 5.

⁷³ Ware, *supra* note 71 at 58.

⁷⁴ Duane Thomson, "Opportunity Lost: A History of Okanagan Indian Reserves in the Colonial Period" (1978) 42nd *Okanagan Historical Society Annual Report* 43 at 45 [Thomson, "Okanagan Indian Reserves"]. Of this negotiation, Peter Carstens concludes that "Chelahitsa was consulted by Cox because of his pro-settler tendencies. It is true that he was Nkwala's [Nicola's] sister's son who had been adopted by Nkwala and, according to Teit (1930:268), designated by the latter to succeed him. However, the 'appointment' was never accepted by the majority of the Head of the Lake people. Whatever the case, there is no record of proper negotiation with the Okanagan in the creation of this 1861 reserve": Carstens, *supra* note 51 at 60-61. Carstens does not provide a source for his statement that the majority of the Inkumupulux people did not accept Chilliheetsa as the head chief of the Syilx people, and Chilliheetsa's role, including with respect to the JIRC's and Sproat's reserve allotments, suggests otherwise.

[Chilliheetsa] the Okanagan Lake Chief had a lengthy interview with me relative to his reservation in the vicinity of the newly discovered diggings” at the head of Okanagan Lake.⁷⁵ Cox received instructions to allot Indian reserves there and travelled to the area to mark out a reserve in June 1861.⁷⁶ He reported that the Syilx “appeared well satisfied with the arrangement, having selected the ground themselves and also named the extent desired by them.”⁷⁷ The colonial government would later reduce the size of this reserve in 1865, leading to great discontent and anger among the Inkumupulux people, emotions which would confront the JIRC when they arrived in 1877.⁷⁸ Chilliheetsa does not appear to have been present when the colonial Magistrate reduced the reserve.⁷⁹

Despite Cox’s reservation of lands in the Okanagan valley in 1861, the British Columbia colonial government only allotted reserves in the Nicola valley, Chilliheetsa’s home, in 1868. The government sent then-Magistrate Peter O’Reilly to the area after he reported that a considerable number of settlers had filed pre-emption claims that spring around Nicola Lake, and he recommended that “certain lands immediately about the lake, which have for many years been occupied and partly cultivated by Indians, should at once be surveyed off and established as permanent reserves for the use of the Indians resident thereon, so as to prevent collision between them and the white settlers.”⁸⁰ The CCLW directed O’Reilly to decide how much land to include in each reserve “on the spot, with due regard to the numbers and industrial habits of the Indians permanently living on the land, and to the quality of the land itself, but as a general rule it [was] considered that an allotment of about ten acres of good land should be made to each family in the tribe.”⁸¹ O’Reilly reported finding in the valley “two tribes, one occupying the Eastern or upper, and the other the Western or lower end of the lake, ‘Chillihetza’ being the chief

⁷⁵ Cox to Young, Colonial Secretary (16 February 1861), Victoria, B.C. Archives (GR-1372, file 375/5).

⁷⁶ For a discussion of Cox’s allotment, see Thomson, *History of the Okanagan*, *supra* note 63 at 114-118.

⁷⁷ Cox to Young, Colonial Secretary (17 June 1861), Victoria, B.C. Archives (GR-1372, file 375/27b). The sketch map of this reserve was sent separately: see sketch map enclosed with Cox to Young, Colonial Secretary (4 July 1861), Victoria, B.C. Archives (GR-1372, file 376).

⁷⁸ For a detailed discussion of the colonial government’s reduction of Cox’s reserves at the head of Okanagan Lake and at Penticton, see Thomson, “Okanagan Indian Reserves,” *supra* note 74 at 46-49; and Thomson, *History of the Okanagan*, *supra* note 63 at 118-120.

⁷⁹ Thomson, *History of the Okanagan*, *supra* note 63 at 120.

⁸⁰ CCLW to O’Reilly (5 August 1868) in *Papers Connected with the Indian Land Question 1850-1875* (Victoria: Queen’s Printer, 1875) at 50 [PILQ].

⁸¹ *Ibid.*

of the former, and ‘Nowistican’ of the latter.’⁸² According to O’Reilly, Chilliheetsa’s community numbered 150 people, and he marked out one reserve of 800-1,000 acres and another fishing reserve of about 80 acres. O’Reilly left Edward Mohun, the surveyor (who would become the JIRC’s surveyor), to complete the surveys. However, O’Reilly’s Nicola reserves were not satisfactory to either Nowistican (Na-weese-is-ti-kun) or Chilliheetsa, and they told Sproat of their dissatisfaction in the summer of 1878.⁸³

In 1873 and 1874, spurred in part by missionaries, the Secwépemc and Syilx increasingly voiced their anger over their land situation. In responding to the anger, Superintendent Powell visited the area in the summer of 1874 and discovered that “the Indian bands at Nicola and Okanagan Lakes wholly declined to accept any presents from him...., lest, by so doing, they should be thought to waive their claim for compensation for the injustice done them in relation to the Land Grants.”⁸⁴ Some of the Syilx, hearing of Powell’s meetings at Kamloops and in the Nicola valley, refused to meet with him,⁸⁵ although it appears that Powell did meet with Chilliheetsa.⁸⁶ After that trip and for at least the next two years, Chilliheetsa kept up a steady stream of correspondence to Powell and to Lenihan, the two Dominion Indian Superintendents, through the Nicola Justice of the Peace, Clapperton, a man who appears to have worked hard to keep the peace between Indigenous peoples and white settlers in the Nicola valley.⁸⁷

⁸² O’Reilly to CCLW (29 August 1868) in *ibid* at 50-51.

⁸³ See, for example, Petition of “Naweeshistan” (17 December 1870); Reverend Good to Governor Musgrave, (19 December 1870); O’Reilly to [unknown] (12 January 1871); Hankin to Reverend Good (12 January 1871); Reverend Good to Colonial Secretary (3 February 1871); Mohun to [unknown] (24 February 1871); O’Reilly to [unknown] (4 March 1871); Colonial Secretary to Reverend Good (13 March 1871) in *ibid* at 86-91.

Kenneth Brealey canvasses these reserve-allotments of O’Reilly’s briefly in Kenneth Brealey, “Travels from Point Ellice: Peter O’Reilly and the Indian Reserve System in British Columbia” (Autumn/Winter 1997-98) 115/116 *BC Studies* 181 at 191-192.

⁸⁴ Minister of Interior Laird, “Memorandum” (2 November 1874) in *PILQ*, *supra* note 80 at 153. Lynn Blake canvasses some of the protests and Powell’s trip in Lynn A Blake, “Oblate Missionaries and the ‘Indian Land Question’” (August 1998) 119 *BC Studies* 27 at 33-38.

⁸⁵ Thomson, *History of the Okanagan*, *supra* note 63 at 126. Lynn Blake suggests that Powell did go to the main Syilx village at the head of Okanagan Lake as well as to Kamloops and Nicola, but that the Penticton, Osoyoos and Similkameen Syilx people did not come to the head of Okanagan Lake: Blake, *supra* note 84 at 36.

⁸⁶ That the two met is suggested in Powell to Clapperton (20 January 1876), Ottawa, LAC (RG 10, vol. 3638, f. 7346).

⁸⁷ See Clapperton to Powell (5 March 1875, 30 March 1875, 15 May 1875, and 8 January 1876 enclosing Chilliheetsa’s statement); and Clapperton to Lenihan (3 April 1876, 25 April 1876, 24 August 1876, and 23 December 1876), all in Ottawa, LAC (RG 10, vol. 3638, f. 7346).

The most contentious source of land-related conflict was the pre-emption regime, which granted a settler a provisional interest in land under colonial and later provincial legislation and allowed him to claim up to 320 acres of land (east of the Cascade Range) without surveying it or paying for it until the government surveyed the land. Once the government surveyed the land, the settler could pay the government price for the land and obtain a Crown grant in fee simple.⁸⁸ From the first colonial proclamation establishing the pre-emption right, an “Indian settlement” had always been precluded from land available for pre-emption. However, many pre-emption claims were recorded to land which, in fact, did include an “Indian settlement.” The most acrimonious dispute between Chilliheetsa’s people and settlers involved a pre-emption claim. A settler, John Douglas Jr., had filed a pre-emption claim in 1872 to land he then attempted to occupy but on which Chilliheetsa’s people lived. In March 1875, about ten men from Chilliheetsa’s community seized Douglas over the dispute, after he had hauled a load of shingles to roof the house he had built on the land.⁸⁹ Chilliheetsa’s men prevented Douglas from leaving until Chilliheetsa arrived. When he arrived, Chilliheetsa ordered the release of Douglas and his horses on the condition that he stop work and leave the land until June 1, when they expected Powell would come to settle the dispute.⁹⁰ Clapperton told Powell that Chilliheetsa’s men had begun to build their own house on the land in an effort to assert their possession.⁹¹ Powell responded to Clapperton in this way:

I regret exceedingly that the Indians are misguided enough to suppose that their cause will in any way be assisted by taking the law into their hands. The trouble in regard to Indian lands has now been referred to the Secretary of State for the Colonies (Lord Carnarvon) for settlement and as soon as the question is decided I shall lose no time in

⁸⁸ At the time Douglas filed his pre-emption claim in 1872, the governing legislation was the *Land Ordinance, 1870*, RSBC 1871, c 144, a colonial ordinance still in place after B.C. joined confederation. Section 3 was the operative provision:

3. From and after the date of the proclamation in this Colony of Her Majesty's assent to this Ordinance, any male person being a British Subject, of the age of eighteen years or over, may acquire the right to pre-empt any tract of unoccupied, unsurveyed, and unreserved Crown Lands (not being an Indian settlement) not exceeding three hundred and twenty acres in extent in that portion of the Colony situate to the northward and eastward of the Cascade or Coast Range of Mountains, and one hundred and sixty acres in extent in the rest of the Colony. Provided that such right of pre-emption shall not be held to extend to any of the Aborigines of this Continent, except to such as shall have obtained the Governor's special permission in writing to that effect.

⁸⁹ Clapperton to Powell (5 March 1875), *supra* note 87.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

acquainting Shilihietza [Chilliheetsa] with the decision. This may take some time and in any event it would be an impossibility for me to go to Nicola in June as there are many places in the Province where I have not as yet visited at all.

Will you be good enough however to inform Chilihitza [Chilliheetsa] that such action as that complained of on the part of the Indians will greatly retard any efforts which I may be able to put forth on their behalf. I wish moreover, as the land question is to be left to the Imperial Government for settlement, to be able to show Her Majesty that the Indians of this Province are well behaved and law abiding – a statement which will not be justified should Chilihitza's people continue to act in the manner alluded to in your letter.⁹²

Powell's reference to the matter with the Secretary of State for the Colonies refers to the Dominion government's decision to seek "the decision of the Secretary of State for the Colonies," as provided for in Article 13 of the Terms of Union, by which British Columbia joined the Canadian confederation, "in case of disagreement between the two Governments respecting the quantity of such tracts of land to be so granted" for Indian reserves.⁹³ On December 4, 1874, nearly four months before Powell responded to Clapperton, Canadian Governor General Dufferin had submitted the question in a long letter to the Secretary of State for the Colonies, the Earl of Carnarvon, describing the problem in this way:

6. ... the conception formed by the Dominion and the Provincial Governments as to the rights and requirements of the natives, as well as of their own obligations towards them, appears to be fundamentally opposed.

7. In Canada the accepted theory has been that while the sovereignty and jurisdiction over any unsettled territory is vested in the Crown, certain territorial rights, or at all events rights of occupation, hunting, and pasture, are inherent in the aboriginal inhabitants.

8. As a consequence the Government of Canada has never permitted any lands to be occupied or appropriated, whether by corporate bodies, or by individuals, until after the Indian title has been extinguished, and the Districts formally surrendered by the Tribes or bands which claimed them for a corresponding equitable consideration.

9. In British Columbia this principle seems never to have been acknowledged. No territorial rights are recognized as pre-existing in any of the Queen's Indian subjects in that locality. Except in a few special cases dealt with by the Hudson Bay Company before the foundation of the Colony, the Indian title has never been extinguished over any of the territories now claimed as Crown property by the Local

⁹² Powell to Clapperton (30 March 1875), Ottawa, LAC (RG 10, vol. 3638, f. 7346).

⁹³ British Columbia Terms of Union, RSC 1985, App II, No 10, Art 13.

Government, and lands have been pre-empted and appropriated without any reference to the consent or wishes of their original occupants.⁹⁴

Dufferin sought Carnarvon's "good offices and co-operation" under the Terms of Union and detailed the dispute between the two governments that, he said, centred around the amount of Indian reserve land to be allotted to each family. Given his description of the underlying issue concerning Indian title, Dufferin's focus seems misplaced. However, his primary concern was that the Indigenous people of British Columbia be entitled to the same reserve acreage – 80 acres per family – as were those in the rest of the country.⁹⁵

Despite the Dominion's request for assistance, on February 5, 1875, Carnarvon replied to Dufferin – information which seemed not to have reached Powell by the time he wrote to Clapperton – indicating that he was going to stay out of the dispute until the Dominion and the province had had a full chance to resolve their issues:

I have read these papers with great though painful interest, as I cannot but regret that there should be any difference of opinion on such a subject, or indeed that there should be any ground for believing that the provision made for the Indian tribes is not fully equal to their requirements. It is not, therefore, easy to overstate the importance of the question to which these papers relate, but I do not perceive that it is suggested that I should now take any action in the matter, and indeed I abstain from coming to any conclusion respecting it pending the receipt of the reply to the representation addressed by the Dominion Government to the Provincial Government, by whom I cannot doubt that full and liberal consideration will be given to all the considerations of the case.⁹⁶

⁹⁴ Dufferin to Carnarvon (4 December 1874) in United Kingdom, Colonial Office, *Correspondence Relative to the Present Position of Her Majesty's Indian Subjects in British Columbia* (Colonial Office, May 1875) at 1 [Correspondence re British Columbia Indians]. Thomson discusses the referral to Carnarvon in *History of the Okanagan*, *supra* note 63 at 129-130.

⁹⁵ Dufferin to Carnarvon (4 December 1874) in Correspondence re British Columbia Indians, *supra* note 94 at paras. 18-20.

⁹⁶ Carnarvon to Dufferin (5 February 1875) in Correspondence re British Columbia Indians, *ibid* at 44.

Just a few days later, Carnarvon thanked Dufferin for forwarding Dominion correspondence regarding its consideration of the B.C. *Land Act, 1874*, "in which the question is raised of the legal right of the Government of British Columbia to appropriate the entire lands of the Province without reference to the claims of the Indians or the preliminary extinction of their title": Carnarvon to Dufferin (17 February 1875), Ottawa, LAC (RG 10, vol. 3611, f. 3756-1, reel C-10106). Dufferin had forwarded a Dominion Order-in-Council and the underlying Deputy Minister of Justice's January 19, 1875 report (with which the Minister of Justice concurred), in which the Deputy Minister had recommended disallowance of the provincial Act but also put forward a strenuous argument in support of the requirement to extinguish Indian title: Bernard, Deputy Minister of Justice, concurred in by Fournier, Minister of Justice (19 January 1875) in *Sessional Papers*, No. 141 (1882) at 59. Dufferin would disallow the B.C. *Land Act, 1874* in March 1875: PC 1875-0246.

Clapperton evidently explained to Chilliheetsa what Powell had said in his letter about the matter being “left to the Imperial Government for settlement,” because Chilliheetsa told Clapperton several times over the next few years words to the effect that “as soon as Lord Carnarvon’s decision is made known, they are prepared to abide by the result, but whilst the question is pending, they have a right to crop the land in equal shares with Douglas.”⁹⁷ Either Powell did not learn of Lord Carnarvon’s reply or he did not pass on the information to Clapperton since, even in 1876, Chilliheetsa was still trying to be patient in waiting for Lord Carnarvon’s answer: Clapperton told Powell that Chilliheetsa and his people “are aware that as yet no decision from Lord Carnarvon has been made public touching settlement of [the] Indian question.”⁹⁸

In January 1876, Clapperton gave Powell a detailed history of the dispute between Chilliheetsa’s people and two settlers, the same John Douglas Jr. and a Ronald McRae.⁹⁹ This dispute figured prominently in Sproat’s negotiations and decisions in 1878. Clapperton advised Powell that, despite a looming trial for trespass brought by the pre-empting settlers against Chilliheetsa’s people, “the Indians appear determined to hold, per force, what they believe to be their rights.”¹⁰⁰ Clapperton forwarded Powell Chilliheetsa’s own statement that Chilliheetsa had delivered to Clapperton:

The Chief reminds Mr. Clapperton that Mr. O’Reilly promised the land in dispute to him, and his family, he had only 2 sons then, now he has many children, and he

On July 24, 1875, Dufferin forwarded Carnarvon a telegram he had just received from B.C. Premier Walkem, “Satisfactory settlement Indian affairs probable”: C.W. de Kiewiet and F.H. Underhill, eds., *Dufferin-Carnarvon Correspondence, 1874-1878* (Toronto: The Champlain Society, 1955) at 152.

In December 1875, Carnarvon thanked Dufferin for forwarding Dominion correspondence “relating to the course proposed to be adopted with the view to a satisfactory settlement of questions connected with the Indians of British Columbia.” Carnarvon observed, “with much gratification that a cordial co-operation in this matter seems to be established between the Dominion and Provincial Governments, and I trust that their efforts will be attended with success. I feel satisfied that their conclusions will be dictated by an enlightened spirit of humanity and regard for the best interests of the Indian population”: Carnarvon to Dufferin, 19 December 1875 in Parliament, “Annual Report of the Department of Interior for year ended 30 June 1875 – Special Appendix” (Ottawa: Parliament, 1876) at 49. The correspondence Dufferin had forwarded was the Dominion Order-in-Council that would form the basis of the Dominion-provincial agreement to establish the Joint Indian Reserve Commission.

⁹⁷ Clapperton to Powell (15 May 1875), *supra* note 87.

⁹⁸ Clapperton to Powell (8 January 1876), *supra* note 87.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

considers he has now a right to the land resting on Mr. O'Reilly's promise which was given before Old Douglas settled there, in proof of this, the Indian had laid claim to, & fenced in the place on which Douglas now lives. Douglas allowed nothing when entering.

Dr. Powell promised the piece of land on the opposite side of the river to the Chief, when he found that the old Chief had quietly yielded up the place which Douglas now holds, adding that he would see him properly settled when he came up next summer, he has never returned & the (4) white men are coming in & claiming Siwash land on which there is a corral & little house. Mr. Mara (Kamloops) at the Chief's request, called on Dr. Powell in Victoria and enquired about the land & Dr. Powell's answer was that the Indians were to settle on the land & not be afraid as it should be his, Douglas finding that the Indians were carrying logs to the land for fencing &c., he went to the old man's keequally house, called him bad names, and dancing on the top of it nearly smothered all inside with dust, and would have ill used the old man but for the Indian "Napoleon".¹⁰¹

To this, Powell finally advised Clapperton in reply that "the Indian land question is at last settled by both Govts, and in order that you may be able to explain the same to the Indians, I enclose an extract shewing the basis of agreement" and that now "it can only be a matter of time until Shilihietza's [Chilliheetsa's] complaint is finally settled."¹⁰² He further told Clapperton that since the reserve commissioners were soon to be appointed, he trusted that "as their rights are to be fully respected by an impartial arbitration, the Indians will wait patiently, and live on friendly terms with their white neighbours, until their Reserves are fully and finally defined."¹⁰³ In reply to Chilliheetsa, Powell said this: "[i]n respect of Shilihietza's [Chilliheetsa's] statement I may add that I never gave my direct or indirect advice to any Indians to settle on lands which had not been reserved for them. I told Shilihietza that I should take good care to make his complaints known to Her Majesty, and I had no doubt his just rights would be protected, this I have done fully, and he will soon now know that I have performed my promise faithfully."¹⁰⁴

¹⁰¹ Chilliheetsa, "Chief Shilihietza's Statement" (undated), Ottawa, LAC (RG 10, vol. 3638, f. 7346).

¹⁰² Powell to Clapperton (20 January 1876), *supra* note 86. See also Powell to Lenihan (3 April 1876), Ottawa, LAC (RG 10, vol. 3638, f. 7346).

¹⁰³ Powell to Clapperton (20 January 1876), *supra* note 86.

¹⁰⁴ *Ibid.*

6.3 SPROAT'S RESERVE ALLOTMENTS FOR CHILLIHEETSA'S PEOPLE

By May of 1878, just as Sproat was beginning his first solo circuit, he received a letter from John Ussher, the Government Agent at Kamloops, responding to an inquiry about land questions in his district. Ussher advised of only one: the long-simmering dispute between Chilliheetsa's people at the foot of Douglas Lake and John Douglas Jr.¹⁰⁵ In a similar letter to the CCLW, Ussher had summarized the problem in this way:

John Douglas Junr recorded at Yale Oct 2nd 1872, 320 acres, Douglas Lake[,] ... On Mr. Douglas entering upon this land the Indians laid claim to it, forbade him improving it, backing up their protest by ordering him off, & taking possession themselves, cultivating it & keeping possession of it to the present time: since the date of the occurrence a majority of the families from the reservation situated at the mouth of East Nicola River, near the Head of Nicola Lake, and known on the Official Map as Lot 107, G.1, T 97, have removed to this & lands adjacent thereto, they have marked out for themselves I understand the quantity of land they desire. I believe they have expressed a willingness to relinquish their title to the reservation before described, reserving a fishing station at the mouth of East Nicola River, for the preemption of John Douglas Junr and a certain quantity of land in its proximity. I have reasons to believe that the land lying five miles S.E. from foot of Douglas Lake for which Mr. J.D. MacDonnell made application to purchase, on the 3rd Nov 1877, comprises a portion of the land the Indians have marked out for themselves.¹⁰⁶

Clapperton encouraged Sproat to come to the Nicola valley quickly to resolve the dispute between Chilliheetsa and Douglas.¹⁰⁷ Sproat refused, but he was already at work attempting to understand the different claims. He had spoken with Douglas's uncle who admitted there had been "an Indian cultivated patch" on the land when his nephew filed his pre-emption claim. Sproat therefore asked Clapperton rhetorically: "[i]f this was so[,] how could Mr. Douglas have declared on pre-empting that no part of the land was an Indian settlement? I know as yet nothing of the case but this view would invalidate the pre-emption and oblige the chief commissioner to cancel it. Mr. Douglas is a useful settler and thus [would] suffer disappointment, as I am afraid the above is the law." Nonetheless, Sproat was "very averse" to enforcing "the law" against Douglas, and he sought a compromise. He wanted the CCLW to press Douglas to relinquish his pre-emption claim by threatening to cancel it and by offering him

¹⁰⁵ Ussher to Sproat (30 May 1878), Ottawa, LAC (RG 10, vol. 3670, f. 10,768).

¹⁰⁶ Ussher to F.G. Vernon (20 April 1878), Victoria, B.C. Archives (GR-868, box 3, folder 24).

¹⁰⁷ All quotations in this paragraph from Sproat to Clapperton (19 May 1878), Vancouver, INAC (Prov. Coll., vol. 1: Letterbook #2, 117-118).

land elsewhere. Just as Sproat had done with Anderson in the face of Teen-melst's kee-kwilly, he was hard in his rhetoric about Douglas, telling Clapperton that if Douglas chose "to stand up on any legal right he may have and the law is against him he will get nothing." Moreover, Sproat told Clapperton that "even if he [Douglas] got the land the Indians would probably not permit him to use it. A government of course is supposed to protect the legal rights of citizens, but we all know that in the upper country a practical view has at present to be taken of this government obligation, so far as Indians are concerned in some places at any rate." In other words, in a situation reminiscent of Greenhow's inability to occupy his pre-empted land at Okanagan Lake because of Indigenous opposition and occupation, Sproat felt that if Chilliheetsa's people were opposed, the governments did not have the capacity or willingness to enforce Douglas's claims.

By the end of June, Clapperton again urged Sproat to come immediately to deal with making reserves for Chilliheetsa's people, but Sproat again refused: "[t]he tribe of Chilly.heets.sa will be taken in their turn. The other Indians would not like me to go past them to attend to Chilly.heets.sa's tribe. My progress, there is no harm in your saying to Chilly.heets.sa, depends much upon whether the Indian orators talk much or not before coming to business."¹⁰⁸ So Sproat continued to work his way up the Fraser Canyon, along the Thompson River, and finally into the Nicola valley in August.

When Chilliheetsa and Sproat finally met in September 1878, Chilliheetsa surprised Sproat by telling him that, in the twenty years since white men had come to the Nicola valley, Sproat was "the only duly authorized white chief with whom he had an opportunity of negotiating for land for his people."¹⁰⁹ Chilliheetsa told Sproat that he had been in Osoyoos when Magistrate O'Reilly had allotted his reserves in the valley in 1868 and therefore, in Chilliheetsa's mind, "no binding agreement, if such was required at all, could be entered into as to land for his people, without his presence and consent."¹¹⁰ A settler supported Chilliheetsa's account of O'Reilly's 1868 reserve allotments, telling Sproat that he had been present when Chilliheetsa's son had asked O'Reilly for land at the foot of Douglas Lake, an old "summer

¹⁰⁸ Sproat to Clapperton (22 June 1878), Vancouver, INAC (Prov. Coll., vol. 1: Letterbook #2, 165).

¹⁰⁹ Sproat to Powell (19 October 1878), Vancouver, INAC (Prov. Coll., vol. 1: Letterbook #2, 276).

¹¹⁰ Sproat to O'Reilly (14 September 1878), Vancouver, INAC (Prov. Coll., vol. 1: Letterbook #2, 259-260). Some of the documents surrounding O'Reilly's allotment of lands for Chilliheetsa's people are in *PILQ*, *supra* note 80 at 50-52, 86-91.

place” of Chilliheetsa’s people.¹¹¹ This was the land over which Chilliheetsa was now engaged in the acrimonious dispute with John Douglas Jr. According to the settler, O’Reilly had told Chilliheetsa’s son that “these places were comparatively remote, and that their requirements there would be attended to when white settlers began to take up land about these places.”¹¹² Sproat immediately wrote to O’Reilly to inquire about his 1868 reserve-allotments.¹¹³

Sproat also wrote to both Douglas and his uncle, John Douglas Sr., about the disputed land. Sproat outlined Chilliheetsa’s complaints to the younger Douglas and asked for a response:

I beg to inform you that the Indian chief Chilliheetsa made formal complaints to me yesterday afternoon that the land which you pre-empted 17 Sep 1872 was in part land which had previously been occupied and improved by him. He states that he had chosen that place for residence, and had cleared a field of land and fenced it, and that during his temporary absence at Kamloops on a berrying excursion, you occupied the land and told him on his return that you had papers for it from the Govt and that he has not since been able to recover what he considers to be his property.

Will you have the goodness to state, for my information, whether any and if so, what improvements had been made by Indians upon said land at the head of the Lake when you took it up - also whether, in pre-empting, you made the declaration, required by law, that no part of the land was an Indian settlement - and if there were improvements, under what circumstances you made such declaration - together with any other information bearing upon the question which you may be able to furnish.

I shall be glad, if, in making any statement relative to the matter, you will give me the names of any white settler or Indians who can give evidence, to support your statements in whole or in part.¹¹⁴

The elder Douglas replied to Sproat, advising him that, in respect of Chilliheetsa’s claim to land at the foot of Douglas Lake, “it is the first intimation I have had of it in the last six years that I have been here.”¹¹⁵ Sproat was incredulous, telling him that he must have made an error, since “the dispute of the Indians with your nephew has been notorious for years, and certainly everyone in Nicola Valley knows of it. You yourself mentioned it to me in May last in the steamboat going from New Westminster to Yale, and... you left at my Camp a signed statement

¹¹¹ Sproat to O’Reilly (14 September 1878), *supra* note 110.

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ Sproat to John Douglas Jr. (22 September 1878), Vancouver, INAC (Prov. Coll., vol. 1: Letterbook #2, 263).

¹¹⁵ *Ibid.*

of the particulars of the dispute.”¹¹⁶ In his signed statement, the elder Douglas had asserted that Superintendent Powell had said that his nephew, not Chilliheetsa’s people, had rights to the land. Accordingly, Sproat wrote to Powell asking if this were true and, if so, the grounds for his opinion.¹¹⁷

While gathering information on the land dispute, Sproat was also actively trying to reach a compromise with Chilliheetsa. Shortly after first meeting with Chilliheetsa, Sproat characterized his “demands” as “very extensive.”¹¹⁸ As one route to a compromise, Sproat suggested Chilliheetsa surrender his people’s “old reserve,” as Ussher had suggested he might be willing to do. However, as Sproat told John Douglas Jr., Chilliheetsa rejected this idea: “I opened the question of surrendering the old reserve, and will continue to bring the subject forward, but I have no hope that the Indians will consent to the surrender.”¹¹⁹ Further, Sproat provided Douglas with a copy of a letter from the CCLW that appears to have undermined Douglas’s position, since “a perusal of it [made Sproat] all the more anxious to recommend a compromise, as a wise course.”¹²⁰ Once again, in the face of an Indigenous claim based on rights supported by provincial legislation and perhaps on Indian title, rights that Sproat considered stronger than the settler’s rights under the provincial legislation, Sproat was unwilling to decide definitively against the settler. Instead, he sought to make both parties happy – or, happy enough.

In their negotiations with Sproat, Chilliheetsa and his people “very much pressed to have land all around Douglas Lake”; Sproat found them “very difficult to deal with” in this respect.¹²¹ Nonetheless, Sproat

refused [Chilliheetsa’s] demands whereupon he returned to his tent for 24 hours.¹²² I then informed his people that I would proceed to lay off a reserve for them and that I

¹¹⁶ *Ibid.*

¹¹⁷ Sproat to Powell (25 September 1878), Vancouver, INAC (Prov. Coll., vol. 1: Letterbook #2, 266). See also Sproat to Clapperton (26 September 1878), Vancouver, INAC (Prov. Coll., vol. 1, Letterbook #2, 268).

¹¹⁸ Sproat to Powell (19 October 1878), *supra* note 109.

¹¹⁹ Sproat to John Douglas Jr. (26 September 1878), Vancouver, INAC (Prov. Coll., vol. 1: Letterbook #2, 268).

¹²⁰ *Ibid.*

¹²¹ Sproat, Field Minute for “Upper Nicola Indians – Nicola and Douglas Lakes” (28 September 1878), in Vancouver, INAC (Federal Collection [Fed. Coll.], vol. 4: Field Minutes) [Sproat, “Upper Nicola Field Minute”] at 12.

was wiser than Chilliheetsa and they were, and, that they must submit to my decision which would be well considered and liberal. The chief[,] finding that his people approved my action[,] was shrewd enough to go with the stream, and he took again his proper place in the conduct of the negotiations.¹²³

Just as the commissioners had done at Splat sin the previous year, Sproat went around the tribal, ruling chief – in this case, the most powerful and co-operative chief in the southern interior – and spoke directly to the people of Chilliheetsa’s community in order to achieve his desired outcome. Sproat went so far as to tell Chilliheetsa’s people that “they must submit to [his] decision.”

In making his decisions about land around the lake still known today as Douglas Lake, Sproat imposed a “compromise” between Chilliheetsa and John Douglas Jr. He allotted the land at the foot of Douglas Lake – the land Douglas had pre-empted – as the main reserve for Chilliheetsa’s people. He left for the settlers the land at the head of the lake, “thus minimizing as far as may be the risk of trouble between the two races. I refused to give land [to the Indians] all around the lake or all on one side of the lake.”¹²⁴ Sproat recorded this “compromise” in a “Memorandum of agreement of compromise”:

Douglas Lake

Nicola Valley

27th Sepr 1878

Memorandum of agreement of compromise of the matters in dispute between John Douglas Jr of Douglas Lake Nicola Valley, British Columbia and Too-o-yet, Seen-noo-lowhk¹²⁵ and other Douglas Lake Indians respecting a piece of land at the foot of Douglas Lake claimed by these Indians as an Indian settlement and preempted by

¹²² In his Field Minute, Sproat describes Chilliheetsa’s shutting himself in his house for *two days*: Sproat, “Upper Nicola Field Minute”, *ibid* at 12.

¹²³ Sproat to Powell (19 October 1878), *supra* note 109.

¹²⁴ Sproat, “Upper Nicola Field Minute”, *supra* note 121 at 12.

¹²⁵ Blenkinsop records “Too.E.yEt” and “Seen.moo.lowhk” in his census of the “Upper Nicola tribe occupying two Villages on the Nicola & Douglas Lakes – Chilliheetsa’s camp.” They were part of the group who were recorded at “Na.weese.us.ti.kun’s village but were transferred to Chilliheetsa’s camp, having had land given them at the latter place”: “Upper Nicola tribe occupying two Villages on the Nicola & Douglas Lakes – Chilliheetsa’s camp” (18 September 1878) in George Blenkinsop, “Indians inhabiting portion of New Westminster, Yale and Coast Districts, 1878-1879”, Ottawa, LAC (RG 10, vol. 10012A) [Blenkinsop, “1878/79 Censuses”].

John Douglas Junior 2nd October 1872. Neither party being willing to abandon their equitable or legal rights, settlement by compromise is agreed to as follows.

In consideration of his receiving, free of cost from the provincial government, a crown grant for the unoccupied crown land bounded on the east by Hugh Murray's preemption (6th Sept 1876) on the south and west by the upper Nicola River and by lots 362 and 363 Group I and extending northerly with an average width of half a mile back from the upper Nicola River the whole containing probably 350 or 400 Acres John Douglas Junior agrees to the cancelling of his preemption record of 2nd October 1872.

Gilbert Malcolm Sproat Indian reserve commissioner, under Authority conveyed in Order in Council of the British Columbia Government dated 26th April 1878 and by the letter to him of 30th May 1878 from the Chief Commissioner of Lands and Works agrees that the above Crown Grant shall be issued, provided that John Douglas Junior agrees to the cancelling of his record preemption 2nd October 1872.

[signed by John Douglas Jr., witnessed by John Douglas Sr.]

[signed by Gilbert M. Sproat, witnessed by George Blenkinsop]¹²⁶

Despite the apparent resolution of a long-standing problem, this “memorandum of agreement of compromise” – to which no Indigenous people were party – solved one problem only by creating another. The land John Douglas Jr. was to receive in return for agreeing to the cancellation of his pre-emption record included Chilliheetsa's kee-kwilly. Sproat, who in most instances vigorously defended Indigenous rights to land with occupied kee-kwillys, appears to have had two reasons for allotting that land to Douglas: to prevent Chilliheetsa's people from having all the land around the lake and to weaken Chilliheetsa's authority.

In conversation with Douglas's uncle and confirmed in a letter to Douglas, Sproat imposed an obligation on the younger Douglas to “contribute \$25 out of \$50 should it be found necessary to compensate the Indian Chief Chilliheetsa for his improvements on land which it is contemplated you may acquire under the Agreement of Compromise of this date.”¹²⁷ In other words, Chilliheetsa himself had “improvements” on the land Douglas would acquire in exchange for the land at the foot of Douglas Lake. Chilliheetsa's improvements, in fact, were a “small kee-kwilly house and small corral on some land on the right bank of the upper Nicola River a

¹²⁶ Sproat, “Memorandum of Agreement of Compromise” (27 September 1878), included in Sproat, “Upper Nicola Field Minute”, *supra* note 121 at 9-11.

¹²⁷ Sproat to John Douglas Jr. (27 September 1878), Vancouver, INAC (Prov. Coll., vol. 1, Letterbook #2, 269).

mile or so from the head of the lake – the said house and corral being probably on land assigned to Mr. Douglas Jr. under the compromise.”¹²⁸ But even this obligation Sproat subsequently waived in recognition of Douglas’s having to abandon the house he had built at the foot of Douglas Lake.¹²⁹

Despite the fact that the most important Indigenous chief in the Shuswap, Okanagan and Nicola valleys occupied a *kee-kwilly* on certain land, Sproat allotted that land to a settler who had wrongfully pre-empted other land belonging to the chief’s people. Sproat justified his decision in this way:

The Indians having the choice land at the foot of the lake, where notwithstanding the elevation, it is said they can always be sure of their wheat crop, I could see no reason, but on the contrary a prolific source of trouble, and no kindness to the Indians, in permitting Chilliheetsa to have a small Residence at the above spot, and I told him and his people so, but inasmuch as he had a house I said I would take the subject into consideration and see what could be done for him.¹³⁰

Yet, the story of the land Chilliheetsa occupied in his *kee-kwilly* is even more complicated than already apparent: Sproat ousted another settler, Ronald McCrae, to obtain the land for John Douglas, Jr.¹³¹ Sproat found that McCrae had wrongfully pre-empted the land on which Chilliheetsa’s “Indian settlement” – his *kee-kwilly* – stood, but then ordered Chilliheetsa off the land so that Douglas could occupy it.¹³²

In general, Sproat’s treatment of Chilliheetsa’s requests and complaints were decidedly one-sided.¹³³ In response to Chilliheetsa’s request for more timber, Sproat decided that his

¹²⁸ Sproat, “Upper Nicola Field Minute”, *supra* note 121 at 20-21.

¹²⁹ Sproat to John Douglas Jr. (27 September 1878), *supra* note 127.

¹³⁰ Sproat, “Upper Nicola Field Minute”, *supra* note 121 at 21.

¹³¹ Clapperton’s letter confirms that there was “land taken from McCrae and given to Douglas Jr.”: Clapperton to Sproat (7 December 1878), Ottawa, LAC (RG 10, vol. 3670, f. 10,768). See also Sproat to Mohun (20 June 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 312-314), where Sproat discusses Chilliheetsa leaving McCrae’s land.

¹³² In September 1878, Chilliheetsa informed Sproat that McCrae had failed to occupy his pre-empted land and that the “Indian improvements” on the land – two houses and a corral – were in place before McCrae had recorded his preemption. Sproat then asked McCrae “to state what you know of this matter,” before Sproat applied to the CCLW to cancel McCrae’s record: Sproat to McCrae (26 September 1878), Vancouver, INAC (Prov. Coll., vol. 1, Letterbook #2, 266). Ultimately, McCrae did lose his pre-emption: Sproat to [unknown] (2 April 1880), Ottawa, LAC (RG 10, vol. 3705, f. 17,989).

¹³³ Though Sproat dated this Field Minute September 28, 1878, it is clear from its contents – it mentions, for example, a Mohun report to Sproat of 12 January 1880 – that Sproat did not finalize this Field Minute until

people could get timber from land “not likely to be occupied by whites” and, for this reason, he did not lay off a reserve.¹³⁴ In response to Chilliheetsa’s complaint that the back line of O’Reilly’s “old reserve No. 1” had been run in the wrong place, Sproat consulted with O’Reilly but found no evidence supporting the complaint.¹³⁵ In response to Chilliheetsa’s request to have lands reserved at a certain fishery at the mouth of a stream on land occupied by a settler, Sproat “showed Chilliheetsa how inconvenient it would be to have Indians there,” persuading him that his people could get “all the fish they wanted” at their existing reserves.¹³⁶

After conversation with the white settlers in the neighborhood, Sproat assigned for Chilliheetsa’s people, “in the manner best calculated to please the Indians and avoid sources of trouble to the white people,” various fisheries and “places of resort” to which “great value is attached by the Indians as connected with their old habits and ways of living.”¹³⁷ At one of these places at Chapperon Lake that included a race course, camping ground, and “favorite burial ground,” Mr. Guichon, the settler, told Sproat that he had seen a thousand Indigenous people there in the spring (from the Nicola, Similkameen, Shuswap, and Okanagan valleys), “as fish can be caught earlier there than at any other place in the district, and these being of large size and fine quality are a welcome supply of much prized food after the privations of the winter.”¹³⁸ Sproat reserved this location, as well as a grass area for horses to feed, yet still accommodated the interests of a settler who had only just applied to purchase lands nearby: “[i]t will be undesirable while giving the Indians what they prize at this place, to interfere unnecessarily with the hay land which Mr. Woodward has applied to purchase,” Sproat said.¹³⁹ In August 1879, Chilliheetsa asked Sproat for more grassland at this reserve.¹⁴⁰ However, Sproat refused because a settler had already applied for the grassland and had “gone to the expense of surveying it,” and,

over a year later. He appears to have delivered the Field Minute to Powell only in March 1880, though he had yet to deliver the formal Minutes of Decision for Nicola: Sproat to Powell (1 March 1880), Ottawa, LAC (RG 10, vol. 1274).

¹³⁴ Sproat, “Upper Nicola Field Minute”, *supra* note 121 at 3.

¹³⁵ *Ibid* at 4-5.

¹³⁶ *Ibid* at 8.

¹³⁷ *Ibid* at 24-25.

¹³⁸ *Ibid* at 25-26.

¹³⁹ *Ibid* at 26.

¹⁴⁰ The quotations in the remainder of this paragraph are from Sproat to Mohun (12 September 1879), Ottawa, LAC (RG 10, vol. 1274, 30-31).

since Sproat did not intend Chilliheetsa's people to occupy the nearby reserve year-round, he believed they had enough grassland reserved.

At another fishery, also on the Guichon land, Mr. Guichon had fenced in a trail to the fishing location. However, Chilliheetsa's people continued to access the area by going outside his fence lines. Sproat hoped there would be no future problems at this place, but he was sensitive to Guichon's fear that his cattle might be alarmed by "Indians... wearing blankets":

It is to be hoped no dispute will arise here, for these rights-of-way are difficult to adjust except by compromise. In case of need I may say that Mr. Guichon's statement is that he sometimes has cattle in the field and many of these being unaccustomed to see Indians on foot and particularly wearing blankets, are apt to "stampede". If the Indians were on horses probably the cattle would regard them quietly, but, in that case, the Indians would be apt to leave the gate open. On the other hand, the Indians might say that their old trail to a fishery should not be shut and that an addition of half a mile to the distance from Chapperon Lake Reserve to the fishery, caused by deviating, is hard upon women and children carrying fish and food to and fro.¹⁴¹

Chilliheetsa was not the only one complaining; Sproat also "expressed dissatisfaction" to Chilliheetsa that the "old Reserve No. 1 was not cultivated more, and obtained a promise from Chilliheetsa that there should be a change in this respect."¹⁴² Sproat also gave two settlers the right to cut timber on one of Chilliheetsa's reserves near their farms without payment, advising Chilliheetsa to this effect. (Mohun, the surveyor, would inform Sproat in early 1880, after Chilliheetsa complained to Mohun, that the settlers "had a gang of eight men employed for 2 months cutting timber, it is said for the sawmill."¹⁴³)

When Sproat left the Nicola valley in late September, Chilliheetsa was "very polite and friendly and accompanied us a long way down the road to say goodbye."¹⁴⁴ Sproat described him as "one of the best Chiefs of the old school I have met with, and it is a pity that he is now getting too old to help his people much in the new fashion which the government wish them to adopt."¹⁴⁵ However, just a few months later, Chilliheetsa was not happy about the land situation in the Nicola valley. In December, Clapperton advised Sproat that Chilliheetsa and several of his

¹⁴¹ Sproat, "Upper Nicola Field Minute", *supra* note 121 at 27-28.

¹⁴² *Ibid* at 6-7.

¹⁴³ *Ibid* at 15.

¹⁴⁴ Sproat to Powell (19 October 1878), *supra* note 109.

¹⁴⁵ *Ibid*.

sons had just been to seem him “regarding the land taken from McRae and given to Douglas Junr.” Chilliheetsa and his sons felt that they should have the land. Clapperton told them “decidedly that no further alteration would be allowed.” Chilliheetsa then told Clapperton that McRae and Douglas were demanding that Chilliheetsa’s people immediately disinter their relatives buried on the land. Clapperton told Sproat he was going to visit Douglas personally to intercede, as he felt things were “going too far.”¹⁴⁶ Clapperton further reported that Chilliheetsa would not accept a bronze medal and diploma from the Centennial Exhibition in Philadelphia in 1876 which had arrived in the mail, an award for his people’s wheat.¹⁴⁷ Chilliheetsa told Clapperton that he and his people “were afraid to receive anything from Govt at present, that such a thing as medals were only given to soldiers who distinguished themselves in battle; and that the medal was a bad omen.”¹⁴⁸ Sproat reported this to the Superintendent General, advising him that Chilliheetsa was now “very doubtful about the government.”¹⁴⁹

In March 1879, Clapperton, urged by Chilliheetsa and others, wrote to Sproat requesting to know the definite reserve boundaries in the Nicola valley. Sproat replied that, with the exception of natural boundaries or fences already on surveyed lines, he could not indicate precise lines without a survey. He expected Ottawa to authorize him to send out surveyors soon, and he would “endeavour to send a party to survey Chilliheetsa's reserves among the first, owing to the importance of having a definite settlement with that Tribe.” Sproat also said he would “write a letter for Chilliheetsa to explain all matters fully to him, and to give him advice.”¹⁵⁰ At around the same time, Sproat also learned, likely through Clapperton, that Chilliheetsa had spent the previous winter in his kee-kwilly on the land Sproat had promised to John Douglas Jr. at the head of the lake. Although Sproat would refuse Chilliheetsa further rights there, he acknowledged

¹⁴⁶ Clapperton to Sproat (7 December 1878), Ottawa, LAC (RG 10, vol. 3670, f. 10,768).

¹⁴⁷ *Ibid.* Superintendent Lenihan had reported these awards to the Superintendent General, and they were noted in a year-end Indian Affairs report. The Deputy Superintendent General advised, “I have much satisfaction in placing on record the fact that the Indians of Douglas Lake, in the Fraser Superintendency of British Columbia, were awarded, at the Centennial Exhibition held in Philadelphia in 1876, two diplomas and a medal for wheat grown by them”: Canada, Department of Interior, *Report of the Deputy Superintendent General of Indian Affairs for 1877* (Ottawa, Department of Interior, 1877) at 7.

¹⁴⁸ Clapperton to Sproat (7 December 1878), *supra* note 146.

¹⁴⁹ Sproat to Superintendent General (23 December 1878), Ottawa, LAC (RG 10, vol. 3672, f. 10,898).

¹⁵⁰ Sproat to Clapperton (21 April 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 185).

that “Chilliheetsa lived there the winter after my visit, in which there is no harm, as he is of the old school and fond of the kee-kwilly house in winter.”¹⁵¹

In June, Sproat wrote his letter to Chilliheetsa, sending it with Mohun and asking him to deliver it to Chilliheetsa and have it read to him¹⁵²:

My dear Chilliheetsa,

I have thought it well that your reserves should be surveyed soon, and Mr. Mohun goes to Nicola for this purpose.

I have remembered all that you said to me, and all that I said to you, and what I said stands fast, and Mr. Mohun has been informed of all our talks and of my decisions.

The government thinks that the arrangement made is suitable and has no doubt that the whites and the Indians will get on well.

I told you that in giving your Indians the place at the foot of the lake which had been the subject of dispute between you and J. Douglas Junr, I thought that the cropping place of the Indians should be there with a considerable area of your land conveniently adjacent but not closing around the lake, and further, a commonage between Indians and whites on the North End of Nicola River, together with sundry fishing places, the old race course +c.

You finally agreed to what I decided but asked me to represent to the government that you had a kekwilly house and corral on what was McRae’s land or claimed by that gentleman and you wished to know what the government thought about this matter.

The government is of opinion that the Indians in getting the fine piece at the foot of the lake are well supplied, and that neither yourself nor any other Indian should settle upon any lands not given by the commissioner. You should not stay where the kekwilly and corral are, but should go within the proper Indian lands. But the Government, at the same time, think that you should receive some compensation, if you will accept it, but the Government do not offer this not knowing how you may feel: they only say that you must not stay on that land or the law will take hold of you, which all who know you as one of the old chiefs of the country, and nobody more than myself, would deeply regret. I have authorized Mr. Mohun to pay or arrange for payment of \$50 for expense of moving your corral +c if you choose to accept it. Whether you do so or not, you will have no right to the land.

I said I would write to you about this, as soon as I could, to Mr. Coultier or someone at Nicola, but as Mr. Mohun is going, I send word by him, and with best wishes for you and your people.

I am, My dear Chilliheetsa

¹⁵¹ Sproat, “Upper Nicola Field Minute”, *supra* note 121 at 21.

¹⁵² Sproat to Mohun (20 June 1879), *supra* note 131.

Yours truly

Sd. G.M. Sproat

Your reserve is a very good one, and I am trusting greatly to you to promote whatever is good among your people, giving up old ways and adopting a new fashion which will bring you peace and contentment among your children and people in your old age.

Indian Chief
Chilliheetsa

Nicola Valley¹⁵³

There is no indication that Sproat ever sought the advice of “the government” regarding Chilliheetsa’s land, and it would not have been in keeping with his practice: neither the JIRC nor Sproat sought either government’s advice on the allotment of specific reserve lands. Refusing Chilliheetsa’s request for this land was Sproat’s decision. Indeed, in his subsequent Field Minute, he wrote: “I have decided that he [Chilliheetsa] has no right there, and that it is most undesirable he should be there. I have induced Chilliheetsa to leave that place and go within his proper reserve.”¹⁵⁴ Once again, Sproat’s focus on the “humanitarian civilizing” of Indigenous people appears, embedded in this critical decision to refuse Chilliheetsa the land on which his kee-kwilly was located, and highlighted by his parting words in his letter to Chilliheetsa, asking him to encourage his people’s “giving up old ways and adopting a new fashion.”

In Sproat’s letter to Mohun enclosing the letter to Chilliheetsa, Sproat said that he had arranged for a \$50 credit with Indian Superintendent Lenihan, in case Chilliheetsa chose to accept the money.¹⁵⁵ Sproat also recommended that Mohun mark off subdivisions in the new reserve at the foot of Douglas Lake for two reasons. First, he wanted Mohun to mark off Chilliheetsa’s own land on the reserve, where Sproat had told Chilliheetsa he could have forty acres. If Chilliheetsa refused to leave his kee-kwilly at “McRae’s place outside the Reserve on which he is squatting,” then Sproat suggested that Mohun tell Chilliheetsa “the Govt would probably refuse him these 40 acres.”¹⁵⁶ In other words, Sproat was attempting to coerce

¹⁵³ Sproat to Chilliheetsa (20 June 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 310-311).

¹⁵⁴ Sproat, “Upper Nicola Field Minute”, *supra* note 121 at 21-22.

¹⁵⁵ Sproat to Mohun (20 June 1879), *supra* note 131.

¹⁵⁶ *Ibid.* Mohun reported to Sproat, at the end of his 1879 surveying season in Nicola, that “Chilliheetsa did not wish forty acres surveyed for himself, as he had not, he said, made up his mind as to where he should locate his farm”: Mohun to Sproat (12 January 1880), Ottawa, LAC (RG 10, vol. 3670, f. 10,768).

Chilliheetsa by threatening him. Second, Sproat recommended that Mohun subdivide at least the agricultural portions of the reserve into ten-acre portions, because “it would greatly help the people and quietly have the effect of curtailing the chief’s powers.” Sproat thought “Chilliheetsa through jealousy might oppose this, but you could tell him you had your orders. The people are anxious about it.”¹⁵⁷ Sproat was again attempting to undermine Chilliheetsa and, at the same time, promote “the new fashion.”

Sproat did send Mohun to survey Chilliheetsa’s reserve first, as he had said he would, particularly since Chilliheetsa had sent Sproat a letter questioning Sproat about some land and threatening that “he and his tribe would combine and keep the place” if Sproat did not return to Nicola or send a surveyor.¹⁵⁸ By this point, Sproat knew Chilliheetsa was “the most influential chief in the southern frontier” and described him as an “old and influential intriguer.”¹⁵⁹ If Chilliheetsa were satisfied, Sproat felt, “the frontier may be said to be largely secure,” as “a settlement with him would please the Okinagans, though their own reserves were not surveyed this year.”¹⁶⁰ In July, Mohun was finally in the Nicola valley and read Sproat’s letter to Chilliheetsa, who had visited Mohun’s camp with his own interpreter.¹⁶¹ According to Mohun, Chilliheetsa told Mohun that he had occupied the land now assigned to Douglas under a misapprehension, having understood from Sproat’s interpreter that Sproat had assigned the land to Chilliheetsa. Now, however, Chilliheetsa agreed to leave the land and live only on the reserve at the foot of Douglas Lake; he also accepted the \$50 Sproat offered.¹⁶²

At the same time, Chilliheetsa sent his son, Alexander, to see Sproat in Lytton. Through Alexander, Chilliheetsa advised Sproat that it was “the desire of his tribe to surrender the fishing reserve at the mouth of Hamilton’s Creek, as their young women are made drunk and exposed to temptations there during the fishing season and he thinks it better to have his reserves more

¹⁵⁷ Sproat to Mohun, enclosing “Memo to Surveyors” (20 June 1879), *supra* note 131. At the end of his 1879 surveying season in Nicola, Mohun reported to Sproat that he had staked out nine ten-acre parcels: Mohun to Sproat (12 January 1880), *supra* note 156.

¹⁵⁸ Sproat to Dennis, Deputy Minister of Interior (23 June 1879), Ottawa, LAC (RG 10, vol. 3679, f. 12,068).

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*

¹⁶¹ Mohun to Sproat (28 July 1879), Ottawa, LAC (RG 10, vol. 3670, f. 10,768).

¹⁶² *Ibid.*

concentrated.”¹⁶³ Sproat would not accept Alexander’s word on the matter, so he asked Mohun to confirm Chilliheetsa’s reason for wanting to surrender the fishery. Through his own interpreter, Chilliheetsa confirmed to Mohun the reason Alexander had given.¹⁶⁴ In Mohun’s letter, relating to Sproat his conversation with Chilliheetsa, one can almost hear Chilliheetsa’s words:

on speaking to Chilliheetsa on the subject of the Hamilton’s Creek Fishery, he, through his interpreter, stated that he was anxious to surrender that fishing station, and for the reason that he was unable to control his people when there, as the white men in the neighbourhood supplied the young women with whiskey in order to prostitute them.

He however wanted in exchange a small reserve, as I understand, at the head of Trout Lake, near Guichon’s; if I am correct in what I suppose to be its position, I do not think it would prove inconvenient to the white residents there.

He said, if he could obtain this, that he should be able to hold all his children in his hand, and that they would be removed from temptation which at present he has no control over them when camped at Hamilton’s Creek.¹⁶⁵

Despite Chilliheetsa’s request, Sproat decided to retain the reserve, because he doubted that Chilliheetsa’s people would support its surrender. If Chilliheetsa’s people eventually did not want it as a reserve, he thought the land could serve as a mission or agency station.¹⁶⁶ Yet Chilliheetsa felt so strongly about protecting his people that, on the day Mohun left the Nicola valley in December 1879, Chilliheetsa again told Mohun that he wished to surrender the reserve.”¹⁶⁷ Sproat never accepted this surrender.

By the middle of August 1879, Mohun had paid Chilliheetsa the \$50 to remove himself from what was now, according to Sproat’s decision, Douglas’s land.¹⁶⁸ Nonetheless, Sproat received further complaints about Chilliheetsa, probably relayed by Mohun. Over the previous winter, Chilliheetsa had felled trees and begun building a log house near his kee-kwilly. After

¹⁶³ Sproat to Mohun (21 July 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 368-369).

¹⁶⁴ *Ibid*; Mohun to Sproat (28 July 1879), *supra* note 161.

¹⁶⁵ Mohun to Sproat (28 July 1879), *ibid*.

¹⁶⁶ Sproat, “Upper Nicola Field Minute”, *supra* note 121 at 7-8.

¹⁶⁷ Mohun to Sproat (12 January 1880), *supra* note 156.

¹⁶⁸ Sproat to Lenihan (14 August 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 375); see also Sproat to Mohun (17 August 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 378).

receiving Sproat's decision that he must leave, Chilliheetsa wanted to remove the logs for the house, but Douglas objected.¹⁶⁹ Further, the grave of Chilliheetsa's son was also on the land near the kee-kwilly. Although Chilliheetsa had buried his son there when "the land was not in the legal occupation of anyone," and Sproat knew that provincial legislation protected the grave, he nonetheless considered "this scattering of graves" to be "objectionable." Sproat believed Chilliheetsa had buried his son there "from a savage idea (quite intelligible in the confused state of the Chief's mind as to his land claims) that thereby he was strengthening his claim to the land." Sproat had told Chilliheetsa that "the graves of the people should all be together, or at least on their own land," but he recognized that, by law, he could neither induce nor compel Chilliheetsa to remove the grave. In respect of all the matters, Sproat concluded that his previous decisions were final and that Chilliheetsa's people were "amply provided for in the best way for them." With respect to Douglas's complaint about the logs, Sproat recommended that he "act good-naturedly and prudently in not contesting so small a matter with the Chief." With respect to the grave, Sproat recommended "prudence on the part of white occupiers." He had found that Indigenous people, "after a time," would remove graves from white settlers' land "when the settlers do not worry them on the subject, or when privately they offer some little inducement."¹⁷⁰

Although Sproat's primary focus was land, he also communicated with Chilliheetsa about other matters. Selixt-asposum, the chief of the Inkumupulux, had died in the winter of 1878-79. When he was dying, he "expressed a wish that his eldest son, Quills-cheenigan ... should succeed him in the office of chief."¹⁷¹ Chilliheetsa wanted to ensure this outcome and asked Mohun to communicate this request to Sproat. Sproat's reply hewed, he thought, to the letter of Canadian law under the *Indian Act* in supporting elected chiefs over tribal or hereditary chiefs:

The law made in Canada for all the Indians, commonly called the "Indian Act" says that while the old chiefs like yourself are not to be disturbed in their office, unless they prove to be bad men, the chiefs who come after them, when the old chiefs die or resign office, are to be elected by their people. This is, I think, a good law, because the people themselves know who will be best man for chief, and if the Government

¹⁶⁹ All information and quotations from this footnote until the next one are from Sproat, "Upper Nicola Field Minute", *supra* note 121 at 22-23. Although this Field Minute is dated 28 September 1878, it is clear from its contents that it was finished many months after this date.

¹⁷⁰ *Ibid* at 23.

¹⁷¹ Sproat to "Mr. Chilliheetsa" (14 August 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 374).

appointed one, the people might not be pleased. I am much pleased to hear of your good acts and hope that everything will go on comfortable with your people, and that you yourself may be happy in your old age.¹⁷²

Once again, Sproat's reply incorporated elements of the ideas he had first expressed to the Minister of the Interior in September 1876 about encouraging the slow but steady break-up of tribal organizations.

In November 1879, Sproat was still writing to the Superintendent General about the "old dispute" involving O'Keefe, and he enclosed "a letter of continued complaint just received from Chilli heetsa, who may be regarded as the principal Indian chief in the southern Interior of the Province."¹⁷³ In the letter – a settler who apparently spoke the Syilx (Okanagan) language had written it in English for Chilliheetsa – Chilliheetsa said this:

You will remember that you gave the land and Mr. O'Keefe has retained possession of it. Yesterday the Okanagan Indians informed me that they would take forcible possession of it, but I advised them to take no step in the matter and told them I would communicate it to you and told them to wait for your answer. I think that the fence which you gave him permission to move should now become the property of the Indians in payment of rent of the ground by Mr. O'Keefe for the past two years. I call your attention to the matter so that you may take steps to settle it as you think proper.

Mr. O'Keefe has built a mill on the creek in which the Indians fish and diverted their water and threatened the Indians when they remonstrated with him.

I thank you for your kindness towards us. I would like to be near you to shake hands but my heart is good towards you.

¹⁷² *Ibid.* Probably unbeknownst to Sproat, but perhaps known to Chilliheetsa, the Superintendent General had approved the community's election of "William" as Selixt-asposum's (Moses's) successor in February 1879: Vankoughnet to Lenihan, file copy (11 February 1879), Ottawa, LAC (RG 10, vol. 3673, f. 11,356). A "William" on the Okanagan census taken by Blenkinsop in 1877, also known as "Tuk.wil.sa.kim," does not appear to be the same person as Selixt-asposum had selected: "Okanagan Tribe – Main Village" (10 September 1877) in "Census of Indians inhabiting Shuswap and Okanagan Districts, 1877", Ottawa, LAC (RG 10, vol. 10011) and Victoria, B.C. Archives (GR-2928, file 4) [Blenkinsop, "Shuswap/Okanagan Censuses"]. The Deputy Superintendent General told Lenihan that contrary to Lenihan's suggestion that the *Indian Act* contemplated "an interference with the established customs of the Indians in appointing their chiefs," it "merely provides that in case His Excellency sees fit he may order that the chiefs of any Band shall be elected in the manner prescribed thereby": Vankoughnet to Lenihan, file copy (11 February 1879), Ottawa, LAC (RG 10, vol. 3673, f. 11,356). "William," the new Okanagan chief, wrote a letter to Sproat in April 1879 (translated by a settler), complaining about O'Keefe's continued "cropping" of his claimed land at the head of Okanagan Lake: William to the Indian Commissioner (11 April 1879), Ottawa, LAC (RG 10, vol. 3641, f. 7571).

¹⁷³ Sproat to Superintendent General (10 November 1879), Ottawa, LAC (RG 10, vol. 3663, f. 9801).

I remain your true friend,

Chilli-heetsa¹⁷⁴

Sproat did not know how to respond. Six months earlier, he had told the Superintendent General, in reference to a similar complaint from the new Inkumupulux chief, William: “I feel that in continuing to assure these Okanagan Indians that the matter which they complain of is receiving effective attention I am stating what is probably not quite true so far as the Provincial Government is concerned.”¹⁷⁵ Sproat now felt even worse: he simply could not bring himself to assure Chilliheetsa that the governments were working to resolve the O’Keefe matter.¹⁷⁶

In another letter the same day, Sproat wrote to the Superintendent General to explain that what the commissioners had achieved by breaking up the Secwépemc/Syilx “confederation” in 1877 had been undone by the provincial government’s actions and inactions since then.¹⁷⁷ Despite this, Sproat felt that the letter from Chilliheetsa, “the most influential [chief] in the southern interior,” showed “his loyalty, notwithstanding difficulties.” Sproat assured the Superintendent General that even if there were “a local outbreak, with bloodshed” – which he did not now think was out of the question – the Dominion government would not be to blame. Rather, Sproat felt that, as was evident from Chilliheetsa’s letter, “even now, after two years of trouble, it is the influence of the Dominion Government that is invoked to prevent a breach of the peace at the head of Okanagan Lake.”¹⁷⁸

A few weeks later, Sproat wrote to the Superintendent General again, this time about the province’s sale of lands the reserve commissioners had allotted as reserve at Osoyoos. Once more, Sproat brought up Chilliheetsa’s allegiance:

Is it entirely realised at Ottawa what such a case, for instance, as the sale of the Osoyoos Indian lands amounts to?

...

¹⁷⁴ Chilliheetsa to Sproat (5 October 1879), Ottawa, LAC (RG 10, vol. 3641, f. 7571, reel C-10112).

¹⁷⁵ William to the Indian Commissioner (11 April 1879), Ottawa, LAC (RG 10, vol. 3641, f. 7571); Sproat to Superintendent General (26 April 1879), Ottawa, LAC (RG 10, vol. 3663, f. 9801).

¹⁷⁶ Sproat to Superintendent General (10 November 1879), *supra* note 173.

¹⁷⁷ Sproat to Superintendent General (10 November 1879), Ottawa, LAC (RG 10, vol. 3669, f. 10,691).

¹⁷⁸ *Ibid.*

The Indians send me messages, and I have done what I could to calm them, but time passes, and it is not difficult to imagine with what feelings the Indians must regard the Governments. They consider that they have been played with, and will soon be ripe, again, for anything that may happen, whereas very satisfactory relations had been established between them and the Governments.

The people concerned are Okanagans -- the same group of Indians as those who have disputes at the head of Okanagan Lake -- namely the O'Keefe question, and the new question which the Provl Government have raised (see mine of 11th Oct 1879). But for the friendly relations established with the chief Chilliheetsa, these Okanagan Indians would have probably taken matters into their own hands.¹⁷⁹

Between December 8 and 13, Chilliheetsa and his people were involved in the capture of the "Wild McLean" brothers (one of whom was married to one of Chilliheetsa's daughters), after the McLean brothers and Alex Hare murdered two men, including John Ussher, the provincial Government Agent at Kamloops.¹⁸⁰ The cabin in which the brothers and Hare holed up and were eventually captured belonged to Chilliheetsa's son, who had allowed his sister and her husband, Allen McLean, to live in it.¹⁸¹ At the end of December, Chilliheetsa wrote to Sproat asking for copies of two letters Sproat had previously sent him and which he had lost in the capture of the McLeans. Sproat provided Chilliheetsa with new copies and told him that "I have been much pleased to hear of the good conduct of yourself, your sons and people in the capture of these bad youths, who by breaking the law, will bring ruin on themselves and shame on their friends. You have always been a good friend to the white people, and I quite expected that you would act as you have done."¹⁸² Sproat's acknowledgement of Chilliheetsa's longstanding friendship with non-Indigenous people was well-founded. However, although Sproat felt warmly towards Chilliheetsa, he nonetheless saw him as a hindrance to his people's "progress." Nowhere in Sproat's reserve-allotment decisions are his underlying intentions and hopes for Indigenous people's "civilization" more evident than with respect to his decisions concerning land for Chilliheetsa and his people. Sproat worked consistently, if subtly, to undermine Chilliheetsa's

¹⁷⁹ Sproat to Deputy Superintendent General (26 November 1879), Ottawa, LAC (RG 10, vol. 3612, f. 3756-21).

¹⁸⁰ For an account of Chilliheetsa's and his sons' roles in the capture of the McLean brothers and Alex Hare, including Chilliheetsa's refusal to allow his people to become involved in the McLeans' urged uprising against the settlers, see Mel Rothenburger, *The Wild McLeans* (Victoria, B.C.: Orca Book Publishers, 1993) at 131-139.

¹⁸¹ *Ibid* at 134.

¹⁸² Sproat to Chilliheetsa (16 February 1880), Ottawa, LAC (RG 10, vol. 1274, 182).

chiefship. He did so by continuing to discuss reserve allotments with younger men in his community after he had refused Chilliheetsa's extensive demands for land and Chilliheetsa had terminated discussions, by refusing to reserve land on which Chilliheetsa's own kee-kwilly and his son's grave were located, by subdividing the reserve at the foot of the lake so as to weaken Chilliheetsa's power, and by threatening to take away Chilliheetsa's subdivided land on the reserve if he did not move from his kee-kwilly. Sproat's actions in respect of Chilliheetsa's land reveal his complicity in the colonial project, writ large. Sproat was not simply an empathetic man, keen to support Indigenous land rights at any cost. He was bent, as he always had been, on the "humanitarian civilizing" of Indigenous peoples, and his land allotments reflected this objective through the allocation, for example, of arable and pasture land. But more than that, Sproat was prepared to use land policy and to subvert his instructions in order to break tribal bonds and undermine tribal chiefs, two key aspects of Sproat's perspective on the "humanitarian civilizing" of Indigenous peoples.

6.4 SPROAT'S APPROACH TO RESERVE-ALLOTMENT IN HIS FIRST SOLO CIRCUIT, 1878

Sproat articulated his reserve-allotment approach many times, from his first expression in the provincial commissioners' report after their second circuit,¹⁸³ to his public statement in his self-published booklet just before his first solo circuit, to his restatement in January 1880 when he urged the Minister of the Interior that there should be "no change of policy on the part of the Government in reference to the Land adjustment."¹⁸⁴ Based on these articulations and his decisions (particularly in his Field Minutes from 1878¹⁸⁵), Sproat's reserve-allotment policy had two main elements. First, if available, he reserved the traditional places listed in the governmental instructions – "villages, fishing stations, fur-trading posts, settlements or

¹⁸³ Sproat and McKinlay to Provincial Secretary (6 February 1878), enclosing "Second Condensed Report of the commissioners acting for the Province" (1 January 1878), Victoria, B.C. Archives (GR-494 at 488-549).

¹⁸⁴ Sproat, "Memorandum" (30 January 1880) (enclosing Sproat, *Memorandum on Indian Reserves*, *supra* note 3), Ottawa, LAC (RG 10, vol. 3706, f. 18,632), and also enclosing "Appendix A – a Memorandum on the principles applied by the Commission in assigning Indian Reserves in the district of Yale which practically is the Southern Interior of the province" (30 January 1880), Ottawa, LAC (RG 10, vol. 3707, f. 19,307); underlining in original.

¹⁸⁵ See, for example, Sproat, Field Minute for "Nekla-kap-a-muk Indians – The Coldwater and its neighbourhood – Coldwater Indians" (6 September 1878), Vancouver, INAC (Fed. Coll., vol. 4: Field Minutes), and Sproat, Upper Nicola Field Minute, *supra* note 121.

clearings,” in the words of his Dominion instructions.¹⁸⁶ Second, if available and especially in the interior of the province, he allotted as reserves sufficient and reasonable acreages for arable and grazing lands.

Cole Harris argues that in allotting reserves, Sproat understood “the essence of the task at hand was compromise.”¹⁸⁷ There is no doubt Sproat pursued compromises. Sproat himself articulated his “compromise approach” many times, describing how he typically “began negotiations by telling the Indians that I had to care for the interests of the white settlers as much as for the interests of the Indians, and that I was not going to do anything that would turn the country topsy-turvy; but would try to arrange such a reasonable compromise as circumstances permitted, showing no favour either to white men or to Indians.”¹⁸⁸ Harris describes Sproat’s pursuit of compromises “locally on the ground,”¹⁸⁹ but Sproat also pursued compromise on a different plane, between various claimed, but uncertain and untested, land rights. Indigenous land claims were based on age-old occupation, Indian title, and colonial reserve-allotments; settler claims were based on occupation and ownership rights granted by colonial ordinances and provincial statutes.¹⁹⁰ Sproat considered it his task to find compromises between these claims

¹⁸⁶ I have set out these instructions in Appendix C.

¹⁸⁷ C Harris, *Making Native Space*, *supra* note 19 at 147.

¹⁸⁸ Sproat to CCLW (26 October 1878), Ottawa, LAC (RG 10, vol. 3612, f. 3756-18). (“Negotiations” is an old form of “negotiations”; Sproat typically spelled this word and its variants with a “c” rather than a “t”.)

¹⁸⁹ C Harris, *Making Native Space*, *supra* note 19 at 147.

¹⁹⁰ See, for example, Sproat to Superintendent General (10 November 1879), *supra* note 173, where he noted that, “One of my principal duties, though least understood by the public, is to effect a compromise in regard to the large question of the Indian title to the soil.” See also Sproat’s letter in the newspaper, “The Indian Question Explained,” where he stated that the Commissioner had spent considerable time and money

in explaining to the Indians everywhere that it would be well for them to withdraw claims which they firmly made to white men’s farms under supposed prior grants to the Indians from the old colonial governments, and that it was in the interests of both the White and the Indian people that a fair compromise should now be made and accepted, starting from the existing basis. ... In every case, after a free, and certainly a full, discussion, I am glad to say that the above view of the propriety of a general compromise has finally been taken by the Indians. Their own requirements, afterwards, have been considered on business like principles.

Sproat, “The Indian Question Explained” (20 October 1877), Ottawa, LAC (RG 10, vol. 3612, f. 3756-16), and also in Parliament, “Special Appendix E” in *Sessional Papers*, No. 10 (1878) at ixv.

Sproat further explained, in the same article that, after listening to Indigenous peoples,

The commissioners, afterwards, tried to lead their minds to sensible views of the present facts of their lives and surroundings generally-- Old questions, and claims such as the “title” question and the claims under old Colonial Govt grants, it was considered, might perhaps be adjusted by a liberal

and to secure a more legally certain land base: that is, to move the land out from under the uncertainty inherent in these claims to the certainty of surveyed boundaries of land, transferred, in the case of Indigenous land, from the provincial to the Dominion government and regulated by the *Indian Act*.¹⁹¹

Cole Harris summarizes Sproat's general approach to reserve-allotment and the management of Indigenous peoples – what Harris calls the “Sproat system” – in this way:

During a transition period that could well take several generations, Native people required secure access to enough land (broadly defined) to support themselves. As far as possible, their principal traditional resource procurement sites should be secured for them, so too whatever land[s] (including timber rights) were required to enable them to participate in the new commercial/industrial economies as suppliers of raw materials as well as of cheap labour. Hence, Sproat's attempt to find sizable reserves, secure fisheries, and extend forest tenures to Native people. Always land allocations should be as sensitive as possible to traditional Native land uses and, with due attention to the requirements of settlers, to Native wishes. In many particular cases, the resolution of competing interests would turn on local compromise.¹⁹²

I agree with Harris about the principal elements of the “Sproat system,” but I disagree with him, in part, as to why Sproat incorporated the various elements. Sproat believed that Indigenous people should have their traditional resource procurement sites, but not only because the sites helped the people to support themselves. Sproat also secured them, because those were his instructions.¹⁹³ Moreover, as he gained experience in discussing land and land-related needs with Indigenous peoples, he increasingly recognized the cultural importance of these sites and, somewhat paradoxically, the role that these sites would play in easing the Indigenous transition

compromise-- The Indians were recommended not to brood over what was past, though it may in some cases have been a past of unfortunate misunderstandings and mistakes, but now, frankly, to accept the liberal share of the public lands, and also the somewhat privileged position which the two Governments offered and confirmed to them, and to make a manly effort to take their places, or to fit their children for taking their places, by and bye, as full citizens in a community governed by equal laws.

¹⁹¹ See Keith Carlson's discussion of a similar point in Keith Thor Carlson, *The Power of Place, the Problem of Time: Aboriginal Identity and Historical Consciousness in the Cauldron of Colonialism* (Toronto: University of Toronto Press, 2010) at 18-19. See also Nicholas Blomley, “Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid” (2003) 93:1 *Annals of the Association of American Geographers* 121, especially at 124.

¹⁹² C Harris, *Making Native Space*, supra note 19 at 160-161.

¹⁹³ See Instructions in Appendices C and D and discussion in section 3.1: “Dominion and provincial instructions to the reserve commissioners.”

to “civilization.” For example, at the end of his 1878 circuit, Sproat displayed his sensitivity towards Indigenous ways of life and traditional places when he told the Superintendent General:

The first requirement is to leave the Indians in the old places to which they are attached. The people here so cling at present to these places that no advantage coming to them from residence elsewhere would reconcile them to the change. It is the plain truth that during last summer, I have had Indians kneeling to me with lamentations, and praying that if the Queen could not give them soil, she would give them stones or rocks in the old loved localities now possessed, or at least occupied, by white men. The British Columbian Indian thinks, in his way and in a degree, as much of a particular rock from which his family has caught fish from time immemorial as an Englishman thinks of the home that has come to him from his forefathers. This strong feeling which is well known, but the force of which I did not, until this year, fully appreciate, cannot be justly or safely disregarded.¹⁹⁴

Sproat explained how he had solved “several apparently insoluble problems” by “discovering, that what the Indians really wanted was not so much good ploughland, as some old ‘places of fun’ up in the mountains or some place of fishing-resort where, at certain seasons, they assemble to fish, dig roots and race their horses.”¹⁹⁵ In another instance, he told the Superintendent General it was important “to interfere as little as the controlling necessity for settling up the country with white settlers permits, with the favourite resorts of the Indians, their old ways, their councils and gatherings and their intertribal traffic.”¹⁹⁶

Sproat’s sensitivity towards accommodating Indigenous ways of life is the characteristic that perhaps has been the most discussed by “Sproat scholars.” But this characteristic, though motivated by empathy, was not what it first appears to be. Sproat advocated preserving traditional places and ways of life in part to facilitate Indigenous “civilization.” This aspect of his reserve-creation policy has not been well-recognized; yet, it is evident in many of his writings, particularly his decisions about and correspondence with Chilliheetsa. In its more sensitive aspects, Sproat’s approach recognized “[t]he difficulty of weaning an uncivilised people from old ways of life, without needless hardship to them”: in other words, his approach

¹⁹⁴ Sproat to Superintendent General (26 October 1878), Ottawa, LAC (RG 10, vol. 3612, f. 3756-18, reel C-10106).

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

was built on “civilizing” Indigenous people, but in a humanitarian way.¹⁹⁷ In its less sensitive aspects, Sproat’s focus on “civilizing” Indigenous peoples sometimes sacrificed or overrode individual interests, even the land-based interests of the most powerful interior chief, Chilliheetsa. If there were one man whose efforts helped the reserve commissioners complete their reserve-allotments in 1877 and 1878 and avoid an “Indian war” in the interior of British Columbia, it was Chilliheetsa. Accordingly, if there were one people who ought to have been treated well by the reserve commissioners in return, it was Chilliheetsa’s people. However, Sproat’s decisions display no acknowledgement of Chilliheetsa’s leadership and assistance. If anything, they display the most problematic aspects of Sproat’s decision-making and emphasize that, for Sproat, “civilizing” Indigenous people meant more than facilitating Indigenous people’s transition to “civilization” by allotting them the places they had traditionally occupied or arable and grazing land. “Civilizing” Indigenous people meant that Sproat was prepared to manipulate reserve-allotments so as to undermine “tribal chiefs,” even Chilliheetsa. Land – and, importantly, the selection of which land to reserve – was a fundamental component of the “civilizing” project. Sproat used his almost total discretion over land allotments to drive this project, not only by prioritizing particular land-based interests and pursuits over others, but also by attempting to change Indigenous culture and to manipulate community politics.

¹⁹⁷ *Ibid.* Sproat made similar observations at the end of the JIRC’s first circuit: see Sproat to Minister of the Interior (29 March 1877), Ottawa, LAC (RG 10, vol. 3611, f. 3756-11).

Chapter 7: Sproat and Indigenous self-government

At the end of his Nlha7káp̓mx and Nicola valley circuit in 1878, Sproat soldiered on as sole commissioner, working through the winter. He faced novel issues on his next circuits, up the coast and in the Fraser valley, while also dealing with reactions to the commission's preceding work. By this time, Sproat had worked out his approach to reserve-allotment and was comfortable in applying his methods. However, as he continued to allot reserves, he was drawn into another crucial issue: what was Indigenous peoples' jurisdiction over their lands and their people? The Nlha7káp̓mx asked this question of Sproat in the Nicola valley in September 1878, after he had finished deciding on their reserves. Sproat felt that the Nlha7káp̓mx, and all Indigenous people when "ready," should have their own jurisdictional sphere within the legal framework and political structures imposed by the two governments. The Nlha7káp̓mx welcomed this approach and, in the fall of 1878 and at their request, Sproat agreed to act as their intermediary with the Dominion government with respect to the matter. In this capacity, he attended a Nlha7káp̓mx meeting in Lytton in July 1879. However, Sproat's instructions as reserve commissioner did not include determining matters of jurisdiction, and Canada and the province adamantly opposed the Nlha7káp̓mx proposals from that meeting. In the end, this lack of support figured prominently in Sproat's resignation as Indian reserve commissioner in 1880. Sproat's belief in Indigenous self-government and the agency of Indigenous peoples marks him as unusual in settler British Columbia at the time, particularly among provincial officials. However, Sproat's model of Indigenous self-government fit within his "humanitarian civilizing" framework, rendering his support of Indigenous self-government more complicated than may at first appear. This chapter examines Sproat's involvement in the Nlha7káp̓mx self-government proposal and 1879 meeting in an effort to understand what his involvement shows about his beliefs about Indigenous peoples.

7.1 NLHA7KÁPMX PLANNING

As Sproat worked amongst the Nlha7káp̓mx in 1878, he

could not refrain, in consequence of their inquiries, from some attempt to explain, informally, to them the relations which so far as I knew, the Government of Canada

wished to establish between itself and them. I said, generally, that the heart of the great chief at Ottawa towards them was what the heart of Sir James Douglas had been; that he wished them to have land to work on, but not land to lie on their backs and look at; that the government wished Indians and whites to be the same; and that all present special arrangements for the Indians were temporary; they could not read nor write, and as on this account white men might cheat them, the government, in some degree, intervened and protected them; all talk about the “Great Mother”, I said, was “gabble”; the Queen was just and kind to Indians as to whites, but they must not suppose that they were children; they were strong men, and their aim should be to be like good white men -- meanwhile, as they were the old people of the country, they got land for nothing and paid no taxes. White men paid for their land and paid taxes. The Government was a kind friend, but not an indulgent mother. Their fate was in their own hands; if they did not work they would die off. The old fashion was passing; they must adopt the new fashion, and in doing so they would find that the Queen had one heart for all; and so forth.¹

Though he did not use the words “progress” or “civilization” in this passage, it nonetheless represents one of the clearest articulations of what Sproat hoped for in terms of the “progress” and “civilization” of the Indigenous peoples amongst whom he worked, and the consequences if they did not aim “to be like good white men.” As Sproat repeated what he later called “these unusual views” to each community, he saw that they were “well received by the people generally.”² In fact, even though he told the Nlha7káp̓mx that he “had nothing, as a land chief, to do with such matters,” they repeatedly asked:

whether it was true that they, simply by hard work, could get a piece of land that would be absolutely their own, and with which chiefs or others could not interfere. The number of questions additionally put as to schools, medicines, churches, ‘Queen’s’ law versus ‘Church’ law, in its bearing on questions of divorce, custody of children &c &c would fill a quire of paper to enumerate.³

Sproat’s informal discussions during his circuit culminated in a “formal council” in the Nicola valley to which the Nlha7káp̓mx sent delegates to meet Sproat at the end of September, just as he was finishing with Chilliheetsa’s reserves.⁴ There, “chiefs and delegates from over

¹ Sproat to Superintendent General (6 November 1878), Ottawa, Library and Archives Canada [LAC] (RG 10, vol. 3669, f. 10,691). Cole Harris discusses this letter in Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: UBC Press, 2002) at 153-154 [C Harris, *Making Native Space*].

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

200 miles of country,” representatives of the 2800 Nlha7káp̄mx people, met with him.⁵ They wanted him, “(now that the land question advanced towards an adjustment) [to] tell them what was the law and the Queen’s wishes.”⁶ Sproat advised them as follows:

that my duty was limited to the land; and it was the way of the white people to divide duties, but I took advantage of the opportunity to explain to them generally the main provisions of the Indian Act, and they seemed pleased with the idea that they would be entrusted, partly, with the management of their affairs. Some of the Shuswap chiefs were present -- having come to see what was done in Nicola -- the very heart of the Indian “difficulty”.⁷

In Sproat’s view, a provision in the newly-enacted *Indian Act* entrusted Indigenous peoples with the “management of their affairs.”⁸ The *Indian Act*, which came into force in the spring of 1876, was the first post-confederation consolidation of federal legislation concerning “Indians.” The earlier Canadian British colonies had legislated with respect to “Indians” and “Indian land” before confederation and there had been several similar Dominion statutes after confederation. The *Indian Act* pulled together into one statute the provisions governing three principal subjects: lands, Indian status and band membership, and band governance.⁹ In relation to band governance, section 63 provided:

63. The chief or chiefs of any band in council may frame, subject to confirmation by the Governor in Council, rules and regulations for the following subjects, viz.:

1. The care of the public health;
2. The observance of order and decorum at assemblies of the Indians in general council, or on other occasions;
3. The repression of intemperance and profligacy;
4. The prevention of trespass by cattle;
5. The maintenance of roads, bridges, ditches and fences;

⁵ Sproat to Deputy Superintendent General (20 September 1878), Ottawa, LAC (RG 10, vol. 3666, f. 10,213).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Indian Act*, SC 1876, c 18.

⁹ John Leslie and Ron Maguire, eds., “The Historical Development of the Indian Act” (Ottawa, 1978), online: <http://publications.gc.ca/collections/collection_2017/aanc-inac/R32-313-1978-eng.pdf>, accessed 29 November 2017.

6. The construction and repair of school houses, council houses and other Indian public buildings;
7. The establishment of pounds and the appointment of pound-keepers;
8. The locating of the land in their reserves, and the establishment of a register of such locations.¹⁰

At the meeting in the Nicola valley, Sproat learned that the Nlha7kápmx “so much wish to adapt themselves to the new fashion of things” that they had offered the position of “chief of the whole people” to his interpreter, Michel.¹¹ Sproat was surprised that “[t]he old chiefs, some of whom are the best known in the country, have concurred in this,” but he imagined that the Nlha7kápmx had “arranged in some way known to themselves to save the dignity of the old gentlemen, and that the position offered to my interpreter is a sort of Chief of the Staff. They suppose that he must know all about the ‘new fashion’ – having been so long with the Commission.”¹²

Sproat wholeheartedly supported the Nlha7kápmx organization. He believed it had originated “entirely with the Indians & completed without the knowledge even of the missionaries,”¹³ and he felt it was:

pretty good proof of their real desire to turn over a new leaf in their modes of life, and it is also proof that they feel a little in need of help and advice. The Nekla-kap-amuks have been talking to the effect that, though many of them are poor, now, from the nature of the district in which they have had to live, they are going to rival in progress the Shuswaps & Okanagans who, living in a better district, have better opportunities.¹⁴

¹⁰ *Indian Act*, *supra* note 8. Parliament amended this section slightly in May 1879: *An Act to amend “The Indian Act, 1876,”* SC 1879, c 34, s 4; and again in May 1880: *An Act to amend and consolidate the laws respecting Indians*, SC 1880, c 28, s 74.

¹¹ Sproat to Deputy Superintendent General (20 September 1878), *supra* note 5.

¹² *Ibid.* Sproat made the same point, somewhat more explicitly, to the Superintendent General several months later, when he advised that the Nlha7kápmx had chosen “Michel, (one of their own people) to be the chief of the whole people, under some arrangement which, while not interfering with the dignity of the old hereditary chiefs is, as they think, calculated to secure to themselves the benefit of Michel's supposed acquaintance with the ‘Queens mind’, derived from his having been in such close relations to the Commissioner”: Sproat to Superintendent General (6 November 1878), *supra* note 1.

¹³ Sproat to Deputy Superintendent General (20 September 1878), *supra* note 5.

¹⁴ *Ibid.*

In October 1878, Sproat wrote to Clapperton in the Nicola valley about a meeting the Nlha7kápmx proposed to hold for all their people in Lytton. He asked Clapperton to advise “any of the Indians you may see” that the meeting would take place in the spring: “[t]he Indians among whom I have been working this year who call themselves the Nekla.kap.a.muk nation wish to have a great meeting or convention at Lytton to talk over matters connected with the management of Reserves, Schools, Presents, Whiskey-drinking +c +c.”¹⁵

At the end of October, Michel was in Lytton to speak with the local Nlha7kápmx people about the proposed meeting, and Reverend Good reported that he had assisted Michel in these discussions.¹⁶ Good later explained the object of the meeting to the Superintendent General of Indian Affairs (Superintendent General):

It is proposed that next spring they should all meet at their central home (Lytton)

(1) for the purpose of offering to the Government through the Commission or other delegated authority an united expression of their satisfaction with the manner in which they had been dealt by the present Indian Commission and their willingness to abide by the settlement that has been effected of their claims throughout their borders.

(2) Upon consideration to devise some measures for the better preservation of order, sobriety and virtue amongst themselves and to guard their intercourse with the whites.

(3) To ratify the nomination of their future Chief in a formal manner and to complete their tribal organisation for the government and management of their reserves and settlements within the Tribal District.

(4) To determine upon the erection of a Court house and other matters of general interest to their commonwealth.¹⁷

Reverend Good also complimented Sproat’s work of the past year, having just returned from “a somewhat extensive mission tour throughout the Yale Lytton Kamloops and Nicola District”:

I may be permitted to observe that having for years maintained the closest acquaintanceship with the Neklakapamuk or Thompson Tribe which numbers over 2500 souls: and with whose language I am intimately familiar: --

¹⁵ Sproat to Clapperton (19 October 1878), Vancouver, Indigenous & Northern Affairs Canada (Specific Claims West) [INAC] (Provincial Collection [Prov. Coll.], vol. 1: Letterbook #2, 279-281).

¹⁶ Reverend Good to Superintendent General (15 November 1878), Ottawa, LAC (RG 10, vol. 3611, f. 3755).

¹⁷ *Ibid.*

Having after years of toil possessed their entire confidence and secured their constant attendance on my ministry:

Having witnessed with admiration their patient continuance in well doing notwithstanding their just dissatisfaction at the way in which their rights had been ignored and the neglect more particularly of their land interests.

I have lately experienced an unspeakable relief since Mr. Sproat was sent to adjudicate upon and settle these longstanding and most complicated complaints, in finding wherever I journeyed that dissatisfaction if not also disaffection has given place to universal content, and I did not meet with one Indian throughout my travels that moved his tongue against either the Government or the readjustment of his claims under the present Commission.¹⁸

At their September “council,” the Nlha7kápmx delegates had asked Sproat “to write to the great chief at Ottawa, to say that, now they had got land, they wished to have a clear understanding with the Government to all matters, and they wished their minds to be known.”¹⁹ Sproat told them that it was outside his authority to deal with such matters and they should request either a clergyman or Lenihan to write to Ottawa. However, the Nlha7kápmx insisted that Sproat “should be the medium to communicate their wishes.” When Sproat subsequently wrote to the Superintendent General at the Nlha7kápmx’s behest in November 1878, he noted that despite their insistence that Sproat be their intermediary, “it is a curious proof of their independence that they said they wanted me merely to be on the spot when the meeting was held, to advise them what to discuss, and to tell them what was within the law, and afterwards to communicate with Ottawa: the discussion itself they wished to conduct in their own way.” Sproat told the Superintendent General that he expected the discussion at the proposed meeting “would embrace the whole Indian Act -- schools, contributions for the poor: presents from the Government, the holding of lands, inheritance, and, in fact, everything.” He advised:

Indians are changeable, but if they remain in the mind in which I left them, I imagine that this proposed meeting of the Nekla-kap-amuks at Lytton is worthy of your attention, and might be memorable as a step taken entirely by the Indians themselves, to make the Government acquainted with the views of a very important section of the native population of this province. I therefore, at the special solicitation of delegates from all these tribes, mention their request to you that I should be empowered to call a meeting of these tribes at Lytton next spring, and that I should attend the meeting as

¹⁸ *Ibid.*

¹⁹ All information and quotations from this footnote to the next are from Sproat to Superintendent General (6 November 1878), *supra* note 1; all underlining in original.

special commissioner to advise with them, and report their views on all matters to yourself.²⁰

Sproat noted for the Superintendent General several additional points of interest about the meeting. First, he thought that the Nlha7kápmx “might agree to some light burden upon the allotments of land to individuals within the reserves, for their own schools or as contributions to a poor box.”²¹ Second, because of the Nlha7kápmx’s location between the Secwépemc and Syilx to the east, and the Stó:lo²² to the south-west, he thought it likely that the other groups would “follow the example of the Nekla-kap-a-muks. It is therefore desirable to encourage the Nekla-kap-a-muks, particularly as they desire to help themselves.” In addition, Sproat asked the Superintendent General whether there had been any relevant amendments to the *Indian Act* and, “further, whether there are any points connected with the administration of Indian affairs, to which in the event of the proposed Indian meeting being held, you would wish the minds of the Indians to be directed.”

In a separate letter on the same day to the Deputy Superintendent General of Indian Affairs (Deputy Superintendent General), Sproat explained that his letter to the Superintendent General was “on a subject the most important that has ever taken place among the Indians in this province.”²³ Despite his feeling that the governments had not fairly treated the Nlha7kápmx before and since confederation, Sproat now considered them “extremely disposed to do what

²⁰ Sproat to Superintendent General (6 November 1878), *supra* note 990.

²¹ All quotations in this paragraph are from *ibid*.

²² Here I use the term, “Stó:lo” as Keith Carlson does in Keith Thor Carlson, ed, *A Stó:lo Coast Salish Historical Atlas* (Vancouver: Douglas & McIntyre, 2001) at 2, to refer to “all Indigenous people and communities along the lower Fraser River and its tributaries between Sailor Bar Rapids (nine kilometres above Yale) and the Strait of Georgia.” (“Stó:lo” should have a lateral line over the second “o” but I was unable to produce this with my word processing software.) Carlson notes that “the designation “Stó:lo” sits better with some contemporary Aboriginal political and cultural leaders and community members than others. . . . By and large it is the communities at the peripheries of this region that have chosen not to officially affiliate with or join the broader Stó:lo Nation. Tsawassen, Musqueam, Coquitlam, Semiahmoo and Katzie at the river’s mouth; Tsleil-Waututh and Squamish in Burrard Inlet; Chehalis to the north on the Harrison River; and Union Bar and Yale at the entrance to the Fraser Canyon are either completely independent of the Stó:lo Nation or receive only select services.” See also Keith Thor Carlson, *The Power of Place, the Problem of Time: Aboriginal Identity and Historical Consciousness in the Cauldron of Colonialism* (Toronto: University of Toronto Press, 2010) at 13 [Carlson, *The Power of Place*], where he notes that, “Stó:lo is the Halq’eméylem word for river, and I was told by Stó:lo Tribal Council staff and Elders alike that all the Indigenous people living along the lower 190 kilometres of western Canada’s greatest river were ‘Stó:lo,’ or ‘River People.’”

²³ All information and quotations in this paragraph are from Sproat to Vankoughnet (6 November 1878), Ottawa, LAC (RG 10, vol. 3669, f. 10,691).

may be required of them and [they] say that outside of church chiefs['] lessons, they want to know what they call the 'Queen's' or the 'law' about everything that concerns them." The Nlha7kápmx had heard that "the Lower Fraser Indians had only been made to quarrel by the action of the Department, and so they want to have a clear understanding for all their own -- the Nekla kap a muks people." Sproat observed: "[s]ome of these people are poor; others are well off, but they all show a pleasing spirit of their own, which rightly dealt with, might be the means of starting a new and sensible policy in this province."

When former B.C. Premier Amor De Cosmos heard of the proposed Nlha7kápmx meeting in the fall of 1878, he provided a scathing critique of the "extraordinary proceeding which has already taken place or is in contemplation, and which we are informed originated with the Commissioner."²⁴ De Cosmos claimed that the meeting was an attempt of "nothing less than to confederate all the Indian tribes inhabiting the extensive tract of country within a circuit - which would include within its bounds Yale, Lillooet, Kamloops and Similkameen, into one nation or commonwealth, and to elect a gentleman who has been acting in some capacity under the Commissioner as king or great chief of the confederacy." Moreover, he expressed the longstanding and strongly-held sentiment that settlers should prevent Indigenous confederation at all costs; the tribal jealousies, prejudices, and ancient feuds worked to the settlers' favour, he said, preventing Indigenous communities from "acting in concert for any purpose prejudicial to the whites." De Cosmos felt that even if the intention of the "projector of the scheme" was to have the Nlha7kápmx "combine" for laudable reasons,

They might begin by uniting for a perfectly legitimate purpose, but it is equally likely that they would not stop [there?], but would use the [illegible the?] combination gave them to endeavor to obtain some privilege or concession antagonistic to the white interests, and the result would inevitably be collision between the two races and possibly another Sitting Bull affair. ... Singly, the Indian tribes are easily dealt with, but once bind them together by ties, whether political or social, and they will be much more difficult either to coerce or persuade.²⁵

²⁴ "The Indian Commissioner", *The Daily Standard* (28 November 1878) in Ottawa, Library and Archives Canada [LAC] (RG 10, vol. 3669, f. 10,691, reel C-10117). For the identification of the author, see Sproat to Superintendent General (1 December 1878), Ottawa, LAC (RG 10, vol. 3669, f. 10,691, reel C-10117).

²⁵ "The Indian Commissioner", *supra* note 24.

Sproat forwarded this editorial with his extensive comments to the Superintendent General.²⁶ He reiterated that the Nlha7káp̄mx themselves were the “projectors” of the scheme and declared that he considered the anti-confederation policy to be a “narrow, obsolete” one. In respect of De Cosmos’s comment that the “Indians are the wards of the Crown and should be treated as such,” Sproat wrote: “Indians and whites are one people and equity will bind them together yet more closely.”²⁷

In mid-December, the Deputy Superintendent General responded to Sproat’s November 6 letter proposing the Nlha7káp̄mx meeting, advising Sproat that so long as the provincial government did not object to the meeting, “it would be well that such should be held and that you should preside thereat as suggested in your letter.”²⁸ In his reply, Sproat took pains to explain that he would not “preside” at the meeting:

I will, in due course, communicate with you respecting the proposed meeting of the Nekla.kap.a.muk Indians, should anything seem worthy of communication before it takes place. I may mention that it is not proposed that I should convene a meeting, or that it should have such an official character as it would have were I to convene it and preside.

It is an Indian meeting pure and simple. They only asked that I should be there, and I could not accept their invitation without permission from you to leave my ordinary work for a week for the purpose of attending.²⁹

Although provincial officials might have known of the Nlha7káp̄mx meeting – perhaps from reading De Cosmos’s newspaper editorial in November 1878 – there is no evidence that Sproat told the province of the meeting until the week before it took place in July 1879.³⁰ And when he did, he did not highlight the meeting’s probable significance to the province’s Chief Commissioner of Lands and Works (CCLW), saying only that the Nlha7káp̄mx would be “electing a chief, and discussing matters connected with schools, etc.” and that he anticipated that “[t]he occasion will be interesting and I shall be glad if you could be present to observe the

²⁶ Sproat to Superintendent General, 1 December 1878), enclosing “The Indian Commissioner”, *supra* note 24.

²⁷ I discuss this sentiment further in Chapter 8, for it reveals more of Sproat’s beliefs, this time about law and the principles of liberalism becoming firmly established in Canada during the 19th century.

²⁸ Vankoughnet to Sproat, file copy (16 December 1878), Ottawa, LAC (RG 10, vol. 3669, f. 10,691).

²⁹ Sproat to Superintendent General (1 February 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 4-5).

³⁰ Sproat to CCLW (9 July 1879), Vancouver, INAC (Prov. Coll., vol. 3, Correspondence no. 895/79).

efforts these deserving people are making to do what both governments would approve in relation to the matters above mentioned.” In the end, Sproat did not receive a reply to his letter to the CCLW, and the province did not send a representative to the meeting.³¹

In early 1879, Sproat found himself engaged again on the question of “presents,” this time agricultural implements the Dominion was proposing to give to Indigenous people through Lenihan. In March, Sproat dispatched Michel to visit the principal Nlha7káp̄mx villages to ascertain the implements they already had and “what they really need for their poor,” issuing Michel written instructions, even though he appears to have been illiterate.³² Sproat’s written instructions to Michel provide the best record of what Sproat likely told other Nlha7káp̄mx, Secwép̄emc, and Syilx groups, and it provides the clearest articulation of Sproat’s sentiments about appropriate Indigenous “progress” and “civilization”:

Michel,

You will proceed to Yale and thence to the principal village[s] of the group of the Nekla.kap.a.muk Indians who had their names taken together in our census book.

You will remind the Indians of what I said to them with respect to my desire that they should not appear before the white people in the light of children or beggars, but should be proud and independent, as their friend Sir James Douglas wished them to be.

Now that they have land, let them work it; let them walk about feeling like white men. That is what the Govt wishes. If the Indians choose not to work, but lie about doing nothing and drink and gamble and “potlatch” they will become poorer, and suffer and die off the face of the land.

The government can only see that they get their rights as to land and water, and the proof of this is in the Commission going about and being followed by the surveyors. The government cannot have officers living in the village to see that the Indians work and behave themselves. The Indians must manage their own affairs.

³¹ Sproat to Superintendent General (26 July 1879), Ottawa, LAC (RG 10, vol. 3669, f. 10,691, reel C-10117) [Sproat (26 July 1879), “Letter to SGIA about Indian meeting at Lytton”].

³² Sproat sent his written instructions to Michel to the Superintendent General: Sproat to Superintendent General (31 March 1879), Ottawa, LAC (RG 10, vol. 3666, f. 10,213). Since Michel appears to have been illiterate, it is likely that this letter to Michel was the written form of Sproat’s verbal instructions. As to Michel’s illiteracy, see Sproat’s subsequent statement to the Superintendent General that “The Indian whom I sent to arrange as to the implements cannot read nor write, but this presented no difficulty. I gave him lists marked to show the tribes meant, in the order of grouping them for census and land purposes, and the lists had sketches of the implements at the top”: Sproat to Superintendent General (13 April 1879), Ottawa, LAC (RG 10, vol. 3666, f. 10,213); these sketches are in the same file.

The Govt have found, as the Indians will know, from what has taken place in New West District, that presents do no good and cause jealousies and quarrels.

Looking always to the good of the Indians the government will not give presents. The Indians are strong: why should they get presents like beggars?

But as the Nekla.kap.a.muks have had few presents, and have behaved well, I have asked the government to give them something, and the government have said they would, if I could say how the things could be distributed.

Now this I cannot say, and no white man can. If the presents do not get into the right hands and cause jealousies, then the government will say I am a foolish man, and this will hurt me much after trying to help the people.

I therefore wish you and the headman of each group to sit around the fire, and discuss the difficulty in which I am and help me out of it. White men say the Indians can do nothing. Show that they can. Bring back a list of what implements the poor women or poor old men in each group need for their gardens. Talk the whole matter over. This is the first business ever left entirely to the Indians. The government tells its mind to the Indians. Let the Indians do their part.

No strong, lazy man is to have a tool. The government kindness is, merely, on this last occasion towards the really needy. Some Indians dress in rags and have pots of gold in the ground. Look out for them. The government cannot be cheated. It will all be inquired into.

There are not many poor after you pass Jackass Mountain.

The Queen's mark will be on each tool and no man can keep it without using it.

All I have said is about the poor.

Now as to the people in general who lately have got lands. The winter has been hard and stock has died.

I will ask the government to put a plow harness and a crosscut saw at Lytton, and the same at a place between Yale and Jackass Mountain.

This is to help the Indians in cultivating their new land.

The Indians must arrange among themselves for the use of these ploughs by different tribes and men, as they think fit. One must do his piece and then another. Everybody says the Indians are fools and cannot do this and will quarrel who is to have the plough first. When people say so I tell them I know the Indians and that I am sure the Nekla.kap.a.muks can manage these matters.

If I hear of any quarreling the ploughs will be at once removed.

Before they are sent, I must know what the Indians propose, and who is to take care of the articles. They must submit some business proposals - no nonsense. There are

many Indians in this country, and they need attention, and when some are foolish, I turn my eyes to the sensible ones.

Come back quickly.³³

This is a remarkable letter on many levels. First, as with the letters Sproat wrote directly to Chilliheetsa, it is a clear example of the language Sproat used to speak to Indigenous people and gets us closer to envisioning his relationship with them than do his reporting letters or decisions. More importantly, it displays Sproat's beliefs in simple and clear words. Sproat wanted the Nlha7káp̓mx to be independent members of society, not wards of the Crown. To evidence their independence and pride, he wanted them to behave and feel "like white men" by working their land. He wished them to discard both the vices they had adopted from the settlers, such as drinking alcohol, as well as what he thought of as their own cultural vices, including gambling and potlatching. If they did not abandon these vices in favour of white men's hard work, they would naturally "decay," in accordance with his theories propounded in his 1868 book. For Sproat, the government had only a limited role in encouraging the Nlha7káp̓mx transition to a white man's lifestyle: it could provide aid to the sick, poor, and old, and to those who, in this first year, had suffered livestock or crop losses because of a hard winter. But already, Sproat was pushing the idea of Indigenous municipal-style self-government, in accordance with the jurisdiction contemplated by s. 63 of the *Indian Act*. For him, these steps – working the land, dropping "vices," and managing community affairs – were the only way Indigenous people could "progress" towards "civilization." Further, it is clear from his instructions to Michel what limited government support Sproat advocated during Indigenous people's transition to becoming "like white men."

Michel reported back to Sproat in the middle of April,³⁴ and Sproat, in turn, advised the Superintendent General about the implements needed, praising Michel's work and expressing himself "glad to say to you in this, the first instance of the Government employing Indians solely on important business affairs, [there was] good sense and business like appreciation on the part of the Indians."³⁵

³³ Sproat to Michel (26 March 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 133-135).

³⁴ Sproat telegram to Coxon (5 April 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 147).

³⁵ Sproat to Superintendent General (13 April 1879), *supra* note 32.

At the beginning of June, Sproat corresponded with Lenihan about Indian reserves near New Westminster and gave his views about Indian villages and hospitals – that Indigenous villages should be laid off in lots, that Indigenous people should “largely manage all the town affairs, with very little help indeed,” and that they should contribute financially to maintaining their hospitals and be involved in their management – views that would be reflected in some of the decisions the Nlha7káp̓mx made at their July meeting. In keeping with his growing emphasis on Indigenous people’s behaving like “white men,” Sproat further told Lenihan that “[t]he Dominion Government would gladly hasten the time when the Indians shall become citizens, and would like to see them more largely endeavouring to provide for themselves in the industrial ranks of the community, without having their self help weakened by the thought that the Government is always at their elbow.”³⁶ Just a few days later, Sproat again emphasized to the Superintendent General the importance he attached to the subdivision of reserves into individual holdings. He explained how the independent ownership of land would undermine tribal chiefs and promote Indigenous “civilization,” linking both to cultivation of the land:

This is probably the only way in which the evils of chiefship can be lessened and quietly extinguished in time, and it is a simple means of giving the government a most useful power of admonishing the idle and encouraging the industrious. The Chiefs from jealousy and various reasons often interfere to prevent young men becoming comparatively well-off and powerful in the tribe, as the possessors of good farms. They force them to abandon cultivation or to limit its extent. Nothing pleases many of the Indians more than the hope of having their holding secured to them by a government “paper”. This is an authority which no Chief would question. If a reserve taken as a whole is not properly cultivated the agent of the government at present can only scold the tribe as a mass, and his scolding must give pain to industrious members of the tribe, or men who would be industrious, if they had a chance, and knew that their labor would not be wasted.

If however, Indian Tom, or Dick or Joe had his piece of land, the scolding could be concentrated upon his head if he could not give a good reason for neglecting to use his land, he could be warned and finally dispossessed if he proved incorrigibly lazy, or he could be praised and encouraged if he worked well.³⁷

Whether for the management of hospitals, the cultivation of land, or the subdivision of reserves, Sproat emphasized a role for Indigenous municipal-style self-government: “[t]he

³⁶ Sproat to Lenihan (9 June 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 289-294).

³⁷ Sproat to Superintendent General (12 June 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 301-306).

Indians should be utilized as much as possible, in all administrative matters, and in the management of reserves. People generally undervalue what the Indians are able to do in this respect. They can do much under direction and in so doing would learn how to do more.”³⁸ As an example, Sproat explained how he had required a group of Indians in Chilliwack to subdivide their own reserve, which “everyone has considered ... an impossibility.” Instead, Sproat found that the community “fully discussed the matter among themselves, and by-and-by brought back the sketch filled out ... with subdividing lines drawn by themselves.” This, for Sproat, was a clear and hopeful sign of progress.

7.2 THE NĪHA7KÁPMX MEETING

By the third week in June, Sproat knew that the NĪha7káp̄mx “great meeting” at Lytton was scheduled for July 15 and that “[a]t that meeting their decision as to various alternative propositions connected with their reserves has to be made known to me.”³⁹ The NĪha7káp̄mx had renewed their invitation to Sproat to attend the meeting, where they would “tell [him] what [he] wanted to know.”⁴⁰ Though there is no archival evidence to this effect, phrases like “their decision as to various alternative propositions connected with their reserves” and “they would tell me what I wanted to know” suggest that Sproat had given or at least discussed with the NĪha7káp̄mx (or perhaps Michel only) a list of topics and “alternative propositions” for their decision.

In the second week in July, more than one thousand NĪha7káp̄mx gathered in Lytton, with about 1500 horses.⁴¹ When Sproat arrived on July 14, he met with the chiefs, received a five-gun salute, and then “tranquilly went through the ordeal of shaking hands with over 800

³⁸ All quotations in this paragraph are from *ibid.*

³⁹ Sproat to Dennis, Deputy Minister of the Interior (23 June 1879), Ottawa, LAC (RG 10, vol. 3679, f. 12,068).

⁴⁰ *Ibid.*

⁴¹ Sproat (26 July 1879), “Letter to SGIA about Indian meeting at Lytton”, *supra* note 31. It seems most likely that Chilliheetsa did not attend this meeting. Chilliheetsa sent his son, Alexander, to meet with Sproat in Lytton in July 1879: Sproat to Mohun (21 July 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 368-369). Further, Mohun met with Chilliheetsa in the Nicola valley in July 1879: Mohun to Sproat (28 July 1879), Ottawa, LAC (RG 10, vol. 3670, f. 10,768). Both of these facts suggest that Chilliheetsa did not attend the NĪha7káp̄mx meeting.

Indians.”⁴² The Nlha7káp̓mx had built a large “council house,” measuring about 40 feet by 200 feet.⁴³ It was “a very pretty building with boarded sides and canvas roof, ornamented tastefully with green boughs, and having a raised platform with chairs and tables at one end which was approached under an arch with a pendant crown made of boughs. They also had an ante room, and lunch table with tea, fruit, sardines &c.”⁴⁴ Sproat estimated that the building cost nearly \$500, which he felt “shows good feeling towards the Queen, and no small self[-]respect that these Indians should have gone to this expense in a year of great dullness in the province.” As Sproat approached the building, the Nlha7káp̓mx “had a cannon and saluted me with 12 guns.”

Although Sproat was in Lytton for the Nlha7káp̓mx meeting, he “was not present at their daily meetings, and did not direct their discussions. They did it all themselves, sending occasionally a committee to confer with [him] on knotty points, and as to what would not be against the laws of the province.” In two weeks of meetings, the Nlha7káp̓mx elected a head chief and thirteen councilors, they “made certain laws which all the tribes of the Nekla-kap-a-muks bound themselves to observe,” and they “provided machinery for carrying out these laws.” Ultimately, the Nlha7káp̓mx people as a whole arrived at “Resolutions,” and their elected council created “Rules and Regulations,” both of which Sproat recorded.⁴⁵ Sproat’s notes at the end of the latter indicate this: “the Nekla-kap-a-muk Council framed and agreed to these twenty two rules in my presence and requested me to submit them for confirmation by the Governor in Council in accordance with clause 63 of the Indian Act 1876.”⁴⁶ Sproat considered the Resolutions and the Rules to be “within the meaning of the Indian Act,” and he requested the

⁴² *Mainland Guardian*, New Westminster, BC, 19 July 1879.

⁴³ *Ibid.*

⁴⁴ All quotations from this footnote to the next are from Sproat (26 July 1879), “Letter to SGIA about Indian meeting at Lytton”, *supra* note 31.

⁴⁵ *Ibid.* The term “Rules and Regulations” is from s. 63 of the *Indian Act*. I will refer to these as the “Rules” in this thesis. All of the Rules were written down in English and recorded by Sproat, at least in his papers. (I have not seen any references to the possibility that the Rules were recorded in Chinook or the Nlha7káp̓mx language.) Of all the meeting attendees, it is likely that only Sproat and Michel were able to speak English to any significant degree, and only Sproat could write in English. Thus, it is most likely, in my view, that Michel translated the Nlha7káp̓mx discussions to Sproat, who wrote the Rules down in English.

⁴⁶ “Rules and Regulations framed by the Nekla-kap-a-muk Council, sitting in Lytton, British Columbia the 17th July 1879 for their own people” [Nlha7káp̓mx Rules] enclosed with Sproat to Superintendent General (26 July 1879), Ottawa, LAC (RG 10, vol. 3696, f. 15,316) [Sproat (26 July 1879), “Letter to SGIA enclosing Rules & Regulations”]. I have reproduced these Rules in Appendix A.

Superintendent General, if he approved them, to have the Governor in Council confirm the Rules and the proposed organization under s. 63 of the *Indian Act*.⁴⁷

The Nlha7káp̓mx passed seven Resolutions, six of which related to their Council, Head Chief, Tribal Chiefs, and Councillors; the seventh forbid the raising of “church matters” at any of the council’s meetings.⁴⁸ These Resolutions affirmed Michel’s election as Head Chief, confirmed the “tribal chiefs” enumerated in Blenkinsop’s censuses, and pronounced the election of thirteen named men as Councillors, including several from Lytton and from as far away as Lillooet, Ashcroft, the Nlha7káp̓mx part of the Nicola valley, and the Nlha7káp̓mx part of the Similkameen valley. The Resolutions are notable for their many references to the Queen’s control over all Nlha7káp̓mx government positions. The Council that was to manage the Nlha7káp̓mx’s affairs consisted of the head chief, the tribal chiefs, the thirteen councillors, and “the Queen’s Commissioner or agent”; “the Queen” was to direct the time and place of the annual meetings. The Queen also was to direct the time and place at and manner in which the Nlha7káp̓mx would elect their head chief, “and such Head Chief shall do what the Queen directs him to do, and he shall hold office for three years (unless the Queen removes him for incompetency or misconduct).” The Queen similarly had authority over the councillors’ elections. The tribal chiefs could hold their positions until they died or the Queen removed them.

The twenty-two Rules dealt with schools, medical funds, and forbid a whole host of activities that the newly-established tribal committees (consisting of the local tribal chief and at least three elected Nlha7káp̓mx Councillors) would adjudicate and levy fines for: drunkenness, potlaching, gambling, dirty houses, unweeded crops, weak or ugly fences, animal trespass, fishing using certain methods, hunting game for eight months of the year, and hunting seven species of birds for over six months of the year. Additionally, the Rules provided that the arable portions of reserves were to be subdivided into individual holdings, “the number of useless dogs is to be reduced,” and “the women are not to work so much in the fields as has been the case hitherto, when the men were doing nothing. The women are to look more after the houses.”

It is hard to understand such a bizarre amalgam of provisions. As Douglas Harris states, they were certainly a “radical departure from traditional Nlha7káp̓mx ways” and, from a

⁴⁷ Sproat (26 July 1879), “Letter to SGIA enclosing Rules & Regulations”, *supra* note 46.

⁴⁸ I have reproduced these Resolutions in Appendix B.

contemporary perspective, appear to be “a remarkable concoction of Victorian propriety, Canadian paternalism, and indigenous tradition.”⁴⁹ Harris believes that the Nlha7káp̄mx “self-imposed” these Rules and, in so doing, were attempting to cultivate an alliance with the Queen by “manoeuvring to impose the rule of law not only on themselves but also on their relations with White settler society.”⁵⁰ That may be, but given the similarities between Sproat’s beliefs and the Rules, and his claim in June that the Nlha7káp̄mx would tell him “what [he] wanted to know” at their July meeting, I have difficulty agreeing with Harris’s optimistic view of what might have been possible had the governments approved the proposals. The Rules were a concoction of Victorian and Canadian ideals, but I fail to see many elements of Indigenous tradition, unless they are perhaps the decision not to ban betting on horse-racing outright but, rather, for the Council “to think further about it” and, in the interim, to recommend moderation in gambling on horses,⁵¹ or provisions in the accompanying Nlha7káp̄mx Resolutions that provided a role for the existing “tribal chiefs,” as well as the newly-elected “Head Chief” and councillors.⁵²

Cole Harris sees in the Nlha7káp̄mx Rules an Indigenous effort to find some jurisdictional space “within an increasingly enveloping colonial regime”⁵³; Keith Carlson views them in the same light, concluding that they “codified various spheres of authority.”⁵⁴ The Nlha7káp̄mx do appear to have been attempting to establish space for some measure of self-government, but I see more of Sproat’s influence in the Rules than do any of these other scholars. Cole Harris admits that Sproat, at times, gave forceful opinions at the Lytton meeting and, when he did, the Nlha7káp̄mx followed them.⁵⁵ I see in the Rules Sproat’s beliefs about desirable “progress,” views that he had expressed amongst the Nlha7káp̄mx and others for several years. For example, Sproat had long expressed his support for Indigenous self-taxation to support hospitals and schools, the subdivision of reserves, and banning the potlach and

⁴⁹ Douglas Harris, “The Nlha7káp̄mx Meeting at Lytton, 1879, and the Rule of Law” (Winter 1995-96) 108 BC Studies 5 at 9, 24 [D Harris, “The Nlha7káp̄mx Meeting”].

⁵⁰ *Ibid* at 24-25.

⁵¹ Sproat (26 July 1879), “Letter to SGIA enclosing Rules & Regulations”, *supra* note 46.

⁵² Resolutions adopted by the Nekla-kap-a-muk Indians in a meeting at Lytton, British Columbia,” enclosed with *ibid*.

⁵³ C Harris, *Making Native Space*, *supra* note 1 at 155.

⁵⁴ Carlson, *The Power of Place*, *supra* note 22 at 248

⁵⁵ C Harris, *Making Native Space*, *supra* note 1 at 157.

excessive drinking, all of which were the subject of Rules.⁵⁶ Certainly, the Nlha7kápmx did hold their own meetings at Lytton without Sproat – I do not go so far as Paul Tennant does, when he suggests that Sproat “sought to dominate the meeting” at Lytton and to introduce a governing body over the Nlha7kápmx that would facilitate the Dominion’s control over them⁵⁷ – but the outcome of those meetings seems largely influenced by Sproat both directly, at the meeting itself and over the previous fourteen months of working amongst them, and indirectly, through Michel, the newly-elected Head Chief. During their meetings, for example, Sproat tried to influence the Nlha7kápmx to give up the potlatch by telling them that while he recognized the honour they received for giving gifts, he felt that if they gave donations to the school and medical funds instead, then they would receive honour from their people and the government and also be helping their people: “[t]hus, the “Patlach” is not so much abolished as it is changed, and you will have greater honour,” he said.⁵⁸ He also suggested to them that instead of potlaching, the Nlha7kápmx give “entertainments of good tea and food to your friends – ask them to dinner as white men do.”⁵⁹ More generally, Sproat advised the Nlha7kápmx, upon their request, “as to what would not be against the laws of the province.”⁶⁰ This is not an insignificant point: it suggests that all of the Rules were co-ordinated to fit within the province’s and the Dominion’s legal regimes. Finally, Sproat was also “their referee in open council” on matters upon which they could not decide, such as the banning of the potlach.⁶¹ When the Nlha7kápmx chiefs were divided on this “inveterate custom” after debating it for a long time, they asked Sproat for his decision and told him that if he thought it should “die,” they would make that decision. Sproat

⁵⁶ See, for example, Sproat to Minister of Interior (27 October 1877), Ottawa, LAC (RG 10, vol. 3656, f. 9063); Sproat to Superintendent General (17 August 1878), Ottawa, LAC (RG 10, vol. 3611, f. 3755); Sproat to Deputy Superintendent General (20 September 1878), Ottawa, LAC (RG 10, vol. 3666, f. 10,213); Sproat to Powell (14 December 1878), enclosed with Sproat to Superintendent General (15 December 1878), Ottawa, LAC (RG 10, vol. 3672, f. 10,898); and Sproat to Superintendent General (20 December 1878), Ottawa, LAC (RG 10, vol. 3672, f. 10,898).

⁵⁷ Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989* (Vancouver: UBC Press, 1990) at 54.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ Sproat (26 July 1879), “Letter to SGIA about Indian meeting at Lytton”, *supra* note 31.

⁶¹ *Ibid.*

“brought [his] hand down on the table, and said the ‘Patlach must die’.”⁶² Nlha7káp̄mx Rule 10 banned the potlatch.

In a similar manner to his role in banning the potlatch, Sproat also recorded his role in creating the Nlha7káp̄mx Rules about clean houses and orderly villages. He told the Superintendent General that the heat was so great during some summer months that the Nlha7káp̄mx lived outside in mat houses through which the breezes could blow, and they took their house mats with them to distant berry and fishing grounds on their seasonal rounds. When they left for their seasonal round, “the villages at these seasons look deserted.” At the Lytton meeting, Sproat “laid great stress on having sightly and clean villages well chosen for health and aspect, and this is one of the first things the Indians will attend to.” Sproat even explained that Michel, the Head Chief, “without whom the Tribal chiefs do not at present like to act in this matter,” had received many applications from Nlha7káp̄mx community leaders over 200 miles of country to come and consult with them as to how to improve their existing villages and how to find better new village sites, in accordance with the Nlha7káp̄mx Rules.⁶³

Douglas Harris and Keith Carlson suggest that the Nlha7káp̄mx Rules indicate the extent to which the Nlha7káp̄mx were willing to go, in Carlson’s words, “to demonstrate that they could survive and even thrive in the new Western society.”⁶⁴ In a similar vein, Brett Christophers argues that in passing the Rules, the Nlha7káp̄mx were attempting to show the government “evidence of their civility” (their degree of “civilization”), and he sees the impact of Reverend Good’s teachings in the Rules.⁶⁵ However, my concern here is not why the Nlha7káp̄mx proposed and agreed to the Rules, but what Sproat’s role was, if any, in the content of the Rules. In my view, the Nlha7káp̄mx Rules embodied Sproat’s beliefs more than anyone’s, including the Nlha7káp̄mx’s, and it was not a coincidence that they did so. I take Keith Carlson’s point that that certain details of the Resolutions constituting the Nlha7káp̄mx organization were not Sproat’s: he expressed his concern over some of the seven constituting Resolutions, but his concern focused on details, such as how the Nlha7káp̄mx Council would be

⁶² Sproat (26 July 1879), “Letter to SGIA enclosing Rules & Regulations”, *supra* note 46.

⁶³ *Ibid.*

⁶⁴ Carlson, *The Power of Place*, *supra* note 22 at 250; D Harris, “The Nlha7káp̄mx Meeting”, *supra* note 49.

⁶⁵ Brett Christophers, *Positioning the Missionary: John Booth Good and the Confluence of Cultures in Nineteenth-Century British Columbia* (Vancouver: UBC Press, 1998) at 93, 149.

constituted and how many decision-makers should be on a decision-making panel.⁶⁶ And, although Douglas Harris may be correct that the Nlha7káp̄mx, in demonstrating their faith in the Queen and compliance with her wishes, were attempting to impose the rule of law upon Nlha7káp̄mx relations with settler society, those are not the aspects of the Rules that strike me the most. Instead, I see Rules which bore little relation to Indigenous practices or ways of life and that the Nlha7káp̄mx would never have devised themselves. The Nlha7káp̄mx created rules banning the potlatch, prohibiting the hunting of land mammals and birds for over half the year, banning fish weirs from being installed across the whole width of a stream, requiring houses to be kept neat and not dirty, and mandating fences to be maintained and not ugly. In the end, the Nlha7káp̄mx may have self-imposed these Rules, but I believe they did so because, in effect, they had no other realistic way to exercise some form of self-government that the settlers might recognize. The only type of Indigenous self-government acceptable to Sproat or possibly acceptable to the two governments was the one contemplated by s. 63 of the *Indian Act*.

As with most things related to Sproat, it is difficult to tell where the settler self-interest ended and the empathy for Indigenous people began. Cole Harris concludes, correctly I think, that Sproat supported the Nlha7káp̄mx motivation behind the Lytton meeting: “that, in rapidly changing circumstances, they themselves had to find some means of managing their own local affairs.”⁶⁷ He notes Sproat’s empathetic support for the Nlha7káp̄mx’s strong desire to establish their own schools. Yet Harris concludes that the Nlha7káp̄mx “were not bent on their own cultural reconstruction,” pointing out the difference between their school proposals and Indian residential schools that would be imposed upon them in a few years.⁶⁸ That much is true: there were fundamental and significant differences between the school proposals. However, the Nlha7káp̄mx proposal did incorporate mandatory attendance, and Sproat recommended that the school be under the “superior control” of Ottawa.⁶⁹ Moreover, given the content and context of the Rules, I cannot agree that the Nlha7káp̄mx Rules did not contemplate “cultural reconstruction.” They were *premised* on cultural reconstruction, albeit perhaps not to the degree

⁶⁶ Carlson, *The Power of Place*, *supra* note 22 at 248, 251-252

⁶⁷ C Harris, *Making Native Space*, *supra* note 1 at 158.

⁶⁸ *Ibid* at 159.

⁶⁹ Sproat (26 July 1879), “Letter to SGIA enclosing Rules & Regulations”, *supra* note 46; Sproat to Superintendent General (3 September 1879), Ottawa, LAC (RG 10, vol. 3698, f. 15,924).

that the governments would later impose, and with a certain amount of “municipal” control. More fundamentally, Sproat guided and even provided the content of that reconstruction, although he allowed that the Nlha7kápmx ought to fill in some of the details within the settler-established areas of jurisdiction set out in s. 63 of the *Indian Act*.

Sproat urged the Dominion to approve the Nlha7kápmx Rules for several reasons, the first of which was administrative economy.⁷⁰ Sproat felt the Dominion could save money on the cost of a white Indian agent by instead paying a small salary to the Nlha7kápmx head chief and to two constables. In fact, Sproat suggested that the government pay Michel as a “Departmental Interpreter assigned to special duty, namely, for the present to work up the Nekla-kap-a-muk organization,” thereby avoiding the precedent of paying a chief. Sproat urged the government to pay Michel to “work up” the Nlha7kápmx organization:

after a great effort such as these Nekla-kap-a-muks have made, it is natural for savage people to become listless. They need judicious spurring and guiding, and no one can better do that than their own elected Head Chief, who from having been for 3 years interpreter to the Reserve Commission, knows everything that is required better than any white man who could be selected. He will be invaluable at this time from his knowledge, energy, judgment and linguistic attainments-- a cheap Indian sub agent in fact with special qualifications, including that of interpreting both within and without the Nekla-kap-a-muk district at any time when required.⁷¹

Sproat asked the Superintendent General to authorize Michel’s employment immediately, so that Michel could tackle “the enormous mass of work waiting to be done among these Indians over 200 miles of country in connection with the organisation of the people before next winter,” in pursuit of “the resolutions of the Nekla-kap-a-muk Council, and considering the duties of the Tribal Committees of Council.”⁷² As if to bolster his case, Sproat also sent the Superintendent General a portrait of Michel, dressed in a suit and tie.⁷³

In light of the proposed Nlha7kápmx organization and Michel’s new role, Sproat felt that the Dominion should consult the Nlha7kápmx about the proposed Indian agent for the interior, a

⁷⁰ All information and quotations from this footnote to the next are from Sproat to Superintendent General (26 July 1879), Ottawa, LAC (RG 10, vol. 3669, f. 10,691, reel C-10117) [Sproat (26 July 1879), “Letter ‘A’ to SGIA”].

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ Sproat forgot to include Michel’s portrait in his July 26 letter and sent it subsequently: Sproat to Superintendent General (12 August 1879), Ottawa, LAC (RG 10, vol. 3669, f. 10,691).

Mr. Ross.⁷⁴ Sproat recommended that Mr. Ross be appointed though not designated to act in respect of any particular district for the moment; he should work where he was needed. Sproat based this recommendation on “the movement of the Nekla.kap.a.muks in the direction of managing their own affairs, with the probable effect of their action on other people, such as the Shuswaps (Kamloops) and Okanagan,” as well as possibly, in the future, in the New Westminster District. Though Ross’s first focus would be “the organization of the Nekla.kap.a.muks and aid to the many important matters engaging their attention,” Sproat predicted “the discovery that the Indians can do so much for themselves upon due suggestion and supervision,” thereby reducing the costs of Indian administration in the province.

These passages raise the second reason Sproat thought the Dominion should support the Nlha7kápmx organization: it would foster self-reliance amongst the Nlha7kápmx and possibly have a good, corresponding effect on their Indigenous neighbours. The Nlha7kápmx organization, he felt, presented the “agreeable spectacle” of “the Indians meeting the Government more than halfway in all matters of administration,” and he believed that “[t]he value and effect of such an example upon all the Indians in the province would probably be great.”⁷⁵ Sproat foresaw the day when the Secwépemc, Syilx, and Stó:lo (whom Sproat called the “Flat Heads”) also would organize themselves, but he acknowledged that it would be “some time” before they did so. The Secwépemc and Syilx were

discontented on account of open questions caused by the action of the Provincial Government, and I have been told of very rough speeches being made by chiefs whom I left in good humour two years ago. But with an agent such as Mr. Ross judiciously doing what is possible among them, and with the Nekla-kap-a-muks stepping forward to form a municipality, the Okanagans and Shuswaps may get into a better frame of mind, that is to say, if the Provl. Govt realises facts.

By and by, even the Flat Heads of the Lower Fraser, broken as they are into ridiculously small sects by tribal divisions, and by church divisions, and hurt though they have been by governmental lavishness in presents, may pick up spirit, and do something for themselves.

⁷⁴ All information and quotations in this paragraph are from Sproat to Superintendent General (26 July 1879), Vancouver, INAC (Prov. Coll, vol. 2: Letterbook #3, 333-334) [Sproat (26 July 1879), “Letter to SGIA regarding Indian Agent”].

⁷⁵ Sproat (26 July 1879), “Letter ‘A’ to SGIA”, *supra* note 70.

The Nekla-kap-a-muk Head chief, Michel, of whom I write, speaks the Flat Head language familiarly and is influential among the Flat Heads, but for the present he would have abundance of work among the Nekla-kap-a-muks.⁷⁶

Despite Sproat's hesitation about the Stó:lo's readiness to organize themselves, he wrote again a few days later to report that on his way back to the coast from the Lytton meeting, several Stó:lo chiefs had visited him to say that "all the tribes, between Yale and the Mouth of the Fraser, Cowichan district numbering about 1900 Indians, wish to do what the Nekla-kap-a-muks -- in the upper Country have done."⁷⁷ In reply, Sproat told them that "they must not be in too great a hurry," but, if "they showed good sense and businesslike views, I might write to Ottawa on the subject of their wishes. At present I would not do so." "[T]o show the capabilities of the Indian people," however, Sproat explained how, at the end of his interview with a Stó:lo group, two women had approached him to settle an old land dispute between their families. Sproat told them that, "if they were organised, the Chief and a few Councillors could form a court and settle the question," as "[t]he Indians knew all the outs and ins of the question themselves, and they knew the broad principles of right and wrong just as well as white men did." The next day, the chief told Sproat, in fact, that he had "held a Court and settled the question." On the whole, Sproat described "the organising of the tribes, with interest, as it gives a pleasing view of the capabilities of the people, and as I think if judiciously carried out, it would tend both to the efficient and economical conduct of Indian business in this Province, under the direction of the Department."

In the middle of August, Sproat appears to have unilaterally taken steps to implement the scheme he recommended to the Dominion in respect of Michel. Just three weeks after recommending to the Superintendent General that the Dominion pay Michel \$60 a month as a Departmental Interpreter assigned to special duty to manage the Nlha7kápmx organization, but without having heard back from the Superintendent General, Sproat asked McIntyre, a Lytton official, to pay Michel \$60 a month on Sproat's behalf. Sproat explained his request in this way:

⁷⁶ *Ibid.*

⁷⁷ All quotations and information in this paragraph are from Sproat to Superintendent General (29 July 1879), Ottawa, LAC (RG 10, vol. 3696, f. 15,314). Keith Carlson discusses this letter and the proposed lower Fraser Stó:lo organization in Carlson, *The Power of Place*, *supra* note 22 at 247-248 and 253-254.

Michel is not any longer Interpreter to the Commission as I am going where he does not know the language, but he has Government work to do for which he is to get \$60 a month until otherwise ordered. But this is in full. He has to pay his own board. His time will count from the 20 August.

I will write to you from Victoria as to the manner of paying him, but meantime whatever you pay him not exceeding the above I will repay to you.

He has about \$100 due to him for balance of wages which I will probably remit for him through you when we have adjusted matters which we cannot well do travelling hurriedly.⁷⁸

On August 19, at Blenkinsop's request, Michel signed a document agreeing to look after the Dominion government's four horses "if I am permitted to use them in my work in helping the organization of the Nekla.kap.a.muks."⁷⁹ Sproat continued to advance Michel money, sending \$120 to him through Blenkinsop in December, before he had received the Superintendent General's decision on the proposed Nlha7kápmx Rules. Blenkinsop's letter to Michel said only this: "Mr. Sproat has desired me to send you a cheque for \$120 which you will be kind enough to send me a receipt for. Hoping you are well and everything prosperous with the Indians."⁸⁰

At the beginning of September, probably still mostly ignorant of a growing settler backlash against the outcomes of the Nlha7kápmx meeting, Sproat continued to write to the Superintendent General, repeatedly endorsing the Nlha7kápmx proposals, particularly the proposed school, an urgent and important matter for the Nlha7kápmx.⁸¹ After outlining some organizational principles for the school, he emphasized that he was "anxious only to preserve the principle of Indian Management in school as in all other matters." He also advised the Superintendent General that he had explained to the Nlha7kápmx the "little laws" they could create under the *Indian Act*:

The white men have "little laws" for the government of their towns and municipalities, which of course must accord with the general law of the country, and

⁷⁸ Sproat to McIntyre (19 August 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 392). Sproat, in fact, did remit \$100 to Blenkinsop, who remitted it to McIntyre, who was asked to give it to Michel: Blenkinsop to McIntyre (11 September 1879), and Blenkinsop to Michel (11 September 1879), Ottawa, LAC (RG 10, vol. 1274).

⁷⁹ Michel to Blenkinsop (19 August 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 393).

⁸⁰ Blenkinsop to McIntyre (2 December 1879), and Blenkinsop to Michel (2 December 1879), Ottawa, LAC (RG 10, vol. 1274).

⁸¹ Sproat to Superintendent General (3 September 1879), *supra* note 69.

the Indians may have, under the “Indian Act” similar “little laws” for tribes or groups, without any detachment of allegiance or obedience to the general law for both whites and Indians.

The reason of this is that, neither the Queen nor any of her commissioners can know all the Indians ways: they themselves know their own needs and affairs, and they can know what “little laws” are required and how they can be carried out, and they can change them, if not found good.

On these principles, shortly stated, the Nekla-kap-a-muks proceeded to organise themselves under the “Indian Act.” Their great wish was for schools, but the extent of their decisions on other matters was remarkable.⁸²

By the end of the first week in September 1879, Sproat heard of settler complaints about the Nlha7kápmx meeting. On September 5, he sent the Superintendent General a copy of a letter to the editor in the *Daily Standard* newspaper complaining about the meeting, along with his extensive comments on the letter. He explained that the writer was “one of a class of ‘Old Residents’ here, whose notion of Indian management is terrorism, and who, after using efforts to prevent the Indians getting pieces of land, seems now to have his race-prejudice stirred to its depths by the simple proposal of the Indians to take steps for educating their children and doing other things connected with the material and social wellbeing of the people.”⁸³ The letter asserted that Sir James Douglas had seen “our safety in the fact that no union existed among them, that the chiefs were envious and jealous of each other, and that there was no “Head Chief” to any nationality of the Province” – in other words, that Governor Douglas had seen Indigenous confederation as a threat to settler safety. Sproat himself had strongly advocated this position in his 1876 memorandum to the Minister of the Interior and during the 1877 Joint Indian Reserve Commission (JIRC) circuit. However, Sproat now expressed it “a libel on Sir J Douglas to say that he fostered disunion for safety. I know from his own lips to the contrary. He saw safety in equity.”⁸⁴ Although Sproat had supported the “anti-confederation” policy previously, he did not see the Nlha7kápmx meeting and proposed Rules as violating this policy. Rather, he saw the

⁸² *Ibid.*

⁸³ Sproat to Superintendent General (5 September 1879), Ottawa, LAC (RG 10, vol. 3669, f. 10,691).

⁸⁴ Sproat, comments on “The Meeting of Indian Tribes at Lytton” (5 September 1878), Ottawa, LAC (RG 10, vol. 3669, f. 10,691). By the middle of September, Sproat could not resist responding in the newspaper to the “Old Resident’s” letter and to another from De Cosmos: Sproat to Superintendent General (14 September 1879), Ottawa, LAC (RG 10, vol. 3698, f. 16,086). Sproat’s comments about “equity” illuminate other aspects of his thoughts: in particular, the role that liberalism’s ideals played in his beliefs. I investigate this role further in Chapter 8.

meeting as representing Indigenous “progress” towards becoming more like white men. For Sproat, this movement represented an acceptable step towards “civilization,” particularly – and perhaps only – because he believed the *Indian Act* sanctioned it.

In response to the assertion in the letter that “[a]s soon as the Reserve was made, in accordance with the Indians’ wish, he [former Governor James Douglas] then completed the requisite arrangements for supplanting the law of the natives with that of the whites, and there was peace and good feeling among all concerned,” Sproat argued that, “[f]rom first to last Sir James said ‘one and the same law for whites and Indians,’ but this principle is not infringed by the framing of municipal bylaws under the Indian Act.”⁸⁵ This is the first record of Sproat likening the Nlha7káp̄mx Rules to “municipal bylaws,” though in one of his July 26 letters, he had referred to “the Nekla-kap-a-muks stepping forward to form a municipality”⁸⁶ and in another to the Councillors as “municipal officers”⁸⁷. The Superintendent General would reject the Nlha7káp̄mx Rules in a few months, and Sproat would resign in a few more, but the idea of an Indigenous group acting as if it were a municipality had already taken hold in Ottawa and would not only endure but blossom after Sproat was gone.⁸⁸

In October, Reverend Good defended both the Nlha7káp̄mx meeting and Sproat in *The Daily British Colonist* newspaper in an article Sproat later sent to the Superintendent General.⁸⁹ Good asserted that, “[t]he attack... upon Mr. Sproat is entirely unwarranted,” based either on “false intelligence or wrong understanding.”⁹⁰ Reverend Good wrote that, “Mr. Sproat had no more to do with the election of Meshell [Michel] as head chief than the man in the moon. He never attempted any combination of tribes, nor has there been, to my knowledge, the faintest

⁸⁵ Sproat, comments on “The Meeting of Indian Tribes at Lytton” (5 September 1878), *supra* note 84; underlining by Sproat.

⁸⁶ Sproat (26 July 1879), “Letter ‘A’ to SGIA”, *supra* note 70.

⁸⁷ Sproat (26 July 1879), “Letter to SGIA enclosing Rules & Regulations”, *supra* note 46.

⁸⁸ In this regard, see my discussion in Chapter 8 of *The Indian Advancement Act, 1884*, SC 1884, c 28, the full name of which was *An Act for conferring certain privileges on the more advanced Bands of the Indians of Canada, with the view of training them for the exercise of municipal power*. This Act took the matters within s. 63 of the *Indian Act* and provided specific statutory authority for the elected council “to make by-laws, rules and regulations” concerning the listed topics.

⁸⁹ Sproat to Superintendent General (11 October 1879), Ottawa, LAC (RG 10, vol. 1274).

⁹⁰ All information and quotations in this paragraph are from Reverend Good, “The Indian Organization and the Press—A Challenge”, *The Daily British Colonist* (12 October 1879) 3, online <www.britishcolonist.ca>, accessed 28 July 2017.

conception of initiating such movements. If anybody is to blame for what was done at Lytton the other day I am that man.” Good then referred to a Dominion “blue book for the better government of the Indians throughout the entire Dominion,” which he said “provided that any nation, through their chiefs in council and with one chosen as Head over all, are at liberty, after a national or tribal population to form themselves into a kind of municipal organization for the carrying out of certain defined objects which are duly tabulated in the blue book aforesaid.” The only document that fits this description is the *Indian Act* itself, passed in 1876, and, in particular, s. 63. Good reported that his friend, Lenihan, had sent him the “book,” and that he had “announced to them [the “Thompson tribe”] its gracious provisions and urgently entreated them to be the first in the race, and to show to the neighboring tribes a good example of alacrity in availing themselves of all that was being done by their good mother the Queen and her representatives for their advancement and elevation in the scale of civilized beings.” Good further wrote that, in response, the Nlha7káp̓mx had agreed to elect a head chief and had chosen Michel, the grandson of their oldest chief, Pahlak. The Nlha7káp̓mx had then agreed to meet at “their central tribal station this year to ask to be invested with these municipal privileges, just as [the village of] Yale met the other day and asked to form itself into a corporation in accordance with the statute law of the colonies.”

At the end of October, still not having heard back from the Superintendent General about the proposed Nlha7káp̓mx Rules, Sproat wrote to the Superintendent to decry the lack of governmental action against the potlatch.⁹¹ He observed that the potlatch “habit” was “based on the common human desire for distinction which appears to be as strong among uncivilised as among civilised people,” and that the Nlha7káp̓mx wished to move from the first category to the second. Sproat characterized their resolution against the potlatch at the Lytton meeting as, “[t]he most hopeful Indian fact in the history of the Province... Its influence, if carried out, will be beneficial and far-reaching, by the example it will afford.” Sproat believed that the abolition of the potlatch and the Nlha7káp̓mx organization would combine to elevate the government-approved chiefs over the tribal chiefs by opening up a “career” to Indigenous people. The men who filled the government-sanctioned roles,

⁹¹ All information and quotations from this footnote to the next one are from Sproat to Superintendent General (27 October 1879), Ottawa, LAC (RG 10, f. 3669, f. 10,691).

having been approved by the Queen, will occupy a higher and more coveted position than that which satisfies the ambition of a man who attempts to pass himself off as a chief in virtue of Patlach distributions. The one will quietly and naturally kill off the other as the rays of the sun kills a small coal fire. Compared with 'Queen's chiefs', the Patlach chief, (under a system condemned moreover by the Queen's officer) would soon be no where.⁹²

In this statement, one can see Sproat's "civilizational perspective": although he supported the Nlha7kápmx organization, it was primarily for the distance it would carry the Nlha7kápmx away from the tribal chiefs and traditional practices upon which the Queen frowned and towards a chief and practices of which the Queen approved.⁹³ Sproat closed by giving the Superintendent General, once again, his more general views on the importance of the government's condoning the "organization for municipal purposes under the Indian Act" of any Indigenous communities who were "fit": "I do not say that all or comparatively many of the tribes in the Interior or coast are fit at present for organisation for municipal purposes under the Indian Act, but those who are fit should have that privilege granted to them in view of the great advantages likely to follow, of which in speaking of the effect upon the 'Patlach', I have mentioned only one."⁹⁴

Sproat had left the south coast at the end of August to allot reserves on the north coast of Vancouver Island, adjacent islands, and mainland.⁹⁵ He would not return to the south coast until the third week of January.⁹⁶ While Sproat was away, settler reaction against the Nlha7kápmx organization grew into a firestorm of protest.⁹⁷ Superintendent Lenihan sent one of the first angry letters to the Deputy Superintendent General, commenting on "the ulterior objects" for

⁹² *Ibid.*

⁹³ The term, "civilisational perspective," is Peter Mandler's, in Peter Mandler, "'Race' and 'Nation' in Mid-Victorian Thought," in Stefan Collini et al., eds., *History, Religion, and Culture: British Intellectual History, 1750-1950* (Cambridge: Cambridge University Press, 2000) 224-44 at 226. The "civilisational perspective," according to Mandler, emerged in English political thought after 1815 and presumed "a 'natural' progression from primitive to advanced states." It was generated by "intertwining a more powerful moral component with the material sequence of Scottish conjectural history."

⁹⁴ Sproat to Superintendent General (27 October 1879), *supra* note 91.

⁹⁵ See Sproat to McIntyre, "On board Schooner "Thornton" off Nanaimo BC" (19 August 1879), *supra* note 78.

⁹⁶ See Sproat to Deputy Superintendent General, "telegram sent from Nanaimo" (18 January 1880), Ottawa, LAC (RG 10, vol. 1274).

⁹⁷ Keith Carlson discusses some of this backlash in Carlson, *The Power of Place*, *supra* note 22 at 253-254.

which he believed the “so-called ‘great meeting’” had been convened.⁹⁸ Lenihan based his primary objection firmly on an anti-Indigenous-confederation policy, a theme embodied in each and every protest letter. He wrote:

Hitherto this great "nation" from the absence of any central organization such as that now proposed, have been powerless to concoct mischiefs or intrigue against the Government or people. Should they obtain the power for which they have asked other Nations will immediately demand similar recognition and power, and national jealousies would soon spring up between the various nations, which may endanger the peace of the country, and call for the presence of a force, such as the inhabitants of Kamloops were clamouring for some two years ago to maintain order.

...

Should this new organization be recognized, I am of the opinion it will be the small end of the wedge, for the promotion of schemes and intrigue, which will be productive of little other than expense and trouble to the Department, and the creation of jealousies and contentions amongst the Indians throughout the country.⁹⁹

Three weeks later, the Deputy Superintendent General wrote a long memorandum to the Superintendent General about the Nlha7kápmx meeting.¹⁰⁰ The Deputy Superintendent General also firmly opposed the Nlha7kápmx proposals, again based on opposition to an Indigenous-confederation policy. He emphasized that “the several Bands, comprising the Nek-la-kap-a-muk Nation, which had hitherto been divided, and were regarded as separate communities, have united and have elected one head Chief and 13 Councillors to represent them.” The Deputy insisted that Sproat had not told the Department about any such intention when he had asked permission to attend the meeting and asserted:

This amalgamation of a number of Bands of semi-civilized Indians in a country but sparsely settled with white people, is[,] it is submitted[,] a dangerous principle to initiate or countenance.

Whilst these Bands are in a disintegrated condition they are comparatively harmless, but by allowing them to coalesce and giving them common united interests under one head, with a representative body of Councillors, they become a formidable element,

⁹⁸ Lenihan to Deputy Superintendent General (28 August 1879), Ottawa, LAC (RG 10, vol. 3669, f. 10,691, reel C-10117). Sproat had sent Lenihan a copy of the Nlha7kápmx Resolutions and Rules on August 14: Sproat to Lenihan (14 August 1879), Vancouver, INAC (Prov. Coll., vol. 2: Letterbook #3, 375).

⁹⁹ Lenihan to Deputy Superintendent General (28 August 1879), *supra* note 98.

¹⁰⁰ All information and quotations from this footnote to the next are from Vankoughnet to Macdonald (22 September 1879), Ottawa, LAC (RG 10, vol. 3669, f. 10,691, reel C-10117).

which may well be regarded with serious apprehension by the white inhabitants of the country. The precedent therefore would be a dangerous one to establish. The Indians of British Columbia belong to different nations which again are divided into small bands having separate Reserves and not identical interests - and are thus incapable while so divided, of endangering the peace of the country to any great extent. But should these Bands follow the example set by the Neckla-kap-a-muk Indians by amalgamating, we should have in British Columbia instead of Bands of Indians weak in numbers and therefore easily governed as is now the case several formidable communities each capable of controlling by its number the section of country which it inhabits or frequents.¹⁰¹

As a result of his concern about what the Indigenous communities' amalgamation meant for white settlers and their "governance" of Indigenous people, the Deputy recommended to the Superintendent General that "Mr. Sproat should be informed that the Government cannot approve of the proposed amalgamation of the "Nekla-kap-a-muk nation" and that Sproat and the British Columbia Indian Superintendents should be instructed to discountenance any similar movement on the part of other Indian Tribes in that Province."¹⁰²

On September 25, a group of prominent British Columbia settlers associated with Indian affairs signed a letter to the Premier & Attorney General George Walkem, again strongly protesting the Nlha7kápmx meeting.¹⁰³ Both of Sproat's former fellow commissioners, Anderson and McKinlay, signed the letter. These men strenuously opposed Indigenous confederation: the signatories believed that "the future peace of the Province is being seriously jeopardised in this proposed combination of semi-civilized Natives." The letter to Walkem also asserted that Sproat had called the Nlha7kápmx meeting "with a view of federating or combining them under one head Chief." In perhaps the bluntest exposition of settler views about Indigenous confederation and, somewhat paradoxically, support for (unorganized) hereditary chiefs, the signatories wrote:

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ All information and quotations from this footnote to the next are from Anderson, Duncan, Finlayson, Macdonald, McKay, McKinlay, Tolmie, C.A. Vernon, and Prevost to Walkem (25 September 1879), Victoria, B.C. Archives (GR-429, box 1, file 8, reel B-9318) [Prominent Settlers' Letter (25 September 1879)]. This letter (the original) is written in the hand of Henry Moffatt, Superintendent Powell's secretary. See, for example, Moffatt to Vernon (11 September 1876) and Moffatt to Robson (27 September 1876), Ottawa, LAC (RG 10, vol. 1273). See also letters from Powell in the same hand: Powell to Superintendent General (29 September 1879), Ottawa, LAC (RG 10, vol. 3669, f. 10,691, reel C-10117). Contrast Powell's own handwriting at Powell to Superintendent General, "Private" (28 October 1879), Ottawa, LAC (RG 10, vol. 3679, f. 12,068).

In the first place, we regard a scheme to combine a number of half civilized natives - scattered over a large extent of territory sparsely inhabited by whites, without any controlling influence, exceedingly dangerous to the peace of the Province, especially just at a time when their ancient privileges are being somewhat curtailed, and while they are in a state of transition and hence unable to appreciate or properly utilize the advantages of civilized Government.

...

We desire especially to bring to your notice, that the past safety and security which we have enjoyed in the Province is owing to the fact that the large Indian population of the Country has been divided into small bands without a head Chief possessing general authority or influence, and without the ability to unite and constitute themselves a powerful and formidable force.

...

That at the present time these hereditary Chiefs have little authority or influence for good, and in our opinion a combination of them sustained by official authority as proposed by Mr. Sproat is a grave mistake which cannot be too strongly deprecated or too speedily rectified. On the other hand, should the action of the Commissioner be sustained by the Government of the Dominion it is certain to be attended with enormous and constant expense, with serious trouble, and probably bloodshed, arising from the incapacity of uncivilized Indians to enforce laws amongst themselves, without constant appeals to white authority.¹⁰⁴

The signatories concluded by asking the province to “adopt immediate measures to prevent the future action of the reserve commissioner until some more satisfactory arrangement may be advised by the authorities at ‘Ottawa,’” and to ask the Dominion government to disallow the Nlha7kápmx rules and regulations.¹⁰⁵

The following day, on September 26, Walkem wrote to Powell, enclosing a copy of the September 25 letter that he described as “strongly protesting against the Indian Commissioner being permitted to longer continue his present and past Indian policy.”¹⁰⁶ Powell immediately sent an urgent telegram to the Superintendent General: “[p]lease delay confirmation Sproat's Indian meeting [-] strong protest presented [and] mailed.”¹⁰⁷ Next, in a cover letter to the Superintendent General enclosing the settlers’ letter and Walkem’s letter, Powell penned his own

¹⁰⁴ Prominent Settlers’ Letter (25 September 1879), *supra* note 103.

¹⁰⁵ *Ibid.*

¹⁰⁶ Walkem to Powell (26 September 1879), Ottawa, LAC (RG 10, vol. 3669, f. 10,691, reel C-10117).

¹⁰⁷ Powell telegram to Superintendent General (26 September 1879), Ottawa, LAC (RG 10, vol. 3669, f. 10,691, reel C-10117).

vehement condemnation of Sproat's actions in relation to the Nlha7kápmx meeting, again explicitly opposing Indigenous confederation.¹⁰⁸ He asserted that Sproat's "scheme" was such "a departure from our long-established policy in treating with Indians" that it should not be recognized.¹⁰⁹ He also voiced his concern for the white settlers in the Nlha7kápmx area, suggesting that the government should not endorse any kind of confederation "until necessary arrangements are made to watch and guard their proceedings." Powell foresaw trouble with the Nlha7kápmx, "some powerful and comparatively populous tribes over whom the Commissioner has caused to be elected, as head Chief, a most disreputable person who for years, to my personal knowledge, has been under police surveillance in the city." He asserted that "designing white men or intractable Natives" would easily influence "such a worthless Chief," causing trouble for both settlers and the governments. Finally, Powell launched an attack on Sproat personally, based on his perception that Sproat was trying to undermine him and obtain his job. Powell closed by telling the Superintendent General that

If Mr. Sproat possesses, as he has stated, the authority of the department for his late proceedings, I feel quite certain that the information which he must previously have supplied to obtain that authority is wrong, and cannot be supported by reliable or impartial testimony. I therefore, appreciating the importance of the subject, feel compelled to express myself honestly in the matter, and venture to hope if there yet remains any doubt as to the questionable conduct of the commissioner, that further steps may be taken to obtain the amplest confirmation of my representations.¹¹⁰

A few weeks later, Powell wrote another letter to the Superintendent General (Sir John A. Macdonald, who was also the Prime Minister) lambasting Sproat for interfering in the administration of Indian affairs generally. Powell tracked Sproat's misdeeds back to a December 15, 1878 letter Sproat wrote to the Superintendent General and questioned Sproat's truthfulness to the Superintendent General, his honesty with Powell, and his work ethic.¹¹¹ Senator C.J.

¹⁰⁸ Powell to Superintendent General (29 September 1879), Ottawa, LAC (RG 10, vol. 3669, f. 10,691, reel C-10117).

¹⁰⁹ "Treating" appears to have been used as a synonym for "making an agreement with" as well as the activity of negotiating a treaty.

¹¹⁰ Powell to Superintendent General (29 September 1879), *supra* note 108.

¹¹¹ Powell to Superintendent General (9 October 1879), Ottawa, LAC (RG 10, vol. 3679, f. 12,068); Sproat to Superintendent General (15 December 1878), *supra* note 56.

Cornwall, a large landowner in the Thompson River valley, likewise sent a letter to Macdonald, warning him

to beware of Mr. G.M. Sproat the gentleman in charge of the Indian Reserve Commission here. He is clever and a very plausible writer but he is invariably working in an underhanded way to serve his own ends, and is in all particulars unreliable. He is particularly unfair to his subordinates, and at the present moment especially is working to oust the Indian Commissioner Col. Powell from his post that he himself may step into his shoes.¹¹²

All of the correspondence – from the settlers, Walkem, Powell, and Cornwall – share several things in common: they oppose the Nlha7kápmx organization and Sproat’s involvement in it, and they suggest that Sproat was attempting to obtain Powell’s job for himself. It is hard not to see Powell’s influence in each letter.

From the northeast coast of Vancouver Island in early November, Sproat caught wind of the growing complaints when a missionary, recently in Victoria, told him of “some talk in the circles in which he moved, about ‘Mr Sproat and the Confederation of Indian tribes on the Mainland’.”¹¹³ Sproat immediately declared to the Superintendent General that the allegation was “so broad, and at the same time so unfounded and ludicrous, that I will venture to make a few observations, in case it should come to your ears.” This was one of the most significant letters of Sproat’s tenure, effectively summarizing his view of his work as reserve commissioner and, more particularly, his view of the meaning and importance of the Nlha7kápmx meeting. First, as to his role in the alleged “confederation,” Sproat told the Superintendent General that,

The only ‘confederation’ of Indians which I ever heard of in this Province was the concerted action of the Okanagan and Shuswap Indians, two or three years ago, to enforce what they considered to be their land rights. An outbreak by these Indians was, in my judgment, then imminent. It was prevented by the work of the Reserve Commission. Had it occurred, the Province would have been ruined for several generations.

¹¹² Cornwall to Macdonald (26 October 1879), Ottawa, LAC (MG 26 A (Sir John A. Macdonald Papers), vol. 361).

¹¹³ All information and quotations from this footnote to the next are from Sproat to Superintendent General (10 November 1879), Ottawa, LAC (RG 10, vol. 3669, f. 10,691).

He concluded, on this point, that “[i]nstead therefore of attempting to ‘confederate’ Indian tribes (a large phrase that fills the ears of the ignorant and timid), it has been my lot to be an instrument in the breaking up of the only ‘Confederation’ of Indians that ever existed in this country.”

Next, Sproat addressed the complaints that the “confederation” had arisen as a result of the Nlha7káp̓mx meeting, pointing out that their organization was anything but a “confederation,” because the Nlha7káp̓mx

are as distinct a group as the most exclusive Highland clan in old days in Scotland. They have their own history and language, their own traditions and ways, their own places of resort. They have their own high families. Not only has no attempt been made to ‘confederate’ the Nekla-kap-a-muks with the Okanagans, Shuswaps, or any other Indian groups, but it would be entirely beyond the power of the Dominion and Provincial Governments, combined, to effect that object, if they tried. The people would not be ‘confederated’.

Sproat told the Superintendent General that the Nlha7káp̓mx’s “humble and sincere desire” was only “to show the government that the Nekla-kap-a-muks will be behind none in following the ‘Queen's mind’.”

Sproat then wrote of the degree of “race-prejudice” in the province and how the atmosphere, “thick with prejudice and injustice,” prevented Indigenous people from “making their most reasonable views and wishes known.” Because of this, Sproat said, he was bound to speak for Indigenous people, whom he knew thoroughly and who, “though Indians, are my personal friends.” He also pleaded that the Indigenous people of British Columbia had no other representative but the Superintendent General, and he urged the Superintendent General to believe that, “[i]nstead of the action of the Nekla-kap-a-muks being a source of danger to the province, it is a hopeful sign, and a security both to the provincial white population and the Government.”

Finally, Sproat disclosed one of the more significant insights into his thinking about Indian title, its role in his reserve-allotment process, and its relationship to the Nlha7káp̓mx meeting:

One of my principal duties, though least understood by the public, is to effect a compromise in regard to the large question of the Indian title to the soil, which, under easily conceivable circumstances, the Dominion Government, following their own policy, might insist that the Province should extinguish. The action of the Nekla-kap-a-muks is a distinct, formal sign that they as a people have accepted the position, and

wish, with the help and guidance of the Government, to adopt the new fashion of things, after a reasonable adjustment of their land questions has been effected.

...

These Indians do not ask for payment for their title to the soil, nor do they seek annuities nor presents. They ask for only a reasonable quantity of land and water. They wish to see the white people live among them and thrive. They desire that 'the great chief at Ottawa' should have some means of knowing their minds and their action, for, as they mean their acts to be good, they wish him to know the fact, from time to time. They have 800 to 900 children of school age among them. This is the fact on which my mind is fixed, for, with the good feeling on the part of the grown men, what might not the coming generation of these Indians achieve in the way of satisfactory progress?

This extraordinary passage exemplifies Sproat's beliefs about Indian title and the "humanitarian civilizing" of Indigenous peoples. Sproat knew that even though the recognition of Indian title was an integral element of Dominion policy, the Dominion was not insisting the province recognize or extinguish Indian title, on the condition that Indigenous people were satisfied with their reserves. Sproat largely shared the Dominion's mindset: Indian title was a claim the Dominion could assert, but he was more concerned with establishing reserve land for Indigenous people. Further, this perspective reflected his instructions from the two governments. In fact, Sproat understood the Nlha7kápmx meeting and proposed organization as evidence that they accepted not only the reserves but also the Dominion's position on Indian title. This belief is not something that any other "Sproat scholars" or British Columbian legal historians have suggested before: that, at least for the Nlha7kápmx at this time, the allotment of reserves satisfied their claims to land on any basis, including Indian title, or so Sproat believed.

Moreover, Sproat believed the proposed organization to indicate the Nlha7kápmx's willingness "to adopt the new fashion of things," which, for both Sproat and the Nlha7kápmx, meant managing their own "municipal" affairs under the *Indian Act*. In fact, as Sproat said elsewhere in the letter, the Nlha7kápmx had shown a "laudable desire" to "train themselves for citizenship in a manner approved by the Canadian Parliament." In urging the Superintendent General to accept the proposed Nlha7kápmx organization and to view it not as a confederation but, rather, as a distinct sign of "progress" leading to "municipal duties," Sproat urged:

The people are what they have been except as to their change of feeling. They always have been a distinct people, and have had their meetings and 'talks', and their chiefs and headchiefs, though the settlers living among them do not seem to have known

much about these facts. Their proposed organisation for school and other purposes, creates no new bonds; it merely brings them nearer to the Government in some respects, and tends to advance their remarkable capacity for managing their affairs.

It is obvious to commonsense that the practice of municipal duties, by fostering individual character and independence, and directing the energies of the ambitious Indian into channels approved by the Government, will have the effect of loosening and weakening those old tribal bonds and relations in which some men see danger who would govern by terrorism and divisions instead of on broad principles of equity. What the Nekla-kap-a-muks would not do on the solicitation of the Okanagans and Shuswaps several years, ago, they are ten times less likely to do now.

An almost improbable thing will now, I hope, be placed by their municipal organisation, outside the category of possibilities.¹¹⁴

The same day as Sproat wrote this long letter to the Superintendent General, he also wrote to Powell – unaware, of course, of Powell’s many recent letters to the Superintendent General complaining about Sproat.¹¹⁵ Sproat may or may not have known, as well, that Powell’s father was a friend and old colleague of Sir John A. Macdonald’s; that on Powell’s arrival in the Colony of Vancouver Island in 1862, he had carried a testimonial from Macdonald; that in 1871, Macdonald had offered Powell, on a visit to Ottawa, the office of the first Lieutenant Governor of the province; that on Powell’s turning down the offer, Macdonald had offered him instead a seat in the Dominion Senate that Powell also turned down; and that in 1872, Macdonald had offered and then appointed Powell to his position as the first Superintendent of Indian Affairs in the province.¹¹⁶ By 1879, Powell was technically the Superintendent of the Coast Superintendency and Lenihan the Superintendent of the Fraser Superintendency, though Powell was the *de facto* head of Indian affairs in the province and would, within a few weeks, be re-appointed officially as the head.

In his letter to Powell, Sproat addressed what he saw as the need for the better administration of Indian affairs on the coast and said that “arrangements are not suitable to the

¹¹⁴ *Ibid.*

¹¹⁵ Sproat to Powell (11 November 1879), Ottawa, LAC (RG 10, vol. 3699, f. 16,665).

¹¹⁶ B. A. McKelvie, “Lieutenant-Colonial Israel Wood Powell, M.D., C.M.” (1947) 1:11 BC Hist Quar 33 at 34, 48-49. Despite Macdonald’s apparent support of Powell, Robin Fisher quotes a passage in a 30 October 1872 letter from Macdonald to Trutch opining that Powell “ought to have known more about the Indians,” and describes Powell’s appointment as having been “foisted on John A. Macdonald by pressure from the British Columbia members of Parliament”: Robin Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890*, 2nd ed. (Vancouver: UBC Press, 1992) at 180 [Fisher, *Contact and Conflict*].

circumstances” in Powell’s Superintendency. He assured Powell that he made this statement “without unkind criticism,” but that since he had formed this opinion – and, indeed had found that “the condition of so many Indians within easy reach of Victoria and in the heart of the Coast Superintendency should be in the unsatisfactory condition in which they are, and which is worse than any group of Indians which came under my examination in the interior of the province” – he thought it “the kindest and frankest way to mention it to you, so that you may, if you think fit, put the Superintendent General in possession of any contrary or other views which you may yourself have formed.”¹¹⁷ Sproat then listed all of the deficiencies he perceived in Powell’s administration of Indian affairs in his own Superintendency. Given Powell’s sustained and vociferous reaction to Sproat’s involvement in the Nlha7káp̓mx meeting, one can imagine how well Powell received Sproat’s criticisms.

Just a few days later, in Ottawa, Superintendent General Macdonald wrote on the Deputy Superintendent General’s September 22 memo that, in respect of the Nlha7káp̓mx meeting and Rules, “Mr. Sproat should be informed that this amalgamation is not favourably looked upon by the Supt. Genl & that Mr. Sproat should discourage the same”¹¹⁸ – almost exactly what the Deputy Superintendent General had recommended, based on his opposition to any kind of Indigenous confederation. The Deputy Superintendent General wrote Sproat, Powell, and Lenihan five days later to advise them of this decision.¹¹⁹ On November 26, the Deputy Superintendent General responded to Sproat’s July 29 letter about the proposed Stó:lo organization, advising that, in line with his recent letter rejecting the Nlha7káp̓mx organization, “any such organization on the part of the Indian Nations or Tribes in BC should be discouraged in every way possible.”¹²⁰

¹¹⁷ Sproat to Powell (11 November 1879), *supra* note 115.

¹¹⁸ Macdonald, handwritten notation (15 November 1879), on Vankoughnet to Macdonald (22 September 1879), *supra* note 100.

¹¹⁹ Vankoughnet to Sproat, file copy (20 November 1879), Ottawa, LAC (RG 10, vol. 3669, f. 10,691); Vankoughnet to Powell (20 November 1879); and Vankoughnet to Lenihan (20 November 1879), Ottawa, LAC (RG 10, vol. 3669, f. 10,691).

¹²⁰ Vankoughnet to Sproat, file copy (26 November 1879), Ottawa, LAC (RG 10, vol. 3696, f. 15,314, reel C-10122).

7.3 THE END OF SPROAT'S TENURE AS RESERVE COMMISSIONER

The day after the Superintendent General rejected the Nlha7kápmx's organization, the Deputy Superintendent General, at the Superintendent General's request, wrote a private letter to Powell. He responded specifically to Powell's long October 9 letter in which Powell had complained of Sproat's interference in the administration of Indian affairs in the province and of Sproat's supposedly underhanded attempt to acquire Powell's job. The Deputy Superintendent General advised Powell that the Superintendent General had directed him to state "that you need not be under any apprehension of being superseded by any one as your interests will be quite safe in his hands."¹²¹

On December 11, Powell wrote a scathing letter to Sproat, returning (and not responding to) Sproat's November 14 letter concerning Powell's administration of Indian affairs in the Coast Superintendency.¹²² In the letter, Powell recounted the history of their interaction from December 1878, when Sproat had written to both Powell and the Superintendent General with suggestions as to how to improve the administration of Indian affairs in the province. Powell expressed his "contempt" for and "detestation" of Sproat, referred to Sproat's "underhanded and insidious report," and hoped that his own letter would be "considered a termination to such a disreputable mode of promoting the selfish interests which have constituted the mainspring of all your actions since your first arrival in this province, and especially during your connection with the Indian Reserve Commission." Finally, Powell told Sproat that he had "lost all faith in your statements, and all confidence in your honesty of purpose. Hence I have no desire, nor have I any official instruction to discuss with you these matters which are beyond the limits of your commission." At the end of December, Powell sent the Deputy Superintendent General a private letter, enclosing copies of both his and Sproat's (returned) letters, explaining that,

being thoroughly cognizant of the disrepute into which [Sproat] is bringing matters connected with my office, I felt impelled to return a paper which contained so much deception and, at the same time, to afford him a plain and truthful statement of my reasons for doing so. I was therefore obliged to use the only language which, in my opinion, all the circumstances justified, though, no doubt, it has necessitated my

¹²¹ Vankoughnet to Powell (21 November 1879), Ottawa, LAC (RG 10, vol. 3679, f. 12,068).

¹²² Powell to Sproat (11 December 1879), Ottawa, LAC (RG 10, vol. 3679, f. 12,068).

begging the indulgence of the Chief while submitting these documents for his consideration.¹²³

By the time Powell sent his letters to Ottawa, however, Sir John A. Macdonald had already presented a memorandum to the Privy Council recommending the re-organization of Indian administration in British Columbia. In light of “all the Reserves in the southern interior” and “very many of the Reserves on the coast” already having been allotted, “and the consequent additional responsibilities entailed in the protection of the Indians and encouraging them to settle on their lands and till the soil,” Macdonald advocated a change to the administration of Indian affairs in the province. He recommended that the two Indian Superintendencies be abolished in favour of only one Visiting Indian Superintendent for the whole province – Powell – who would supervise a number of sub-agents. Finally, “with regard to the work of the Indian Reserve Commissioner,” Macdonald “respectfully recommend[ed] that the same be conducted under the supervision of the Visiting Indian Superintendent for the Province of British Columbia, and the Reserve Commissioner be required to report from time to time through that Officer (and whenever required by him) the progress made in the allotment of Reserves.”¹²⁴ The Privy Council affirmed Macdonald’s recommendations by Order-in-Council on December 23.¹²⁵ Unbeknownst even to Powell, Macdonald had put Powell in charge of Sproat.

On December 30, the Deputy Superintendent General wrote to Powell, informing him of the recent Order-in-Council and that he was now the Visiting Superintendent for the province.¹²⁶ The Deputy Superintendent General also advised him that,

His Excellency has been further pleased to direct that the work of the Indian reserve commissioner Mr. G.M. Sproat shall in future be conducted under your supervision, and that the reserve commissioner shall report from time to time through you and whenever requested by you on the progress made by him on the allotment of Reserves, and it will be your duty to communicate with the Superintendent General the purport of Mr. Sproat's reports to you.

The accounts of the reserve commissioner will also pass through your hands and the moneys to be expended by him in the work in which he is employed will be placed at

¹²³ Powell to Vankoughnet (29 December 1879), Ottawa, LAC (RG 10, vol. 3679, f. 12,068).

¹²⁴ Macdonald to Privy Council, “Memorandum” (17 December 1879), Ottawa, LAC (RG 10, vol. 3701, f. 17,514-1).

¹²⁵ PC 1879-1761.

¹²⁶ Vankoughnet to Powell (30 December 1879), Ottawa, LAC (RG 10, vol. 3701, f. 17,514-1).

your credit and the same will be forwarded by you to him from time to time as required.¹²⁷

The Deputy Superintendent General wrote to both Lenihan and Sproat on the same day to advise them of the new arrangements for the administration of Indian affairs in British Columbia.¹²⁸ The Deputy told Sproat that Powell would now oversee the Indian Reserve Commission's work; that Sproat was to report his progress to Powell, when Powell so required; that Sproat should send all of the Reserve Commission's accounts to Powell "for audit"; and that the Dominion would provide Powell with all moneys needed to carry out the Commission's work and Powell would remit the same to Sproat "when necessary." There was now no doubt about who was in charge of the administration of Indian affairs in British Columbia and of Sproat.

In a confidential letter also sent the same day, the Deputy Superintendent General told Powell, at the Superintendent General's direction, that Joseph Trutch "acts as general representative in BC of the Dominion Govt in relation to Dominion matters, and I am to instruct you to confer confidentially with that gentleman on all matters of importance in connection with Indian affairs in order that you may have the advantage of Mr. Trutch's counsel and experience."¹²⁹ Trutch, as CCLW for the Colony of B.C. from 1864 to 1871, was the "archetypal colonist" who considered that, "the Indians had to be relieved of as much land as possible so that it could be 'properly' and 'efficiently' used by European farmers."¹³⁰ In 1867, CCLW Trutch had expressed his views about Indigenous rights to land in this way:

The Indians really have no right to the lands they claim, nor are they of any actual value or utility to them.... It seems to me, therefore, both just and politic that they should be confirmed in the possession of such extents of land only as are sufficient for their probable requirements for purposes of cultivation and pasturage, and that the

¹²⁷ *Ibid.*

¹²⁸ Vankoughnet to Lenihan (30 December 1879), and Vankoughnet to Sproat (30 December 1879), Ottawa, LAC (RG 10, vol. 3701, f. 17,514-1).

¹²⁹ Vankoughnet to Powell, file copy: despite "draft" notation, see marginalia, "Shown to & read & approved by the Suprdent" (30 December 1879), Ottawa, LAC (RG 10, vol. 3701, f. 17,514-1).

¹³⁰ Fisher, *Contact and Conflict*, *supra* note 116 at 162. On Trutch and his role in colonial land policy, see also Robin Fisher, "Joseph Trutch and Indian Land Policy" (Winter 1971-72) 12 BC Studies 3 [Fisher, "Trutch's Land Policy"]; C Harris, *Making Native Space*, *supra* note 1 at 45-46, 58, 68; and Robin Fisher, "Trutch, Sir Joseph William," in *Dictionary of Canadian Biography*, vol. 13, University of Toronto/Université Laval, 2003-, online: <http://www.biographi.ca/en/bio/trutch_joseph_william_13E.html>, accessed 20 September 2017.

remainder of the land now shut up in these reserves should be thrown open to pre-emption.¹³¹

Trutch was also the man who, in 1872, having been recently appointed by Sir John A. Macdonald as the province's first Lieutenant Governor, wrote to Macdonald and recommended that the Dominion not initiate in the province a treaty-making process to extinguish Indian title:

as to Indian policy I am fully satisfied that for the present the wisest course would be to continue the system which has prevailed hitherto, only providing increased means for educating the Indians, and generally improving their condition moral and physical. The Canadian system, as I understand it, will hardly work here. We have never bought out any Indian claims to lands, nor do they expect we should, but we reserve for their use and benefit from time to time tracts of sufficient extent to fulfil all their reasonable requirements for cultivation or grazing. If you now commence to buy out Indian title to the lands of B.C. you would go back of all that has been done here for 30 years past and would be equitably bound to compensate the tribes who inhabited the districts now settled [and] farmed by white people equally with those in the more remote and uncultivated portions. Our Indians are sufficiently satisfied and had better be left alone as far as a new system towards them is concerned...¹³²

At the end of January, Sproat sent the Superintendent General and the Deputy Superintendent General a number of letters, including one in response to Powell's claims that he had performed redundant work on the coast and another advising against any change in policy with respect to "land adjustment" in the province.¹³³ Sproat also wrote a private letter to the Deputy Superintendent General about the hardships he had suffered as Indian reserve commissioner and his relationship with Powell. Given his three-and-a-half-year employment "in arduous public work," he asked for the Superintendent General's attention "for a moment on personal matters, to which I seldom allude."¹³⁴ Sproat began by explaining that "[t]he Indian discontent in the interior of the Mainland was more dangerous than anyone has ever realized

¹³¹ This quotation is from an August 28, 1867 report by Trutch on the Lower Fraser Indian Reserves; it is reproduced in Fisher, "Trutch's Land Policy", *supra* note 130 at 3.

¹³² Sir Joseph Pope, Correspondence of Sir John Macdonald: Selections from the Correspondence of the Right Honourable Sir John Alexander Macdonald, G.C.B., First Prime Minister of the Dominion of Canada (Toronto: Doubleday, Page & Company, 1921) at 185. This document is reproduced as Item 2 in the Appendix in Robert E. Cail, *Land, Man, and The Law: The Disposal of Crown Lands in British Columbia, 1871-1913* (Vancouver: UBC Press, 1974).

¹³³ Sproat to Vankoughnet (30 January 1880), Ottawa, LAC (RG 10, vol. 3699, f. 16,665); Sproat, "Memorandum" (30 January 1880), Ottawa, LAC (RG 10, vol. 3706, f.18,632).

¹³⁴ All information and quotations from this footnote to the next are from Sproat to Vankoughnet (30 January 1880), Ottawa, LAC (MG 26 A (Sir John A. Macdonald Papers), vol. 364).

when the reserve commission began its work.” Given that discontent, Sproat had set to “the work of making a reasonable adjustment of the land question on a permanent basis, and of creating or restoring confidence in the government.” He felt he had achieved both goals. Even though, “during all those years of great labour and enmity,” when he felt he had not “received a word of counsel or encouragement from anyone,” he said he had been “content to hope for success in saving this province from a horrible war and in binding these poor people to the government by just ties.” Sproat explained that, just that day, he had written a statement of open questions at Powell’s request in order to assist with discussions with the province about Indian reserve lands. Sproat sincerely hoped that the Dominion government would not change its policy towards the Indigenous people of the province.

Sproat justified opining on matters outside of his instructions as reserve commissioner, acknowledging, perhaps ruefully, that when he began his work with the reserve commission, “a legal friend told me to stick within the letter of my instructions or I would get into trouble.” He told the Deputy Superintendent General that he had originally intended to simply carry out his job according to his instructions, “but it was impossible for me to conceal from the government what the Indians thought - and the whites too for the matter of that - of the defective administration of Indian Affairs in this country. The Indians have been totally neglected and two sinecure offices enjoyed for years. No one seemed to press the fact on the government.” The “sinecure offices” were those of Powell and Lenihan, the two Dominion Superintendents about whom Sproat had complained at length over the past several years. Now, however, Sproat said he would “cheerfully” give Powell information and assistance, though he had noticed that the “necessary and beneficial criticism which follows all the acts of anyone” in Sproat’s position lately had “an infusion of bitterness” which he could not understand, except that he thought it might result from “the natural action of the two Superintendents and their numerous friends - disturbed in sinecure offices.” Sproat said that he had spoken frankly with Powell, who had told him that he thought Sproat had “attacked his office” to discredit Powell and obtain Powell’s job. Sproat told Powell, in reply, “the simple truth”: “that such an idea never entered my mind, and that I was not seeking any office, but was acting on public grounds alone, and what I have said about the local administration of Indian Affairs hitherto was known to every observer.” Whether or not this was true, upon clearing the air in this manner, Sproat considered himself to have

established “friendly relations” with Powell, which he felt “no doubt will continue and be for the interests of the work in hand.”¹³⁵

On February 3, Sproat wrote to Powell to confirm the arrangements they had made recently about payments: everything before January 31 would be according to the “old practice,” and everything from February 1 on would be according to the new arrangement under which Powell was in charge of funds.¹³⁶ Sproat told Powell that, from February 1 onward, he would require, when in town, his pay and his board, Blenkinsop’s pay and board, and the services of a copyist and a draftsman. Sproat further pointed out that, “if work has to be prosecuted in the interior, as you state, in early spring, no time should be lost in making the necessary investigations and copies of documents and maps at the Land Office for the whole country that may be visited.” Sproat’s letter to Powell and his previous one to the Deputy Superintendent General both contemplated Sproat’s continuing in office. Indeed, over the next month, Sproat sent numerous letters alluding to an imminent start of the reserve-allotment season.¹³⁷ In February, however, the Deputy Superintendent General wrote two confidential letters to Trutch that raised the possibility that Sproat might not retain his office. In the first, the Deputy told Trutch that, further to instructions from the Superintendent General, Trutch should, in addition to his “other duties as Confidential Agent at Victoria of the Dominion Government, take an advisory interest in Indian matters in B.C.” In this regard, the Deputy Superintendent General advised that Powell had been instructed to consult Trutch “on all important Indian matters.”¹³⁸ A few days later, the Deputy Superintendent General wrote to Trutch again, this time asking him to “be good enough to consult with the Hon Mr. Walkem [the B.C. Premier] and Dr. Powell Visiting Indian Supt Victoria relative to the status[,] duties and continuance in office of Mr. G.M. Sproat, Ind Res Commr for BC.”¹³⁹

¹³⁵ *Ibid.*

¹³⁶ Sproat to Powell (3 February 1880), Ottawa, LAC (RG 10, vol. 1274).

¹³⁷ See, for example, Sproat, “Memorandum on the question whether Reserve Commission work should be begun at Williams Lake in the approaching 1880 season, as ordered in Mr. Vankoughnet’s letter of the 4 Dec 1879” (7 February 1880), Ottawa, LAC (RG 10, vol. 3680, f. 12,395-1). See also Sproat to Vankoughnet (18 February 1880), Ottawa, LAC (RG 10, vol. 3700, v. 16,692, Pt.2).

¹³⁸ Vankoughnet to Trutch, draft? (11 February 1880), Ottawa, LAC (RG 10, vol. 3701, f. 17,514-2, reel C-10123).

¹³⁹ Vankoughnet to Trutch (20 February 1880), Ottawa, LAC (RG 10, vol. 3701, f. 17,514-2, reel C-10123).

There appears to be no further archival evidence about Sproat's resignation, but the circumstantial evidence suggests that these three men – Walkem, Powell, and Trutch – pushed Sproat out of office. Less than two weeks after the Deputy Superintendent General's letter to Trutch asking him to discuss Sproat's continuance in office with Walkem and Powell, Sproat penned his resignation letter to the Superintendent General. Sproat premised his resignation on the Superintendent General's decision about the Nlha7kápmx organization, a decision that came in a November 20 letter and would have reached Sproat by mid-January at the latest, over two months earlier.¹⁴⁰ Sproat explained that he had not replied earlier to the Deputy Superintendent General's letters rejecting the Nlha7kápmx and the Stó:lo organizations or the letter advising him about his reporting to Powell, "as several aspects of the matter required grave consideration on my part." Sproat restated his view of the situation:

It is the case of a numerous group of Indians, not much inferior to their white neighbours in general behaviour, and in natural intelligence, whose chiefs, on their land questions being adjusted, and in view of the general progress of events, determined, in concert with the most influential headmen of the different tribes, that a real Indian effort should be made to crush potlaching, whiskey drinking, prostitution, gambling and other customs and evils which they saw were hurting the people. Their great wish, and, as it proved, the common wish of all these Indians was that they should settle down, more and more, to farming and civilised occupations, living in clean, neat villages, where their children might go to school, and where the aged, the infirm and the sick might have attention and medical care.¹⁴¹

Sproat pointed out that the chiefs were old men whose authority had been "weakened by the ordinary effect, upon tribal communities, of contact or -- as may be said in the case of British Columbia -- almost of intermixture with civilised life." The same chiefs wished to pursue the organization at which they had arrived at Lytton, but wanted their people to elect "a popular committee of younger men to assist the chiefs," which they had done. Sproat told the Superintendent General that he could not bear to carry out the Superintendent's instructions to discourage the Nlha7kápmx organization, because it would mean "being the instrument of communicating to the Indians the desire of the Dominion Government to discourage the adoption by them of that which I believe to be the only effective extra-clerical means of abating and

¹⁴⁰ All information and quotations from this footnote to the next are from Sproat to Superintendent General (3 March 1880), Ottawa, LAC (RG 10, vol. 3711, f. 19,581).

¹⁴¹ Sproat to Superintendent General (3 March 1880), Ottawa, LAC (RG 10, vol. 3711, f. 19,581).

abolishing the various evils mentioned, and others that prevent progress.” He thought it only right to resign and to let someone less invested continue the work. In closing, he recounted his accomplishments, which he felt included having “adjusted in a permanent and satisfactory manner, with due regard to the reasonable requirements of the Indians, and of white occupiers,” the land question in the southern interior of the province; averting an “imminent Indian war”; reducing the costs of the Commission by one-third; restoring Indigenous confidence in the government; and “conciliating” the Indigenous people amongst whom he had worked.¹⁴²

A few days later, the new chief of the Inkumupulux community at the head of Okanagan Lake, “Basil called by the whites William,” wrote to Sproat. He had written the year before, in April 1879, complaining about O’Keefe’s continued cultivation of his claimed land at the head of Okanagan Lake and O’Keefe’s failure to abide by the reserve commissioners’ 1877 decisions.¹⁴³ At that time, Sproat had apparently written back to William to say that he would “see justice done to the Indians.” Now, however, William wrote (as translated from Syilx to English by a local farmer):

But we heard nothing more about it.

O’Keefe still [illegible] cultivates a piece of land our fathers had before we were born [&?] that we never ceased to claim.

When you gave us the map of our reserve, when we agreed about the land with the Indian commission, three years ago, we felt it was binding.

It was less than our fathers had, less we were asking, but we agreed & we were satisfied (nesika klosk tum-tum)

Yet if we can’t get any use of our land three years after our treaty[,] if the white reap harvest on our soil, we come to the conclusion nothing is done, that we were deceived.

Our heart grieves [sic] to see that, well-disposed as we always have been to the whites, they all encroach on our wrights [sic]. O’Keefe raised crops after crops on our land[,] others cut our timber on Swan Lake & Duck Lake reservation (Mr & Mrs Postill cut ten thousand rails)[,] if we say anything they reply we have no wright [sic] to stop them.

We can’t bear such uncertainty [sic] any longer & we urge you to show your authority.

We want no damages for what has been done

¹⁴² *Ibid.*

¹⁴³ William to the Indian Commissioner (11 April 1879), Ottawa, LAC (RG 10, vol. 3641, f. 7571).

we are not asking indemnity for the past wrongs [&?]

we beg of you to give notice to the whites not to do it anew.

Write to us to comfort your friends & tell the queen to see justice done to [her?] children.¹⁴⁴

Despite this heartfelt plea for fair treatment, there is no indication in the archival record that Sproat or anyone else ever responded to this letter. However, Sproat did send at least one other important piece of correspondence to an Indigenous man. Although he resigned at the beginning of March 1880, Sproat worked until early August to finish his work from the previous two years. As part of his final correspondence, Sproat replied to a letter from McIntyre, the Lytton official, about a debt McIntyre said Michel, the reserve commission's former interpreter and the Head Chief of the proposed Nlha7káp̓mx organization, owed him. Given Sproat's letter to McIntyre in August 1879 – advising that Sproat would repay McIntyre for his advancements to Michel for “Government work” of “\$60 a month until otherwise ordered”¹⁴⁵ – McIntyre thought that the Dominion government should now pay Michel's debt. Sproat, however, refused. He told McIntyre: “I recommended [Michel] to the Govt, as I promised for further employment, but the recommendation was not adopted and I so informed him as soon as I myself was in possession of the information.”¹⁴⁶ Accordingly, Sproat asserted, his August letter to McIntyre “ceased to be valid of course when [Michel] ceased to be in Govt employment referring merely to what was to be done ‘in the meantime’ until ‘otherwise ordered’ from Ottawa.” Sproat told McIntyre that he hoped Michel would soon get employment to help him pay his debt.¹⁴⁷ Sproat wrote this letter to Michel on the same day:

Dear Michel,

I was sorry to learn from your letter¹⁴⁸ and from that of Mr. McIntyre that there is an unsettled account between him and you which you are unable to pay. What I promised to you was that I would recommend you to the Govt at Ottawa for employment, and this I did not fail to do as strongly as I could, but the Govt did not

¹⁴⁴ Basil/William to the Indian Commissioner, as interpreted by “P. Girod, a farmer” (12 March 1880), Ottawa, LAC (RG 10, vol. 3641, f. 7571).

¹⁴⁵ Sproat to McIntyre (19 August 1879), *supra* note 78.

¹⁴⁶ Sproat to McIntyre (22 July 1880), Ottawa, LAC (RG 10, vol. 1274).

¹⁴⁷ *Ibid.*

¹⁴⁸ I have not found a copy of Michel's letter in the archival records.

approve what was recommended, and I wrote to tell you as soon as I myself was in possession of the information, and at same time I said I could not send you any more money, as the Govt had not sent it to me, and I could not pay out of my own pocket.¹⁴⁹

I did everything for you that I possibly could as I have done for all the Indians but I had no more power than to make what I considered good recommendations to the Government.

I hope you will soon get good employment which you well deserve. I mentioned you to Mr. Onderdonk¹⁵⁰ as you know.

I do not intend going again as Commissioner, but my heart and best wishes are with the Indians, and during the 4 years past I have tried to do justice both to them and to their white neighbours.

I do not know what is being done, or is going to be done about the lands of the Indians, and cannot tell you if another Commissioner is going, nor who he is to be.

With best wishes to your wife,

I am Yours Truly,

G.M. Sproat¹⁵¹

This letter represents lost opportunities on so many levels: not opportunities that would have necessarily led to improved circumstances today, but opportunities that might have opened possibilities for such outcomes. For Michel, clearly, his life may have turned out very differently had he become the Head Chief of the Nlha7kápmx organization and been engaged in the organizing that Sproat had contemplated for him in August 1879. For the Nlha7kápmx, as well, it is possible to envision a future that might have unfolded very differently, had their proposed form of municipal government been accepted. I have mixed feelings about Sproat from this letter: I see his reactive defence of his own interests – his refusal to pay McIntyre and his refusal to take responsibility for paying Michel, even in light of his broadly-worded letter to McIntyre in August 1879 – but also his continued interest in promoting what he considered to be the best interests of the Nlha7kápmx, despite any governmental support for their self-government

¹⁴⁹ I have not found a copy of Sproat's earlier letter to Michel in the archival records.

¹⁵⁰ This is no doubt a reference to Andrew Onderdonk, the engineer and contractor who supervised the construction of the transcontinental railway between Port Moody and Savona's Ferry beginning in 1879: see Robert D. Turner, "Onderdonk, Andrew," in *Dictionary of Canadian Biography*, vol. 13, University of Toronto/Université Laval, 2003–, online: <http://www.biographi.ca/en/bio/onderdonk_andrew_13E.html>, accessed 23 March 2018.

¹⁵¹ Sproat to Michel (22 July 1880), Ottawa, LAC (RG 10, vol. 1274).

initiative. It is true, I think, that Sproat did everything for the Nlha7káp̓mx that he could think of, but also true, as well, that he had only the power to make what he considered to be good recommendations. Ultimately, Sproat was just one man with strongly-held beliefs, that few (if any) shared, who was engaged in a complex governmental process in which he had little ultimate control. And, as Cole Harris observes, Sproat could be “autocratic and overbearing,” and “he was no politician.”¹⁵² For both governments, the lost opportunity to engage with Indigenous collectivities in a way that gave them control over a part of their own affairs is worth contemplating. Unstated in Sproat’s letter, but really the reason for it, was the outright rejection of the Nlha7káp̓mx proposal by every governmental official and settler society man who mattered. Had the governments had the intellectual, cultural, and legal courage to try the Nlha7káp̓mx organization, Indigenous-government relations in British Columbia *might* have turned out very differently. However, as I discuss in the following chapter, I am not confident that even governmental approval of the Nlha7káp̓mx organization would have altered the Indigenous/settler landscape considerably.

Perhaps the greatest lost opportunity was the loss of someone like Sproat – someone who tried his utmost to achieve his vision of “justice” for Indigenous and non-Indigenous people alike, within a tangled web of law and equities and historical circumstances – for the resolution of the British Columbia “Indian Land Question.” Sproat certainly worked within the confines of his own intellectual, legal, social, and cultural worldviews, but, working within those constraints, he strove to achieve “justice,” through compromise, in all the complicated land disputes and other matters presented to him. While we may now disagree with or dislike parts of his worldview, and his vision of justice may have been different than ours is, it is perhaps his pursuit of that vision that we ought to remember. Cole Harris, too, concludes that Sproat’s most important legacy is reminding us “less of where we have been than of where we have the capacity to go.”¹⁵³ As Harris points out, we live in a time remarkably similar to Sproat’s in terms of the complicated land issues and other disputes between Indigenous peoples, Canadian and provincial governments, and private land owners. It is Sproat’s dogged pursuit of some way to

¹⁵² C Harris, *Making Native Space*, *supra* note 1 at 137, 165.

¹⁵³ *Ibid* at xxxi. See also Harris’s final chapter in *Making Native Space* entitled “Towards a Postcolonial Land Policy,” where he presents his ideas for how we might continue this work.

resolve these seemingly irresolvable problems, on the basis of “justice” and compromise, that we should most keep with us.

Chapter 8: A “notable man”

After Sproat concluded his work as reserve commissioner in August 1880, he never worked with Indigenous peoples again. However, in 1882, in what seems like an attempt to talk himself into a job, he wrote to the Governor General of Canada about Canada’s “Indian policy.”¹ His letter discloses the final piece of the Sproat puzzle which, once laid, completes the picture, laying bare his beliefs about the “humanitarian civilizing” of Indigenous peoples and explaining why he so ardently supported the Nlha7káp̓mx organization in 1879, even apparently basing his resignation on the government’s failure to approve it.

In this chapter, I continue my discussion of Sproat’s views about “humanitarian civilizing,” picking up from the beginning of his tenure as sole reserve commissioner in 1878 and carrying through to his 1882 letter. I then review a Dominion legislative initiative of the 1880s aimed at achieving the style of Indigenous municipal government that Sproat sought through the Nlha7káp̓mx Rules.² This initiative suggests that those Rules may not represent the lost opportunity they have been portrayed to be. I next probe two other aspects of Sproat’s mindset, the rule of law and liberalism, both important components of his beliefs about the “humanitarian civilizing” of Indigenous peoples. I examine the role Sproat ascribed to “the law” in the reserve-creation process in British Columbia, as well as how the principles of 19th-century liberalism influenced his thinking about the appropriate way to “civilize” Indigenous peoples and also what that “civilization” would look like. This thesis has not investigated liberalism’s influence over Sproat’s decisions, so this section largely presents ideas for future work. Finally, I end the thesis where I began: with Sproat’s words about writing a piece that is part history and part biography.

¹ Sproat to Governor General’s Secretary (16 November 1882), Ottawa, Library and Archives Canada [LAC] (RG 10, vol. 3617, f. 4563).

² “Rules and Regulations framed by the Nekla-kap-a-muk Council, sitting in Lytton, British Columbia the 17th July 1879 for their own people” [Nlha7káp̓mx Rules] enclosed with Sproat to Superintendent General (26 July 1879), Ottawa, LAC (RG 10, vol. 3696, f. 15,316) [Sproat, “Letter to SGIA enclosing Rules & Regulations” (26 July 1879)].

8.1 SPROAT AND THE “HUMANITARIAN CIVILIZING” OF INDIGENOUS PEOPLES AFTER 1877

Sproat’s views about the “humanitarian civilizing” of Indigenous peoples did not change once he became the sole reserve commissioner. If anything, his vision and the urgency with which he pursued it intensified. On his 1878 Nlha7káp̓mx circuit through the dry Fraser and Thompson valleys, Sproat used the objective of Indigenous “progress” toward “civilization” to underpin his plea that the Dominion government ensure enough land and water were reserved so that Indigenous peoples could sustain themselves, their animals, and their crops: “[a] contrary view,” he said, “would have the effect of burdening the uncivilized man in his first steps in a civilized direction.”³ In a similar but angrier vein, Sproat used the nature of the relationship between Indigenous peoples and the Crown to urge the Superintendent General of Indian Affairs (Superintendent General) to facilitate Indigenous “progress” by allocating both land and water:

If the Crown takes possession of the country, and disables the Indians from themselves acquiring land and water by the ordinary methods, the Crown should assign what is reasonable for their own and their children’s use irrespectively of their expressing a wish for these necessaries.

Their state of imperfect civilisation and want of foresight are the reasons why the Crown assumes to act as trustee for them, and not to be brought forward in exculpation of a failure of duty on the part of the Crown.⁴

Just a few months later, in his 1878 year-end reports, Sproat spoke of Indigenous “citizenship,” expressing his hope to the Superintendent General that settler-Indigenous relations would continue on a solid footing “while the Indians are making progress towards citizenship, which every one hopes there will soon be increasing evidence of their doing.”⁵ In his report to the

³ Sproat, “Report on the land and water affairs of the Lytton subgroup of the Nekla-kap-a-muk Indians” (20 July 1878), Vancouver, Indigenous & Northern Affairs Canada (Specific Claims West) [INAC] (Provincial Collection [Prov. Coll.], vol. 2, Correspondence no. 1769/78).

⁴ Sproat to Superintendent General (15 August 1878), Ottawa, LAC (RG 10, vol. 3666, f. 10,176, pt. 2). Sproat sent a similar letter to the CCLW: Sproat to CCLW (26 August 1878), Vancouver, INAC (Prov. Coll., vol. 2, Correspondence no. 1996/78).

⁵ Sproat to Superintendent General, “Second Condensed Report by the Joint Commissioner appointed by the Governments of Canada and British Columbia” (1 December 1877), Ottawa, LAC (RG 10, vol. 3612, f. 3756-16), also reproduced in Parliament, “Special Appendix E” in *Sessional Papers*, No. 10 (1878) [Sproat’s Dominion Report (December 1877)].

province, he referred to Indigenous peoples as “partially civilized men.”⁶ But in summarizing his first solo circuit in 1878, Sproat leavened his enthusiasm for Indigenous “progress” towards “civilization” with his growing understanding of Indigenous culture and relationships to the land, declaring that “the manners and customs of the native population must be understood before land reserves can be satisfactorily assigned for their use.”⁷ He considered the impact of non-Indigenous settlement on traditional ways of life, concluding that while there was no doubt that the former would disrupt the latter, the governments ought to manage this disruption in a way that impacted Indigenous peoples the least:

It is an error to suppose that there was no system, nor regularity in the old mode of life of these Indians. It was a different life than ours, but in its way, it was systematic. Each month brought its duties, and certain portions of the tribal district were at different times of the year, the scene of Indian pleasure-making, or avocations – these places being linked to the hearts of the people by many associations. ... It is of course impossible to open an Indian country for white settlement without largely interfering with the Indian modes of life -- the lines of the surveyor will run through favourite Indian camping-places and berrying-grounds, and perhaps will cut the tribal race course in two -- but the effect of the incoming of white settlers may be mitigated in many ways which an enlightened humanity can suggest. ... The difficulty of weaning an uncivilised people from old ways of life, without needless hardship to them, has not been sufficiently recognised. ... There seems to be no good reason why we should have drawn our civilised harrow across and over the feelings and habits of the people, nor why the policy of assigning reserves for their use and enjoyment should not have been adapted, as far as possible to their desires, so long as what was done did not importantly tend to check white settlement, or the progress of the Indians through a transition period to the new fashion of life which may perhaps be adopted by their children.⁸

“Uncivilised people” with a “systematic” but “old mode of life”; “weaning”; “transition period”; “progress”; “new fashion of life”; “civilized”; “enlightened humanity”: these words and phrases encapsulate Sproat’s views about Indigenous people and the allotment of their reserves, and they permeate the hundreds of official documents Sproat created during his tenure as reserve

⁶ Sproat and McKinlay to Provincial Secretary (6 February 1878), enclosing “Second Condensed Report of the commissioners acting for the Province” (1 January 1878), Victoria, B.C. Archives (GR-494 at 488-549) [Sproat’s Provincial Report (January 1878)].

⁷ Sproat to Superintendent General (26 October 1878), Ottawa, LAC (RG 10, vol. 3612, f. 3756-18, reel C-10106).

⁸ *Ibid.*

commissioner. Yet, Sproat had an even more fundamental belief to which all of the others related, one he expressed in the last two sentences of this passage from his resignation letter:

I am unable to bring myself into the position of being the instrument of communicating to the Indians the desire of the Dominion Government to discourage the adoption by them of that which I believe to be the only effective extra-clerical means of abating and abolishing the various evils mentioned, and others that prevent progress. Experience has shown that in the effort to improve the Indians, very little of a truly remedial character can be effected without their own intelligent co-operation. The disregard of this co-operation lies at the root of past legislative failures in Indian legislation in this country.⁹

These sentences disclose the conviction at the very core of Sproat's beliefs: a certainty that Indigenous people can only be "remedied" – or, put another way, "progressed" toward "civilization" – with their own participation in the process.

Sproat's clearest exposition of his views came two years later when, after hearing the Governor General of Canada speak in Victoria, Sproat wrote to him about "the native race question," then, he believed, one of the most important questions facing the British empire.¹⁰ In British Columbia at least, Sproat felt that Canada's "Indian policy" had "entirely failed. What was bad enough before, has been made worse, except that some progress has been made in adjusting the land question here, which, of course, is the basis of policy." To Sproat, devising the correct policy revolved around Indigenous peoples' level of "civilization." He evaluated the issue facing the Dominion government:

It is not, of course, how to absorb the Indians, because such absorption is hopeless. Between them and us, there is a gap of centuries of civilisation and of moral training, bridged, here and there, by a few natural human sentiments. There is no hope of closing that gap in our, or in our children's days, by any human, certainly, nor by any Government, agencies. A Government, therefore, should not confuse itself with impossible hopes, but be content to secure free access to the people of all humanising agencies, and, in some respects, to provide such agencies. It might shape its policy constantly, not to weaken, but to strengthen, the few natural human sentiments above alluded to, bearing in mind the undoubted fact that the government is practically their God, their best conception of goodness and power, impressed by its acts of authority, and by the law. The people, if they survive at all, will be acted upon very gradually and slowly by their environments, but this progress will be too slow to

⁹ Sproat to Superintendent General (3 March 1880), Ottawa, LAC (RG 10, vol. 3711, f. 19,581).

¹⁰ Sproat to Governor General's Secretary (16 November 1882), *supra* note 1.

permit any hope of their being absorbed. Morally, we are, probably, going faster away from them than they are coming towards us.¹¹

Given this state of affairs, Sproat declared the government's task "to blend, as far as may be, a small scattered community of different training and habits, a community unorganized socially, or only organised tribally" with the settler society. Even this task, Sproat feared, might not be successful, because "owing to the gap mentioned, there is not the slightest probability that the Indians can, within any appreciable time, contribute any moral or intellectual fuel for the working of our institutions. That is a dream, and dreams are useless in politics."¹² Under these circumstances, Sproat urged the Governor General to implement a plan to assist Indigenous people in mimicking settler institutions:

The utmost that is possible is, that they may contribute fuel and indeed workmen to "run" their donkey engine. We should plan their engine for them, so that they may see how we work ours, and have a certain feeling of oneness with us, and there should be easily applicable attachments to our powerful machinery in case theirs should temporarily get out of gear. These seem truisms, but they need to be repeated, because, in reading Ottawa speeches, reports and declarations, one gets the notion, that the practicable aim is not firmly grasped, and it is only by clearly knowing our aim that all parts of policy and of administration fall into proper order. Two things give me hope that, at least, a suitable parallelism in their institutions and ours may be established. Being unorganized, or loosely organized, they are comparatively plastic in the hands of the [illegible]. Again, of our own institutions, it may be said, that, probably they present no great hindrance to Indian imitation, in some respects, for though now infiltrated with a complex social state, they [illegible] a natural growth. It has been the fortune of the English [illegible] have grown from the tribal condition to a high civilisation, continuously, without the dislocations some other nations have suffered (no small part of our common law, for instance, as well as our institutions, have, not their root only, but their stem, in early English tribal usages), and, therefore, the linking of a tribal people, at some points, to our society should, at all events, be easier than if our own history had been different.¹³

Having established the objective that Indigenous people contribute fuel and labour to run their donkey engine¹⁴ – a remarkable encapsulation, in some ways, of the Nlha7kápmx

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.* In espousing these views, Sproat all but paraphrased political philosopher Mark Francis's conclusions, more than one hundred years later, about pre-1890s Canadian settler views about Indigenous "civilization": see Mark Francis, "The 'Civilizing' of Indigenous Peoples in Nineteenth-Century Canada" (1998) 9:1 *Jour World Hist* 51 at 86-87.

¹⁴ A donkey engine was a small, portable, auxiliary engine often used in logging or mining operations.

government he championed in 1879 – Sproat thought that the principles of “Indian policy” presented themselves easily. Harkening to his theory of “natural decay” from his 1868 book, he cautioned that “[i]f we injudiciously superpose the full weight of the old community, with its regulative forms, on the young community[,] the latter will be pressed out of existence. This has taken place so often in history, that some speak of a “law” of the extinction of the weaker, in the context of two very dissimilar races.” This factor, as well as the aims of the policy, suggested to him a simple approach:

In framing our policy, we should consider the Indians simply as uncivilised men, and should build on what is in them, not like pedants, on what we think ought to be in them. Still many [page torn] things are common to all men, and, roughly, as we ourselves [page torn] what we should like, so we may know what they, as men, would like. Our policy might be shaped to serve both the [illegible; page torn] and political purposes, as far as may be.¹⁵

This paragraph discloses one of the principal grounds for Sproat’s strong support of the Nlha7kápmx organization, one not apparent on the face of his earlier writings: in assisting Indigenous people to become “civilized,” the government should use the people’s existing traits and beliefs “as a force to secure” the government’s desired outcomes, as an “instrument to wean [them], judiciously, from excessive tribality.” In other words, “civilizing” or changing Indigenous peoples – having them limit their whisky drinking, to use Sproat’s example – required their active participation in the process:

The only effective way is to get the people themselves to act against the practice - to attack the [illegible] with Indian clubs in Indian hands, not by three or four Indian constables who can do little good, but, by shaping the general organization of a tribe suitably for all purposes of nature and progress, building it, as already said, on existing facts of human desires and tendencies, as well as on time honoured customs.¹⁶

Sproat also suggested how his proposal might be adjusted to address the potlatch, a practice that he thought “leads to many evils,” because “the people roam about to ‘potlaches,’ neglecting their work; they spend their money foolishly, as we think, on these gifts, and to get the money, their women become prostitutes.” A governmental ban on the practice would “be

¹⁵ Sproat to Governor General’s Secretary (16 November 1882), *supra* note 1.

¹⁶ *Ibid.*

worse than useless,” in Sproat’s view, because “the habit would remain.” Instead, Sproat proposed:

the habit might be [diverted?], if not rooted out, as the church built on pagan customs in dealing with our German forefathers – thus in some degree winning its end. For instance, manage the distribution of food, instead of “dry goods,” as a beginning, and so on. Weaken next, the motive for the habit, and minister to the love of distinction by substituting government ranks, in other words, by organising the tribe for general useful purposes. ... It is hardly needful to say, that no action of the Government can be useful, unless it generally commends itself to the reason and sense of justice of the people; otherwise, it appears in the light of ignorant arbitrariness, and has neither regulative nor educative effect.¹⁷

It was in this context that Sproat referred indirectly to the Nlha7káp̓mx organization in the summer of 1879, asserting that “the chief defect, the radix mali [root of evil], is in my judgment, the exclusion of the Indian from the work, so to speak, of working out his own salvation.”¹⁸ This statement, perhaps more than any other, encapsulated Sproat’s vision for Indigenous people: it was they who should lead their own “civilization.” For Sproat, this missing principle was the *radix mali* of all policies since the rejected Nlha7káp̓mx organization; none would be successful without it. This idea ties together Sproat’s beliefs about and decisions concerning Indigenous peoples.

Cole Harris has suggested that Sproat’s beliefs “reflected Native thought of the late 1870s but [were] a century and more out of phase with the assumptions and values of most immigrant British Columbians.”¹⁹ As I have noted already, I disagree. Certainly, Sproat had uncommon and perhaps unique ideas for *how* to achieve Indigenous “civilization” – that is, by involving Indigenous people themselves in that process. However, Sproat’s beliefs, otherwise, fit well into his time (if not his place). The time in which Sproat lived was a transition period between the stadial view that societies progressed inexorably along a spectrum towards “civilization,” and a “parochialized and racialized ... notion of civilization” influenced by social Darwinism, Victorian religious moralism, and providentialism,²⁰ during which the government’s goal was to

¹⁷ *Ibid*; underlining in original.

¹⁸ *Ibid*; underlining in original.

¹⁹ Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: UBC Press, 2002) at 137.

²⁰ Paul G. McHugh, *Aboriginal Societies and the Common Law: A History of Sovereignty, Status, and Self-Determination* (Oxford: Oxford University Press, 2005) at 125 [McHugh, *Aboriginal Societies*].

assimilate Indigenous people into settler culture.²¹ Robin Fisher has put the start of the “hardening view” of racial attitudes in Britain in the 1850s and 1860s.²² Mark Francis pins the change in the Canadian concept of what it meant to “civilize” Indigenous peoples – from an inexorable development to a required conversion – to the 1870s.²³ In speaking of the common law world, McHugh puts the change only a decade earlier, concluding:

there is no doubt that from the 1860s all colonies as well as the United States applied more aggressive policies of intervention in aboriginal life. In this period, the ‘civilization’ of the native had overtones that it certainly lacked earlier in the century when Scottish stadialism still had some purchase. ‘Civilization’ came to describe a state into which aboriginal culture would be prodded and shepherded by the calculated application of laws and policies of assimilation. The monogenetic idea of a single family of man had been replaced by a sense of the Darwinian survival of the superior European civilization.²⁴

Thus, in Britain in the 1850s and 1860s, in the British empire in the 1860s, and in Canada in the 1870s, “civilizing” Indigenous peoples implied greater governmental intervention to effect this “progress.” Sproat, in the 1870s in British Columbia, expressed beliefs incorporating elements of both periods, though tending toward the later views: namely, that the government would need to actively “civilize” Indigenous peoples.

Yet, as I have discussed, Sproat’s views about the degree of governmental prodding needed to “civilize” Indigenous people were not the only evidence of 19th-century British settler ideas. His beliefs and his decisions also reflect 19th-century humanitarianism.²⁵

Humanitarianism, in this context, began in settler colonies as an effort to protect Indigenous peoples; however, as settlers increasingly took up land in the colonies, it was reformulated to support British emigrant societies founded on occupation of Indigenous land.²⁶ One of the most notable proponents of the new “humanitarian colonialism,” George Grey (a British governor of three different English colonies between 1841 and 1868), expected, as did Sproat, that

²¹ Francis, *supra* note 13 at 81, 83, 85.

²² Robin Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890*, 2nd ed. (Vancouver: UBC Press, 1992) at 86-87.

²³ Francis, *supra* note 13 at 73-83.

²⁴ McHugh, *Aboriginal Societies*, *supra* note 20 at 126.

²⁵ Sproat to Superintendent General (16 November 1879), Ottawa, LAC (RG 10, vol. 3703, f. 17,626, pt. 2).

²⁶ Alan Lester and Fae Dussart, *Colonization and the Origins of Humanitarian Governance* (Cambridge: Cambridge University Press, 2014) at 244.

Indigenous peoples were unavoidably dying out as a result of their contact with a superior civilization.²⁷ Grey's "striking innovation" in the face of this "decay" was to promote "humanitarian governance" under which those Indigenous peoples who did survive would be guided through a "process of amalgamation, with kid gloves where they proved compliant, and with an iron fist, for their own benefit, where they were recalcitrant. The only alternative, after all, was eradication."²⁸ Although there is no evidence that Sproat knew or even knew of Governor Grey, Sproat's education in London in the 1850s, his publishing of various ethnographic papers through the Ethnological Society of London in the 1860s, and his position in London as British Columbia's Agent-General (responsible largely for emigration) in the 1870s all suggest that Sproat was steeped in the London humanitarian discourse of which Grey was a leading proponent.²⁹ Admittedly, this discourse was on the wane by the 1870s, but Sproat's early training, writings, and subsequent analysis as a reserve commissioner suggest the discourse was an important and powerful influence.

Sproat's blending of these two aspects of British settler colonial beliefs – "progress towards civilization" and humanitarianism – generated what might be the unique aspect of his beliefs: that to successfully conclude the "civilizing project," governments must involve

²⁷ *Ibid* at 267.

²⁸ *Ibid* at 267-268.

²⁹ Indeed, Sproat's biography bears some remarkable similarities to Governor Grey's. For example:

- a) Grey was a "collector of rare books and manuscripts" and "enhanced the settler public, scientific sphere by donating his expensively acquired personal collections to establish public libraries in Cape Town and Auckland": Lester & Dussart, *ibid* at 258. Sproat donated many books to the newly-established Mechanic's Literary Institute (which he helped to found) in Victoria in 1864: "Flourishing", *The Daily British Colonist* (10 January 1865) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017; "The Mechanics' Institutes Lectures", *The Daily British Colonist* (11 January 1865) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.
- b) Grey was an honorary member of the Ethnological Society of London, a key source of information for European ethnographers, and a prolific correspondent with scientists: Lester & Dussart, *ibid* at 259. Sproat read two papers at the Ethnological Society of London in the late 1860s and published a book on the ethnology of the Indigenous peoples of the west coast of Vancouver Island: Gilbert Malcolm Sproat, "The West Coast Indians in Vancouver Island" (1867) *Ethnological Society of London Transactions* 243; Gilbert Malcolm Sproat, "On the Probability of a Bone Age" (1868) 6 *Ethnological Society of London Transactions* 253; and Gilbert Malcolm Sproat, *Scenes and Studies of Savage Life* (London: Smith, Elder and Co., 1868).
- c) Grey "published influential works on Australian aboriginal vocabularies": Lester & Dussart, *ibid* at 259. Sproat recorded a vocabulary of what he called the "Aht" people (the Nuu-chah-nulth): "Vocabulary" (copy, originally from Smithsonian Institution, National Anthropological Archives), Victoria, B.C. Archives (Add. MSS. 518.2.35).

Indigenous people in their own “civilization.” For Sproat, while the goal was to “civilize” Indigenous peoples, and humanitarianism established the parameters within which to achieve that goal, Indigenous participation in, or even leadership of, the “civilizing” process was the only way to reach the goal. Sproat supported Indigenous rights within the settler system, but he was not someone who saw a future for Indigenous peoples other than one in which, under the settler government’s guidance, they operated the donkey engine that the settler government planned. This sounds very much like the proposed Nlha7káp̓mx organization from the summer of 1879. But it also resembles the form of Indigenous self-government the Dominion government instituted under *The Indian Advancement Act*, 1884.³⁰

8.2 THE INDIAN ADVANCEMENT ACT, 1884

The man that Sproat scholars have given us, by and large, is one who had ideas we ought to have taken, ideas that would have prevented us from going down Cole Harris’s “dark path” of the last 140 years of Indigenous-settler relations in this province.³¹ In fact, the Dominion did pursue a scheme to allow the Indigenous creation and enforcement of “rules and regulations” under the *Indian Act* and passed new legislation – *The Indian Advancement Act*, 1884 – to support municipal-style Indigenous government. It may be, as Cole Harris and others suggest, that an important opportunity was lost in 1879 when the government rejected the Nlha7káp̓mx proposal and Sproat resigned; however, given the experience with this legislation, it is not clear that Sproat’s suggested path for Indigenous-settler relations would have led to a brighter destination.

Sproat strongly supported municipal-level Indigenous government, but the idea was not his. In 1869, two years before the Colony of British Columbia joined confederation and while Sproat was living in London and working as a private businessman, Hector Langevin introduced in the House of Commons what became *An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act*.³² This *Gradual Enfranchisement Act*, 1869, “another attempt in the direction of civilizing the Indians,” built on

³⁰ *The Indian Advancement Act*, 1884, SC 1884, c 28.

³¹ C Harris, *Making Native Space*, *supra* note 19 at 137.

³² *An Act for the gradual enfranchisement of Indians*, 31 Vic, c. 42 (assented 22 June 1869) [*Gradual Enfranchisement Act*, 1869]. For background on this Act and Indigenous government under the *Indian Act* and its predecessors generally, see Wayne Daugherty and Dennis Madill, *Indian Government under Indian Act Legislation, 1868-1951* (Ottawa: Department of Indian and Northern Affairs Canada, 1980).

the former Province of Canada's *Act to encourage the gradual civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians*, otherwise known as the *Gradual Civilization Act*, 1857.³³ One of the most prominent features of the 1869 statute, and one that would be rolled into the first *Indian Act* in 1876, was "in the direction of giving them the benefits of a municipal government. It was proposed to give them certain powers to pass by-laws, subject to confirmation by the Governor in Council, as to the care of public health, observance of order and decorum in their meetings, encouragement of temperance, &c."³⁴ The Deputy Superintendent General of Indian Affairs (Deputy Superintendent General) described the statute as part of an effort "designed to lead the Indian people by degrees to mingle with the white race in the ordinary avocations of life... [By] establishing a responsible, for an irresponsible system, this provision, by law, was designed to pave the way to the establishment of simple municipal institutions."³⁵ The *Gradual Enfranchisement Act*, 1869 did this through a section that was for all intents and purposes the same as the provisions in the *Indian Act* upon which Sproat relied in seeking approval of the *Indian Act* Rules in 1879.³⁶

The *Gradual Enfranchisement Act*, 1869 represented a change in emphasis for Canadian legislation, from the protection of Indigenous peoples to a focus on their "civilization" and assimilation.³⁷ Further, the legislation laid the foundation for the destruction of native self-government using "the coercive force of the law."³⁸ Although it did give Indigenous peoples municipal authority, as Langevin asserted, it also imposed a greater degree of governmental

³³ *An Act to encourage the gradual Civilization of the Indian tribes in this Province, and to amend the Laws respecting Indians*, 20 Vic, c. 26 (assented to 10 June 1857) [*Gradual Civilization Act*, 1857].

³⁴ *House of Commons Debates*, 1st Parl, 2nd Sess, vol 1 (27 April 1869) at 83-84 (Hon. Hector-Louis Langevin).

³⁵ Department of the Secretary of State for the Provinces, "Report of the Indian Branch" (2 February 1871) (Ottawa, Parliament, 1872).

³⁶ The only difference between s. 12 of the 1869 Act and s. 63 of the 1876 Act was the addition of s. 63(8): "The locating of the land in their reserves, and the establishment of a register of such locations."

³⁷ John L Tobias, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy" in *As Long as the Sun Shines and Water Flows: A Reader in Canadian Native Studies*, Nakoda Institute Occasional Papers (Vancouver: UBC Press, 1983) 39 at 43; originally published in *Western Canadian Journal of Anthropology* 6:2 (1976).

³⁸ John S Milloy, "The Early Indian Acts: Developmental Strategy and Constitutional Change" in *As Long as the Sun Shines and Water Flows: A Reader in Canadian Native Studies*, Nakoda Institute Occasional Papers (Vancouver: UBC Press, 1983) 56 at 58, 61.

control over them and, at the same time, repressed Indigenous models of governance.³⁹

Historian John Milloy explained the objectives of the *Gradual Enfranchisement Act* succinctly: “[i]f the various systems of development were ever to produce the civilized Indian amenable to enfranchisement, then native self-government had to be abolished. It had to be shouldered aside and replaced by new institutions allowing unchallengeable departmental control.”⁴⁰

But if Sproat did not generate the idea of Indigenous peoples governing themselves through municipal-style institutions, was he perhaps on the right track in urging the Superintendent General and Governor-in-Council so strenuously, in 1879, to authorize the Nlha7káp̓mx Rules under the *Indian Act*? Cole Harris seems to think so. Douglas Harris, as well, considers that the Nlha7káp̓mx Rules represented a Nlha7káp̓mx effort to have both the Queen and British Columbian settler society abide by the Queen’s law and, further, that the Dominion government’s refusal to approve the Rules “shattered what might have become a relationship based on trust and the rule of law.”⁴¹ While Harris’s hoped-for future might have resulted, experience with municipal-style Indigenous government under *The Indian Advancement Act*, 1884 in the last quarter of the 19th century suggests otherwise.

Curiously, within a matter of months of its rejection of the Nlha7káp̓mx Rules, the Dominion government pursued the idea of Indigenous municipal government under s. 63 of the *Indian Act*, an initiative that may have arisen out of the Deputy Superintendent’s request for a legal opinion from the Deputy Minister of Justice, in September 1879, as to whether the Nlha7káp̓mx had the authority to pass the Nlha7káp̓mx Rules.⁴² The Deputy Superintendent asked the Deputy Minister of Justice this:

³⁹ *Ibid* at 62. Daugherty and Madill draw a similar conclusion: Daugherty & Madill, *supra* note 32 at 77 (Part 1).

⁴⁰ Milloy, *supra* note 38 at 61.

⁴¹ Douglas Harris, “The Nlha7káp̓mx Meeting at Lytton, 1879, and the Rule of Law” (Winter 1995-96) 108 BC Studies 5 at 25 [D Harris, “The Nlha7káp̓mx Meeting”].

⁴² In Daugherty & Madill, *supra* note 32 at 3-4 (Part 2), there is an intriguing suggestion that the Nlha7káp̓mx Rules may not have been the only or even the first effort in Canada to create “rules and regulations” under s. 63 of the *Indian Act*. There, the authors describe a St. Regis, Quebec band’s 1878 set of regulations for impounding livestock. The regulations included a provision allowing for the levying of fines. The Indian Affairs Solicitor appears to have considered this provision as outside the purview of s. 63 and therefore not within the powers of the chiefs to regulate, a deficiency that appears to have led to an 1879 amendment allowing a band’s “rules and regulations” to impose a fine of up to \$30 and imprisonment of up to 30 days. This amendment was passed in May 1879; however, Sproat may not have been aware of it, as the Nlha7káp̓mx Rules provided for fines of up to \$100 and did not allow a Tribal Committee to imprison someone.

The resolutions and regulations referred to in the covering letter of the 26th ult from Mr. G.M. Sproat, Indian Reserve Commissioner, British Columbia, are submitted herewith, for an opinion as to whether the same are such as Indian Chiefs have the power to frame, under the provisions of section 63 of the Indian Act of 1876 and the 4th section of the Amended Act, 42nd Victoria, cap. 34, subject to confirmation by the Governor in General.⁴³

I have not discovered a response, but later correspondence suggests that Z.A. Lash, the Deputy Minister of Justice, subsequently advised the Deputy Superintendent General that the existing statutory framework was insufficient.⁴⁴ In any event, over the next several years the Dominion developed legislation to support Indigenous municipal government as envisaged by the *Indian Act*, beginning just eight months after rejecting the Nlha7káp̄mx Rules.

In 1880, after Sproat had resigned but before he had sent his last reporting letter to the Deputy Superintendent General, and in the midst of governmental correspondence about the appointment of the next reserve commissioner, the Deputy Superintendent asked various Indian Superintendents and Indian Agents across Canada, including B.C. Superintendent Powell, for their views about “a system of Municipal Government for Bands sufficiently advanced to justify the conclusion that the same would probably be attended with success.”⁴⁵ “The idea,” the Deputy said, “is to constitute on each Reserve an Elective Council for the management of the local affairs of the Band owning the same. Said Council to consist of representatives from the various sections of the Reserve, presided over by one holding a position similar to that of a Reeve or Major of a white municipality, who would be elected by the whole community.”⁴⁶ This

⁴³ Vankoughnet to Lash (3 September 1879), Ottawa, LAC (RG 10, vol. 3696, f. 15,316, reel C-10112).

⁴⁴ In October 1881, the Deputy Superintendent General told Powell that, based on advice from the Deputy Minister of Justice “as to the sufficiency of the existing laws for the establishment of such a system[,] he expressed the opinion that new legislation will be necessary in order that the scheme be effectively carried out”: Deputy Superintendent General to Powell (31 October 1881), Ottawa, LAC (RG 10, vol. 2116, f. 22,155).

⁴⁵ Vankoughnet, “Circular” (19 July 1880), Ottawa, LAC (RG 10, vol. 2116, f. 22,155). Two chapters in Daugherty and Madill, *supra* note 32 – “The One-Year Elective System of the Indian Advancement Act, 1884-1906” (Part 1, ch 2) and “Local Government Initiatives and Band Council Powers, 1880-1906” (Part 2, ch 2) – canvass the development of *The Indian Advancement Act*, 1884, from 1880, including B.C. Superintendent Powell’s correspondence.

At about the same time, the Canadian government conferred municipal status on local governments of the Icelandic colony in Manitoba, New Iceland, as Ryan Eyford has described in Ryan Eyford, *White Settler Reserve: New Iceland and the Colonization of the Canadian West* (Vancouver: UBC Press, 2016), chapter 6.

⁴⁶ Vankoughnet, “Circular” (19 July 1880), *supra* note 45.

step, to be taken with the Indigenous people's consent, was being proposed, "[w]ith a view to the further advancement of the Indians of the Dominion in intelligence and civilization."⁴⁷

Powell's shock at the proposal, so close to the one he had all but staked his career against the previous year when Sproat had been the conduit for the Nlha7kápmx proposal, is evident in his August 20 reply in which he explained: "[i]n British Columbia, as a rule, the reserves are scattered and small in extent, and the various tribes to whom these lands have been allotted are quite independent of each other, each having its separate and distinct Chief."⁴⁸ He presumed the proposal was intended to apply to the "older provinces" of Canada, where Indigenous peoples, "from years of supervision," were perhaps better prepared to try municipal government. And, he put somewhat delicately his concerns about fostering dangerous confederations of Indigenous peoples that he had asserted so vehemently the year before: "[h]itherto, owing to the limited number of whites in the Province, and the comparatively large Indian population, it has not been considered desirable to encourage the amalgamation of these bands, but rather to promote the independence and authority of each Chief." However, he acknowledged that if the Department were to appoint Indian agents in the province, then there were probably many communities "where the experiment of Municipal organization might be tried with success, and if so with great benefit to the various tribes interested." One such community was the Cowichan on Vancouver Island because of their progress in agriculture.⁴⁹ He subsequently proposed to begin the scheme at Cowichan and at Kamloops, and he advised that Indigenous councils at "some of the most important Missions such as Metlakahtla, Simpson, Nass, etc." already acted as advisory boards to the missionaries but they were without enforcement powers and were "most anxious to have proper and legal recognition."⁵⁰ Echoing Sproat's words in support of the Nlha7kápmx proposals, Powell described what he saw as the benefits of Indigenous municipal laws:

Fences laws would be inaugurated, roads made, the present custom of living in large and comfortless houses (rancherias) discouraged, schools with compulsory attendance provided for, intemperance, and potlaching (donation feasts) prohibited, sanitary

⁴⁷ *Ibid.*

⁴⁸ Powell to Superintendent General of Indian Affairs (20 August 1880), Ottawa, LAC (RG 10, vol. 2116, f. 22,155).

⁴⁹ *Ibid.*

⁵⁰ Powell to Superintendent General of Indian Affairs (17 September 1881), Ottawa, LAC (RG 10, vol. 2116, f. 22,155).

necessities promoted, and other municipal regulations introduced which should certainly prove immensely beneficial to these Indians, while rendering them, at the same time, more amenable to the requirements of the Department in preserving peace and good order.⁵¹

And, much as Sproat had, Powell also supported the proposed system for undermining the old chiefs and favouring the younger class:

Many of the old Chiefs still exercise much influence over their respective tribes, and, being wedded to old and ignorant customs, discourage the ambition to progress which prevails among the young men of the band. In the localities that might be selected for the introduction of a Council there is no doubt that the younger and more advanced Indians would be chosen as representatives or councillors, and hence, a vigorous civilizing power would be created which would eventually stamp out hereditary chiefship and, with it, the only upholders of their ancient ignorance and barbarism.⁵²

In Powell's words of support for the proposed legislation, it is hard not to hear Sproat's, leaving one to wonder if it was the messenger and his presentation of the message, more than the message itself, that had led Powell to condemn Sproat for championing much the same thing. On the other hand, the key difference between the Nlha7kápmx proposals and that contemplated by the Dominion's legislation was that the latter was to be done on a community-by-community basis and not on the basis of a "nation" comprising several communities. In Powell's first letter responding to the Deputy Superintendent, he objected to the "amalgamation of these bands." Yet, the Deputy's first letter had clearly been aimed at creating a government for each band, and, as it developed, the Dominion legislation put in place such a government at the band level. If there were a reason the Dominion rejected the Nlha7kápmx Rules yet initiated municipal-style Indigenous government within a year, this was it.

In its report for 1880, the Department of Indian Affairs indicated that it was moving ahead with the "Tribal Government" project, because of "the desirability of introducing, as soon as Indian bands are prepared for it, a better system for managing their local affairs than the one which at present prevails among them, under which the chiefs (who in many cases are hereditary, and therefore may or may not fairly represent the intelligence of the band) control such

⁵¹ Powell to Superintendent General of Indian Affairs (20 August 1880), *supra* note 48.

⁵² *Ibid.*

matters.”⁵³ The government was proceeding, despite the fact that most Superintendents and Agents had advised that the Indigenous peoples within their respective districts were “not sufficiently advanced in intelligence for the change.”⁵⁴ A year later, Superintendent General (and Prime Minister) Sir John A. Macdonald explained the government’s continuing support for the proposed legislation aimed at allowing municipal-level government among the “sufficiently advanced” bands.⁵⁵ This system, he hoped, would “have the effect of accustoming the Indians to the modes of government prevalent in the white communities surrounding them, and that it will thus tend to prepare them for earlier amalgamation with the general population of the country.”⁵⁶ The legislation, in other words, was part of Macdonald’s “civilization” and assimilation program that lasted from about 1878 until the 1890s.⁵⁷

Based on Lash’s advice that additional legislation was needed to support the municipal scheme,⁵⁸ the government developed a bill that became law in 1884 as *An Act for conferring certain privileges on the more advanced Bands of the Indians of Canada, with the view of training them for the exercise of municipal powers*, to be known as *The Indian Advancement Act*, 1884.⁵⁹ This Act took the matters within the “rules and regulations” provision of the *Indian Act* and provided statutory authority for the elected Indigenous council to self-govern with respect to the listed topics. Section 10 was the core provision, mirroring and extending s. 74 of the *Indian Act*, 1880 (which itself had extended s. 63 of the 1876 Act)⁶⁰, and giving a band council the “power to make by-laws, rules and regulations, which, if approved and confirmed by the Superintendent General, shall have force as law within and with respect to the reserve, and the Indians residing thereon.” A band had fourteen areas of jurisdiction, including all of those listed in s. 63 of the 1876 Act.

⁵³ Canada, Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the year ended 31st December 1880* (Ottawa: Parliament, 1881) at 8.

⁵⁴ *Ibid.*

⁵⁵ Canada, Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the year ended 31st December 1881* (Ottawa: Parliament, 1882) at xlvi.

⁵⁶ *Ibid.*

⁵⁷ Daugherty & Madill, *supra* note 32 at 11, 27 (Part 2).

⁵⁸ Deputy Superintendent General to Powell (31 October 1881), *supra* note 44.

⁵⁹ *The Indian Advancement Act*, 1884, *supra* note 30.

⁶⁰ John Leslie and Ron Maguire, eds., “The Historical Development of the Indian Act” (Ottawa, 1978) at 78, online: <http://publications.gc.ca/collections/collection_2017/aanc-inac/R32-313-1978-eng.pdf>, accessed 29 November 2017.

On the second reading of the bill in 1884, Prime Minister and Superintendent General Macdonald described the Act as giving bands powers analogous to those of municipal councils; he hoped that as bands proved themselves “worthy and capable of carrying out the intention of this Act, Parliament will, by degrees, grant them more powers.”⁶¹ On discussing the bill in committee, Macdonald further explained that the government did not intend to force bands to seek self-government under the Act: rather, “this measure is only intended to give them the opportunity of adapting themselves to the white system as much as possible. Some of them are very anxious to stand on an equality with, and to have the same responsibilities and duties as the whites.”⁶² In a similar vein, in responding to a question about a band’s powers with respect to the subdivision of its reserves, Macdonald pointed out: “[i]t would be very unwise to try to force white ideas on the red men prematurely. This is merely to make an attempt to encourage them to do it, if they will.”⁶³

After the passage of the Act, Indian Agents and Superintendents in Nova Scotia, New Brunswick, Quebec, and Ontario told the Deputy Superintendent either that the bands in those provinces were incapable of the municipal-style government under the new legislation or that they refused to adopt it.⁶⁴ In all, fewer than ten bands in Canada would become eligible to create the municipal-style bylaws contemplated by *The Indian Advancement Act*; four of those were in British Columbia and proposed by Powell: Cowichan, Kincolith, Metlakahtla and Tsimpsean.⁶⁵ *The Indian Advancement Act* was eventually rolled into the *Indian Act* in 1906, and the

⁶¹ *House of Commons Debates*, 5th Parl, 2nd Sess, vol 1 (26 February 1884) at 539 (Hon. John A. Macdonald).

⁶² *Ibid* at 540.

⁶³ *Ibid* at 541.

⁶⁴ Leslie & Maguire, *supra* note 60 at 84.

⁶⁵ Cowichan: PC 1885-2340 (30 January 1886); Kincolith: PC 1886-1435 (15 July 1886); Metlakahtla: PC 1889-0069 (24 January 1889); Tsimpsean: PC 1894-0562 (28 February 1894). Leslie & Maguire, *ibid* at 90, suggest that seven bands in Canada came under the *Indian Advancement Act*, although the seventh, of St. Peter’s Reserve in Manitoba, appears not to have applied for or been given general authority under *The Indian Advancement Act*, 1884. Rather, the Minister appears to have relied on s. 74 of the *Indian Act*, 1880, to establish a separate Roman Catholic school on the reserve: PC 1883-1394. Daugherty & Madill, *supra* note 32 at 78, say that “In British Columbia... there were six bands under the Act. ... In its entire history, the election provisions of the Advancement Act was only applied to or adopted by, nine bands. In two instances, it had been applied by an agent who had acted without the knowledge or authority of the Department.”

provisions were finally removed in 1951.⁶⁶ Today, it is perceived largely as a failed policy that Indigenous groups never really supported.⁶⁷

Given the experience with *The Indian Advancement Act*, it is hard to see the hopeful outcome that Douglas Harris seems to foresee, had the Dominion government only agreed to the Nlha7káp̄mx Rules in 1879. Perhaps the Nlha7káp̄mx proposal was more, or different, than municipal government under *The Indian Advancement Act*. Certainly, one fundamental difference – and the only one that might have led to a different outcome – was that the Nlha7káp̄mx themselves advocated the form of self-government they sought. Harris believes, and it may be, that the Nlha7káp̄mx proposal represented a more genuine Indigenous effort to create a relationship with the settler governments built on equity and fairness than did *The Indian Advancement Act* schemes, and that the government’s acceptance of the Nlha7káp̄mx proposal would have established a better relationship between Indigenous peoples and the Crown. That may be. However, it is difficult to see that any of the other differences between the Nlha7káp̄mx proposal and *The Indian Advancement Act* models would have led to a different relationship. One key difference, as I have noted, was that the Nlha7káp̄mx proposed a government to regulate many communities and not just one. While this characteristic more clearly marked it for *unacceptability* within the settler legal system, I do not see it, conversely, as something that would have created a better outcome had the Dominion only approved the Nlha7káp̄mx Rules. It does not seem that the level of the organization – the community or the nation – would have made a difference in the success of the form of self-government. Perhaps Sproat’s vision for the Nlha7káp̄mx proposal, his focus on the humanitarian aspects of the “civilization” project, and his determination that Indigenous people had to be the instruments of their own “civilization” could have carried it beyond what was achieved through *The Indian Advancement Act*, 1884. These are all possibilities, but I think Harris’s hopes for the Nlha7káp̄mx proposal only would have been realized had much been different about the 19th century. Given the policy, social, cultural, and particularly intellectual environment in the late 19th-century, historian John Tobias’s conclusion about *The Indian Advancement Act* seems most appropriate: it was “an ideal tool for

⁶⁶ Daugherty & Madill, *supra* note 32 at 21-22.

⁶⁷ See, for example, *ibid* at 77-82 (Part 1) and Chapter 3 (Part 2), “The Failure of the Advancement Act: 1890-1906.”

directed civilization.”⁶⁸ Moreover, that is a statement with which I think Sproat would have agreed were it applied to the Nlha7kápmx Rules.

8.3 SPROAT, THE LAW, AND THE LIBERAL ORDER FRAMEWORK

Integral to Sproat’s promotion of the “humanitarian civilizing” of Indigenous peoples were his beliefs about the roles of the rule of law and liberalist ideals in society. Hamar Foster probes what Sproat thought about the rule of law and concludes that he saw the law as “an important safeguard” for Indigenous peoples.⁶⁹ I agree entirely. Sproat referred to “the law” frequently; for him, “the law” was predominantly statutory, and he largely assumed the legitimacy of colonial ordinances and provincial and Dominion. Although he never referred to judicial decisions or to the precedent of a decision, on occasion he did refer to civil actions. Sometimes he worried about how settlers would fare in such actions – would a settler of small means be able to afford to sue for ejection of an “Indian trespasser” in Supreme Court?⁷⁰ – but more often he worried about Indigenous peoples and interests: Was it not unfair that an Indigenous man might be the defendant in a civil suit for trespass, prosecuted under the “common law of England,” but be unrepresented in court, since there was no lawyer living between New Westminster and the Cariboo?⁷¹ Would the Dominion have to sue an individual for trespassing on an Indian reserve or to sue the province to buy out settler rights to water so that they could accompany an Indian reserve?⁷² Should the Dominion apply for an injunction to restrain the province from constructing roads through Indian reserves?⁷³ Despite all these conjectures, however, he never recommended that the Dominion pursue an action. Sproat sought certainty through compromise rather than court action.

⁶⁸ Tobias, *supra* note 37 at 45.

⁶⁹ Hamar Foster, “Letting Go the Bone: The Idea of Indian Title in British Columbia, 1849-1927” in Hamar Foster and John McLaren, eds., *Essays in the History of Canadian Law, Volume VI: British Columbia and the Yukon* (Toronto: University of Toronto Press for The Osgoode Society for Canadian Legal History, 1995) 28 at 31. *Ibid* at 31-32.

⁷⁰ Sproat to Minister of Interior (29 March 1877), Ottawa, LAC (RG 10, vol. 3611, f. 3756-11).

⁷¹ Sproat to Superintendent General (20 August 1878), Ottawa, LAC (RG 10, vol. 3668, f. 10,346).

⁷² Sproat to Superintendent General (26 November 1878), Ottawa, LAC (RG 10, vol. 3670, f. 10,769).

⁷³ Sproat to Superintendent General (24 May 1879), Ottawa, LAC (RG 10, vol. 3692, f. 14,171).

Although he worked within the governing legislation, Sproat was not afraid to push it to its limits. Nowhere was this more noticeable than in his interpretation of the colonial pre-emption ordinances and provincial legislation regarding “Indian settlements.” Sproat knew that “there has always been in this country a law protecting an Indian ‘settlement’, as well as a ‘reserve’, though nobody exactly knows what a ‘settlement’ is.”⁷⁴ Nonetheless, Sproat and his fellow commissioners agreed that a place long-inhabited by one Indigenous man was an “Indian settlement,” “without any need of going into discussions as to the precise meaning of that elastic term,” given the obvious indicia of Indigenous occupation and use of the land.⁷⁵ Further, in the same area – the head of Okanagan Lake – the commissioners pushed out two other settlers, O’Keefe and Greenhow, for occupying lands comprising Indian settlements (though in each case, the commissioners took pains to find other reasons for their decisions).⁷⁶

Given his frequent references to “the law,” it is useful to consider Sproat’s understanding of law’s role. As a starting point, his views fit comfortably within Douglas Harris’s description of the place of law in British settler societies generally:

Neither violence nor cultural domination can be excluded from a study of law. Backed by infantry and navy guns, and supported by a powerful set of cultural assumptions, the British established their economic, political, and social order in distant territories with law. Law was the instrument through which Britain both seized and justified its control of colonial lands... In the hands of its settler societies, law became the means to assert a particular order that would reproduce much of what had been left behind in Britain.

Produced and enforced by the state, law was understood by the British in the late nineteenth century as a means of securing order and obedience with rules rather than violence.⁷⁷

Many examples may be called forth to particularize Harris’s words to Sproat’s tenure. For example, one need only think of the call of the Joint Indian Reserve Commission (JIRC) for a

⁷⁴ Sproat to Superintendent General (3 October 1877), Ottawa, LAC (RG 10, vol. 3612, f. 3756-22, reel C-10106).

⁷⁵ *Ibid.*

⁷⁶ Sproat, “Memorandum on the case of Mr. Cornelius O’Keefe, Head of Okanagan Lake” in British Columbia, *Sessional Papers* (2nd Parl, 3rd Sess and 3rd Parl, 1st Sess, 1878), 42 Vic, 715; Sproat, “Rough Statement as to Indian and White Settlers Claims at head of Okanagan Lake, British Columbia” (13 September 1877), Ottawa, LAC (RG 10, vol. 3612, f. 3756-13).

⁷⁷ Douglas Harris, *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia* (Toronto: University of Toronto Press, 2001) at 188.

gunboat at Penelakut and their attempted reliance on the North West Mounted Police in the interior to see where violence came in. Further, the Nlha7káp̓mx Rules that stipulated neat gardens, clean houses, and sturdy fences certainly promoted “a particular order,” reminiscent of what the new settlers had left behind in Britain.

Sproat fits equally well within the assumed matrix of ideas, ideologies, and values that Cole Harris describes in “How Did Colonialism Dispossess,” where he provides somewhat of a field guide to colonial dispossession, identifying ways in which colonialism dispossessed Indigenous peoples of land and methods by which it managed that dispossession. One of the instruments for the management of the dispossession was the English common law, an important aspect of which was the English “legal consciousness” that largely assumed rather than debated private property rights.⁷⁸ For Sproat, not only were private property rights unquestioned, they played an integral role in Indigenous “progress” towards “civilization”: he thought it “essential to the progress of the Indians that individual property in land – at least in the arable lands – should be encouraged and established.”⁷⁹

Something more can be gleaned from Sproat’s understanding of the role of the law by parsing one of his metaphors. On at least two occasions, Sproat referred to requiring Indigenous people or settlers to “pass under the yoke.” This is not a reference to an ox with a harness but, rather, to a practice in ancient Italy whereby victors made their defeated enemies walk under a “yoke” of spears in order to humiliate them and confirm their subjugation.⁸⁰ In 1877, Sproat explained to the Minister of the Interior that “the Commissioners, having vindicated the law, and in a very effectual manner, though in the way least offensive to a proud and lawless tribe, made them pass under the yoke, in the sight, as to speak, of all the Indians on the coast, who were looking to see what was to be done with the Pa-nel-a-kuts.”⁸¹ In 1878, Sproat told the Superintendent General, in justifying the commissioners’ declaration that land claimed by settlers was Indian reserve land: “[i]t is a hard thing to do, but we cannot in performing our duties make things comfortable for all, and having made the Indians at Chemainus and elsewhere

⁷⁸ Cole Harris, “How Did Colonialism Dispossess? Comments from an Edge of Empire,” *Annals of the Association of American Geographers* 94, no. 1 (2004): 165–82 at 177.

⁷⁹ Sproat to Superintendent General (28 February 1878), Ottawa, LAC (RG 10, vol. 3633, f. 6425-1).

⁸⁰ W. Warde Fowler, “Passing Under The Yoke,” *The Classical Review* 27, no. 2 (1913): 48–51. Indeed, the word “subjugate” comes from the Latin phrase for “pass under the yoke,” *passum sub iugum*.

⁸¹ Sproat to Minister of Interior (15 February 1877), Victoria, B.C. Archives (GR-1965).

pass under the yoke when they were in the wrong, we will do the same with the whites, carefully avoiding of course any unnecessary pressure or severity, so long as the claims of law and justice are strictly satisfied.”⁸² In both cases, “the law” compelled the subjugated to “pass under the yoke”; the commissioners’ decisions upholding the law were simply the means by which the law was brought to bear on the people. This metaphor says much about Sproat: he largely did not question the validity of “the law” (legislation); however, to him, Indigenous and non-Indigenous people alike had rights and obligations under the law, and the commissioners would uphold or enforce both. Sproat’s willingness to apply “the law,” even when it was to the significant disadvantage of settlers and their interests, marks Sproat as rare amongst his contemporaries.

But what about when “law” – legislation or even judicial decisions – was absent? What then guided individuals or governments? This was perhaps the most complex question with which Sproat struggled, and its answer provides one explanation for why British Columbian officials ostracized him. The way Sproat answered this question, as opposed to the way in which those officials answered the question, also tells us much about law in Sproat’s time.⁸³ In the absence of legislation, Sproat struggled to find principles with which to guide the actions of the two governments he represented concerning Indigenous rights, and particularly Indigenous rights to land. Indian title, McCreight had told him, was “a moral claim... [that] a civilised Government cannot prudently ignore.”⁸⁴ This description seems to have meant something to Sproat, as he referred to “moral” claims and concomitant “moral” obligations in many instances. For example, he felt that the province was “at least morally bound” by the agreements establishing the JIRC to secure for Indigenous people water for their reserves, “otherwise the assignment of arable lands for the Indians would have no meaning.”⁸⁵ He similarly felt that the province was broadly under a “moral obligation” with respect to the settlement of land and water

⁸² Sproat to Superintendent General (13 September 1877), Ottawa, LAC (RG 10, vol. 3612, f. 3756-13).

⁸³ Paul McHugh calls this “the role and presence of law in the past... Basically, ... an enquiry into how law has operated in the past.” For legal historians, it is important to keep this inquiry separate from “the use of the past in contemporary legal fora, such as courts and statutory or extra-statutory land claims processes, in which those past events are presented for contemporary resolution. ... Basically, [this] is concerned with the role of the past in today’s law.” See Paul G. McHugh, *Aboriginal Title: The Modern Jurisprudence of Tribal Land Rights* (Oxford: Oxford University Press, 2011) at 274.

⁸⁴ J.F. McCreight, “Opinion” (14 January 1878), Ottawa, LAC (RG 10, vol. 1273, 403-405, reel C-13900).

⁸⁵ Sproat to Powell (25 March 1880), Ottawa, LAC (RG 10, vol. 1274).

for Indigenous people.⁸⁶ He also made one reference to a concept that has gained new life in contemporary judicial decisions: “the honour of the Crown.” In a letter condemning the province’s actions, Sproat fumed: “[a] certain degree of loyal co-operation with Canada on the part of the Province might surely be expected in the adjustment of questions affecting the majority of the provincial population and -- as every week's investigation shows -- so nearly touching the honour of the Crown.”⁸⁷ Thus, for Sproat, the Crown had moral obligations and perhaps obligations arising from the honour of the Crown which ought to have compelled its actions in respect of Indigenous peoples. Yet, his suggestions and admonishments in this vein fell largely on deaf ears, especially as far as officials with the province were concerned. For those men, it seems there was not much to guide governments’ actions beyond the strictures of legislation and inter-governmental agreements, and even less to bind those actions.

In addition to moral obligations and the honour of the Crown, Sproat found direction from the principles of another 19th-century set of beliefs, liberalism, which provided part of the framework for his efforts to pursue the “humanitarian civilizing” of Indigenous peoples. Liberalism – generally speaking, an understanding of human nature premised on individual rationality and based on a state that creates conditions conducive to the pursuit of self-interest and the realization of individual will – played a strong role in “making law, order, and authority” in pre-confederation British Columbia.⁸⁸ It also played a strong role in Sproat’s thinking, as when he told the Superintendent General that “[t]he capacity for continuous labour is what they [Indigenous peoples] need more than skill, and this capacity will come in time, following efforts of the will based on self interest.”⁸⁹

In 2000, historian Ian McKay suggested that a “liberal order framework” could be usefully employed as an organizing principle for understanding much of Canadian history in and since the 19th century. I agree it is a useful framework within which to assess Sproat’s actions: exploring the ways in which Sproat’s thinking and decisions invoked liberal ideas allows further insights not only into his actions, but also into this first period of the Indian reserve-creation

⁸⁶ Sproat to Superintendent General (26 November 1878), *supra* note 72.

⁸⁷ *Ibid.*

⁸⁸ Tina Loo, *Making Law, Order, and Authority in British Columbia, 1821-1871* (Toronto: University of Toronto Press, 1994) at 9. See also Ian McKay, “The Liberal Order Framework: A Prospectus for a Reconnaissance of Canadian History” (2000) 81:4 *The Canadian Historical Review* 617 at 623-624.

⁸⁹ Sproat, “Letter to SGIA enclosing Rules & Regulations” (26 July 1879), *supra* note 2.

process in post-confederation British Columbia more generally.⁹⁰ Sproat relied on and advanced all the principal tenets of liberalism – liberty, property, and equality – in his decisions.⁹¹ Understanding when and how these three ideals motivated him further contextualizes Sproat’s decisions. With respect to liberty, for example, he recommended to the Minister of the Interior in 1877 that in formulating “Indian policy,” there should be no “restriction on what may be called the natural freedom of man as regards locomotion” because:

A man may live 50 years without leaving his township; but make a law that he shall not leave it without permission and he will fret. The Indians here are constantly on the move; they gallop about to pay visits to their brethren; they fish and shoot where they please; they take work here and there.

What they do, their friends south of the line once did. Any attempt to restrain that natural human right of locomotion would be attended with great danger, and I must think that its enforcement is one of the chief sources of danger in the reservation system.⁹²

In a similar vein, Sproat wrote that he hoped soon to see “a stream of Indians constantly overflowing their reserves, and taking their places under some improved means afforded by Provincial legislation, among the industrial ranks of the general population.”⁹³ The following year, Sproat advocated an “Indian pre-emption law -- to permit an outflow from the reserves -- which outflow would be in a good direction toward independence & citizenship.”⁹⁴ In other words, Indigenous peoples, Sproat strongly believed, had to be free to pursue their individual self-interests in the mainstream of settler society. This freedom included physical freedom as well as the freedom of choice.

Sproat advocated another of liberalism’s tenets, private property, through his ardent support of the subdivision of Indian reserves into individual parcels. When, at the end of his first solo circuit in 1878, he sent the Superintendent General a rough estimate of the probable annual

⁹⁰ Ryan Eyford has applied the liberal order framework to his analysis of Icelandic colonization reserves in Manitoba in the 1870s: Eyford, *supra* note 45, especially at 8-15. His analysis provides an excellent discussion of the role of reserves – essentially places of collective property and other interests – within the emerging Canadian liberal order.

⁹¹ McKay, *supra* note 88 at 625, in reliance on Fernande Roy, *Progrès, harmonie, liberté: Le libéralisme des milieux d'affaires francophones de Montréal au tournant du siècle* (Montreal: Boréal, 1988).

⁹² Sproat to Mills (27 August 1877), Ottawa, LAC (RG 10, vol. 3653, f. 8705).

⁹³ Sproat to Superintendent General (3 October 1877), *supra* note 74.

⁹⁴ Sproat to Deputy Superintendent General (20 September 1878), Ottawa, LAC (RG 10, vol. 3666, f. 10,213).

cost of managing Indian affairs in the province – in what may have been part of an early play for Powell’s job – he listed the subdivision of reserves as “the keystone of the whole administration of Indian affairs here.”⁹⁵ For Sproat, subdivision would reduce quarrels on reserve and encourage individuals to work the land. Indeed, he concluded that, “[i]ndividual possession of land -- the title strengthening according to the work done, and weakening to extinguishment if little or no work should be done is at the root of all progress. Without this, every effort will be useless. This fact grows more strongly before my mind every month.”⁹⁶ He further described the subdivision of reserves as “the real battleground on which the supremacy of old tribal customs and the hurtful influence of chiefs will receive a harsh blow.”⁹⁷ Interestingly, Sproat justified his subdivision proposal by appealing to the liberal ideal of equity: “[w]hite men would not work under such circumstances [as the collective ownership of land]. Is it reasonable to expect Indians to do so?”⁹⁸

It was equity that Sproat increasingly championed over his tenure as reserve commissioner. This principle and its importance for him lies at the heart of the difference between him and virtually all other settlers around him or, perhaps, even in Ottawa. In the difficult summer of 1877, Sproat told the Superintendent General that, in allocating reserves, “the principle I go upon is that the Indians should have a fair share of what nature has provided in their own district.”⁹⁹ He advised Indigenous peoples, settlers, and governments alike that he believed “the Queen looked on all her subjects with the same eye, and wished white men and red men to live together in peace under a just and impartial administration of the law.”¹⁰⁰ Sproat carried this belief in the power of law’s impartiality throughout his tenure as reserve commissioner. While he did not challenge “the Queen’s” law or her right to make it, he did believe strongly that it should apply to all individuals. He told the Superintendent General that the commissioners would only succeed by “measur[ing] out justice according to the law,” that the government would not protect either “whites or Indians who placed themselves outside the law,” and that “kindness to the white might mean injustice to the Indian, and vice versa, and this

⁹⁵ Sproat to Superintendent General (20 December 1878), Ottawa, LAC (RG 10, vol. 3672, f. 10,898).

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ Sproat to Superintendent General (27 August 1877), Ottawa, LAC (RG 10, vol. 3611, f. 3756-12).

¹⁰⁰ Sproat to Lieutenant Governor (2 September 1877), Victoria, B.C. Archives (GR-495, box 1, file 1).

rule would be applied in action, consistently.”¹⁰¹ Similarly, he told the province that “[i]t is impossible fully to satisfy either the Indians or the settlers when their views and interests conflict, but we try, without disturbing legal rights, to hold the balance of law and justice evenly without respect to questions of race, knowing that such is the earnest wish of both governments.”¹⁰² In commenting on a statement in a newspaper editorial in late 1878 to the effect that Indigenous people were wards of the Crown and ought to be treated as such, Sproat told the Superintendent General that, “Indians and whites are one people and equity will bind them together yet more closely.”¹⁰³

In *Making Law, Order, and Authority in British Columbia, 1821-1871*, historian Tina Loo argues that “a liberal notion of law – the idea of equality and equal treatment before the law” – was central to the identity of immigrant British Columbians in the 1860s by allowing the newly-arrived Britons to hold fast to their self-perceived “civilized” status.¹⁰⁴ Yet, Loo also assessed liberalism’s limitations in achieving justice.¹⁰⁵ Justice, in a liberal society, comprised two competing conceptions: “one rooted in a recognition of differences (themselves constructed in part by liberalism) and in acting upon them, and the other premised on overlooking those differences as insignificant and treating everyone similarly in accordance with liberalism’s universalist tendencies.”¹⁰⁶ Sproat confronted these two ideals of liberal justice daily. On the one hand, he had to navigate legislation that treated Indigenous people differently than non-Indigenous people. On the other hand, he urged the two governments – the province, in particular – to accept that it was possible for Indigenous people, just like non-Indigenous people, to have rights, and he strove to treat both Indigenous and non-Indigenous peoples “equitably” within the framework of differential legislation and policies.

Sproat’s emphasis on equity grew as he realized the extent to which racism affected the province’s legislation, policies, and decisions toward Indigenous peoples. While he accepted legislation or policies that treated Indigenous peoples differently than non-Indigenous, he

¹⁰¹ Sproat to Superintendent General (3 October 1877), *supra* note 74.

¹⁰² Sproat to Provincial Secretary (5 October 1877), Victoria, B.C. Archives (GR-494 at 354).

¹⁰³ Sproat to Superintendent General (1 December 1878), Ottawa, LAC (RG 10, vol. 3669, f. 10,691, reel C-10117).

¹⁰⁴ Loo, *supra* note 88 at 151, 155.

¹⁰⁵ *Ibid* at 157.

¹⁰⁶ *Ibid* at 156.

challenged what he saw as the racially-based *misapplication* of differential legislation and policies. For example, at the end of 1878, Sproat wrote to the Superintendent General complaining about the racism underlying what he considered to be the province's disreputable conduct:

It is uphill work to get anything whatsoever attended to with which Indians are concerned, though for some time past, the Dominion Government have paid all the expenses, and though I use every possible ingenuity and effort to adjust questions on the spot, and to limit the number of those referred to the Provincial Government, and though, in the case of the latter, I not only called the facts laboriously from every source of information, but try to ascertain the law on particular points, so as to minimise the labour of the Provincial Government.

They will simply do nothing, but oppose a passive resistance. One Government is the same as another. They all are manifestly influenced, (I daresay, unconsciously) by deep race prejudice, as is shown by the fact that prompt attention is given to any letter of a white settler and my report on it quickly required, while letter after letter from me on Indian matters of great importance are left for indefinite periods without answer or even acknowledgment.¹⁰⁷

Towards the end of this letter to the Superintendent General, Sproat concluded: "I begin to think that people here believe that Indians have no rights, and that they cannot acquire them." In this sentence, Sproat enunciated one of his important distinguishing beliefs: Indigenous people could, should, and did have rights, whether based on "moral obligations," "the honour of the Crown," "equity," or legislation. Although, in his mind, these rights were not the same as those of non-Indigenous people, they nonetheless could constrain the actions of a settler society.

The following year, in again discussing the province's actions and inactions with respect to Indigenous land, Sproat fumed to the Superintendent General: "[t]he truth is, as I have already said, that race-prejudice is so intense in this matter that it blinds people here: Whatever may be written to the contrary, the fact is that no government of the province will effectually recognise that the Indians can have any rights to land. If it is possible to deprive them of their land, or prevent them from getting a bit of land, it will be done."¹⁰⁸ Sproat further explained that Forbes Vernon – a former Chief Commissioner of Lands and Works who had been in the colony since 1862 and was a long-time colonial and provincial official – had told him that legislation in the

¹⁰⁷ Sproat to Superintendent General (26 November 1878), *supra* note 72.

¹⁰⁸ Sproat to Vankoughnet (9 April 1879), Ottawa, LAC (RG 10, vol. 3684, f. 12,836).

colony and the province had always been based “on the assumption that the Indians neither have nor can have rights.”¹⁰⁹ Finally, in November 1879, just months before his retirement, Sproat returned again to his complaint that neither the province nor its settlers seemed able “to appreciate the fact that it is possible for Indians to have some rights to land”:

This idea was never strong in British Columbia, and the acts of the Provincial Government in selling Indian lands, previously, with their own formal assent assigned to the Dominion Government for Indians, has further weakened it.

...

What seems to me to be required is some action to prove that in law and in fact, an Indian has as much right to his property as a white man and that his land must not be taken and used at anybody’s will.

The miner is here for a few years only. Some of the cattle owners say ‘give me three or four years more grazing on the public lands -- I ask no more’ meaning that he will have made enough and what the effect is on the lands he does not care.

But the Indian is the real inhabitant of the country; he always will be here; and that he should have a reasonable area of land for his requirements and be protected thereon, must be an object of solicitude to the Dominion Government.

These few remarks have additional force in view of railway construction and the eagerness with which cattle farmers and drovers will carry on their business if construction begins.

The Indians will be pushed on one side, and their lands intruded on at will, unless some steps are taken immediately to ensure fair play.¹¹⁰

So, while Sproat accepted racially-differentiated legislation and governmental policies, and he strove for Indigenous people’s “civilization,” he nonetheless lamented throughout his tenure the overt racism he saw inherent in provincial positions that prevented Indigenous peoples’ from enjoying those limited rights that the settlers’ laws had established for them.

Since 2000, historians have taken up McKay’s challenge to employ liberalism as a lens through which to achieve a “reconnaissance” of Canadian history. In her contribution to *Liberalism and Hegemony*,¹¹¹ a response to McKay’s 2000 article, Adele Perry argues

¹⁰⁹ *Ibid.*

¹¹⁰ Sproat to Superintendent General (16 November 1879), *supra* note 25.

¹¹¹ Jean-François Constant and Michel Ducharme, eds., *Liberalism and Hegemony* (University of Toronto Press, 2009).

persuasively that liberalism, as practiced in Canada in the 19th century, relegated “non-Western peoples to a different space of humanity and political life” and that historians ought to acknowledge “the pervasively gendered and racialized character of the liberal order” and consider the past from the perspective of those on its margins.¹¹² Perry notes that liberal thinkers of the 19th-century resolved the contradictions between claims to individuality and equality, on the one hand, and systematic and racialized inequality, on the other, through the “racial contract” (to which I believe Sproat adhered): a belief that white people simply had more and different rights than non-white people.¹¹³ Sproat did not question governmental legislation or policy that treated Indigenous peoples differently than non-Indigenous people. Indeed, his last known remarks on the topic of “Indian policy” in 1882 suggest that he saw Indigenous peoples, at best, on a parallel track to non-Indigenous people, only very far behind and without any real hope of ever catching up.¹¹⁴ Moreover, Sproat did not challenge liberalism’s dominant tenets in an effort to promote Indigenous interests. Rather, he sought to *use* liberalism’s tenets to promote those interests. If anything, he saw Indigenous peoples’ future success in pursuing all three of liberalism’s main ideals.

Historian Robin Jarvis Brownlie has taken up both McKay’s and Perry’s challenges and applies the liberal order framing to analyze the ways Canadian governments have managed Indigenous peoples and the ways in which Indigenous opposition to liberalist forces have shaped the liberal order.¹¹⁵ In her analysis of the former, Brownlie focuses on the general policy of assimilation reflected in the *Indian Act* and its precursors, which she describes as “clearly a liberal initiative that sought to turn culturally distinct, communally oriented opponents into individualistic, private-property-owning liberal subjects.”¹¹⁶ Sproat and his fellow JIRC commissioners worked to implement this “liberal initiative,” undermining tribal chiefs by working with the younger “farming class” and encouraging their acquisition of private

¹¹² Adele Perry, “Women, Racialized People and the Making of the Liberal Order in Northern North America” in Jean-François Constant & Michel Ducharme, eds, *Liberalism and Hegemony: Debating the Canadian Liberal Revolution* (Toronto: University of Toronto Press, 2009) at 291.

¹¹³ *Ibid* at 276-277.

¹¹⁴ Sproat to Governor General’s Secretary (16 November 1882), *supra* note 1.

¹¹⁵ Robin Jarvis Brownlie, “A Persistent Antagonism: First Nations and the Liberal Order” in Jean-François Constant & Michel Ducharme, eds, *Liberalism and Hegemony: Debating the Canadian Liberal Revolution* (Toronto: University of Toronto Press, 2009).

¹¹⁶ *Ibid* at 299.

landholdings. Sproat's support for municipal-style Indigenous self-government contemplated by s. 63 of the 1876 *Indian Act* and brought into being by *The Indian Advancement Act*, 1884 also implicates him in the assimilation policy that Brownlie describes.

But Brownlie also opens the door to future study – of Sproat and of the B.C. reserve-creation process more generally – by pointing out that “the advance of the liberal order can be directly linked with the beginnings of an extended political and cultural conflict between the state and First Nations.”¹¹⁷ She investigates both sides of that conflict, from the perspective of competing ideologies within Canadian “Indian policy” during the rise of the liberal order from 1840 to 1880, and also from the perspective of the ways in which Indigenous peoples opposed the liberal order. With respect to the former, she identifies both a “colonial paternalism” as well as liberal ideals embedded in assimilation policies.¹¹⁸ As discussed already, Sproat's thinking drew from both paternalism and liberal individualism, although it is the latter that predominates – for example, when he advised the Superintendent General at the end of his first solo circuit in 1878: “[p]ure niggardliness is less hurtful than lavish ill directed expenditure. It is better for Indians to be ragged and self reliant than to be well clad and without power of selfhelp. The one is an upgrade -- a roughish upgrade perhaps -- the other is a smooth downgrade.”¹¹⁹

Perhaps Brownlie's most important contribution for this analysis, however, is her examination of how those at the margins of the liberal order nonetheless reframed or shaped it.¹²⁰ She concludes that Indigenous peoples' perseverance – their “persistent antagonism” – “have helped shape the Canadian liberal democracy into the distinct, negotiated, hybrid form it takes today.”¹²¹ This perspective suggests new ways that Sproat's work and the B.C. reserve-creation process might be investigated beyond my narrow focus on Sproat. A liberal order reconnaissance of reserve-creation in British Columbia in the 1870s could mean revisiting Sproat and his relationship to Indigenous peoples and lands “to ask what it tells us about the

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid* at 304.

¹¹⁹ Sproat to Superintendent General (26 October 1878), *supra* note 7.

¹²⁰ Keith Smith has also pursued such a study, in Keith D. Smith, *Liberalism, Surveillance, and Resistance: Indigenous Communities in Western Canada, 1877-1927*, The West Unbound: Social and Cultural Studies Series (Edmonton: AU Press, Athabasca University, 2009).

¹²¹ Brownlie, *supra* note 115 at 316.

process of the Canadian liberal revolution in general.”¹²² For example, where did the Indigenous municipal government the Nlha7káp̓mx Rules envisioned fit in the 19th-century liberal order? Or did it at all? Such a liberal order “reconnaissance” also might compel consideration, more broadly, of Sproat’s role, as well as the role of the Indigenous peoples with whom Sproat engaged, in shaping or responding to the liberal order. It would mean, in this context, recognizing and analyzing the agency of Indigenous peoples in both the B.C. reserve-creation process and in initiatives such as the Nlha7káp̓mx meeting in Lytton in July 1879 and the resulting Nlha7káp̓mx Rules. It would mean “relativizing the Canadian/liberal claim to represent the rule of law” and evaluating Sproat’s place in “a historically contingent formula for liberal order, in competition with older and long-established Aboriginal practices.”¹²³ It would thus require analyzing the Indigenous laws, governance structures, and ideology of those communities about whom Sproat made his decisions. An analysis that truly takes up the liberal order reconnaissance challenge would be one that gave voice to all the chiefs whom Sproat and the other commissioners pushed aside when they made contentious decisions. It could mean a B.C. reserve-allotment analysis written from Chilliheetsa’s point of view.

Chilliheetsa died around 1884.¹²⁴ Although he left no known writings, his son, Chief John (Johnny) Chillihitza continued his father’s advocacy, leading delegations to England and to Ottawa to fight for his people’s land rights.¹²⁵ Chief Chillihitza, nearly 80 years of age, testified in 1927 before a meeting of the Special Joint Committee of the Senate and House of Commons struck to inquire into a petition from the Allied Indian Tribes of British Columbia asking the Canadian government to facilitate a judicial resolution of their land claims based on aboriginal title.¹²⁶ Just before he was called as a witness, Chief Chillihitza’s lawyer referred to three

¹²² McKay, *supra* note 88 at 640.

¹²³ *Ibid.*

¹²⁴ James A. Teit, “The Salishan Tribes of the Western Plateaus”, ed. Franz Boas, *Forty-Fifth Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution* (1927-1928) at 273.

¹²⁵ House of Commons, Special Committees of the Senate and House of Commons meeting in Joint Session to inquire into the claims of the Allied Tribes of British Columbia, as set forth in their petition submitted to Parliament in June 1926, *Proceedings, Reports and the Evidence* (1927) at 144-145 [*Allied Tribes Special Committee Report*]. On this proceeding and its importance in the history of Indian title in British Columbia, see Foster, *supra* note 69.

¹²⁶ The Allied Tribes’ petition is set out in *Allied Tribes Special Committee Report*, *supra* note 125 beginning at xix. While the Allied Tribes’ petition sought to secure a referral to the Judicial Committee of the Privy Council for a judgment in respect of their claims, the Special Joint Committee conducted its hearing as if it

important medals he possessed: one was from the Pope, one was from Queen Victoria, and one was unidentified.¹²⁷ It appears that the Pope and Queen Victoria gave the medals directly to Chief Chillihitza; however, the third might have been one that Chilliheetsa had shown to the JIRC commissioners in the fall of 1877 as evidence of his commitment to living peaceably with the white settlers, a commitment his uncle, Chief Nicola, born before the Syilx (Okanagan) had met non-Indigenous people, had passed down to him.

Chief Chillihitza testified in the Syilx language in Ottawa. The committee asked him: “[w]hat is your grievance? What remedies have you to suggest that would make it more comfortable for your tribe?”¹²⁸ In his translated reply, Chief Chillihitza referred to Gilbert Sproat’s visit to the Nicola valley some forty-nine years before and to the promises Sproat made to his father and his people:

My forefathers and my own father were some of the leading chiefs of British Columbia and they never relinquished their titles, but now they are dead, and I am their successor, and I still have the title; I did not give them to anybody, and now I come over here in Ottawa so that the government in Ottawa will give me power in my titles and my rights.

The Indians do not want to be enfranchised; they want to be as they are. All the Indians want is to be just Indians, and not to be taken as white people, and made to live like the white people; they want to be the way their forefathers used to be, just plain Indians. That is what my people want. They do not want to be enfranchised.

were deciding upon their claims: Darcy Anne Mitchell, *Allied Indian Tribes of British Columbia: A Study in Pressure Group Behaviour* (MA thesis, University of British Columbia, 1977) [unpublished] at 91-92. Warwick Beament, one of the Allied Tribes’ lawyers, outlined their position in *Allied Tribes Special Committee Report* at 75:

We take a very narrow position... What we say is this; we are advised, whether rightly or wrongly, that we have in law a right by a petition to His Majesty in Council to have a judicial determination of the substantive question that rises out of the merits of our claim. We may be wrong in that, but we only ask these Houses to facilitate the hearing of that claim. This whole question of aboriginal title is admittedly a most vexed one. These Tribes now come forward and consent to be bound by the decision of the Privy Council. We are not asking for an expression of opinion from this Committee or from Parliament on the substantive questions involved in our claims, but we are simply asking that you will recommend the facilitation of the hearing of these claims without waiving any defence which the Government of Canada may have to our substantive allegations.

Another important aspect of these hearings, though not a critical point for this thesis, is the split before the Special Joint Committee between the Allied Tribes and their representatives and the Indigenous peoples of the interior of British Columbia (including Chief Chillihitza) and their representatives: see Mitchell, *Allied Indian Tribes*, at 93-94; see also *Allied Tribes Special Committee Report*, *supra* note 125 at 139-141 where the lawyer for the interior Indigenous peoples sets out the differences between the two groups’ claims.

¹²⁷ *Allied Tribes Special Committee Report*, *supra* note 125 at 139.

¹²⁸ *Ibid* at 142.

Long ago the Indians had Indian laws, but since the white people came, the Indian laws are cast aside by the white people, and they impose their white man's law on the Indians. [paragraph break added]

I am going to refer to the time when Sproat came as a messenger from the Queen, and he said "The Queen has heard of you people here, and sent me over to have a conference with you Indians." They asked him to tell the Indians what the Queen intended to do for the Indians, and Sproat said "The Queen has learned of your country, and it is a big country, and the Queen wants to keep your reserves, and put them in four posts," and Sproat said, "Now, if you Indians believe in the Queen, and she will say this - I will tell you what she intended to do," so they asked him to tell them what the Queen was saying, and he said "If you believe in the Queen, and take her as your sovereign, she will take care of you always; she and her successors will look after the Indians; if in any way you have trouble in your country, you will speak to the Queen and she will send word over and have the trouble fixed up for you Indians". That is what the messenger Sproat said.

The Indians did not seem to agree to have their lands in four posts, and then Sproat told the Indians that if they consented to have their reserves posted, – that is, made out the reserves – there is another promise that the Queen made that she would send another messenger – even if it was not Sproat it would be somebody else – to come and have another conference with the Indians about their country, and he said, "When the messenger comes again you will speak about your country; it is a big country, and all what is in it, and you Indians and the Queen will make an agreement". So the Indians were told by Sproat that the Queen would not touch their Indian rights and their rights would include their right to keep their native titles. Sproat told a lot of things to the Indians of what the Queen said, but I will not speak about that, as it will take up too much time, but the Indians have kept in mind what Sproat told them concerning the white men.¹²⁹

Chief Chillihitza and his people were pushing back against the liberal order. They did not want the settlers' laws and ways of organizing Indigenous peoples to be applied to them; they did not want to work the settler "donkey engine." Further, Chief Chillihitza was telling the Canadian government that his people did not want to become enfranchised, a status that meant ceasing to be an "Indian" under the *Indian Act*, purchasing an individual allotment of reserve land, and holding that parcel in fee simple.¹³⁰ "Enfranchisement" allowed an Indigenous man, so the theory went, to become like a "white man," acquiring his rights and obligations; it aimed to promote the "civilization" of Indigenous peoples through individual property holdings.¹³¹ The Indigenous man and his family would disassociate from their people and prosper through

¹²⁹ *Ibid.*

¹³⁰ *Indian Act*, RSC 1927, c 98, ss 110(5), (8).

¹³¹ Milloy, *supra* note 38 at 58.

assimilation into white society and acquisition of private property¹³² Chief Chillihitza and his people did not want these elements of the liberal order.

Chilliheetsa's son was also telling the Canadian government that his people's lands belonged to them because they had never given them to anyone. In this narrative, Sproat was a crucial character, for he had been "the Queen's messenger," telling Chilliheetsa's people that "the Queen" would always "look after" them. When Chilliheetsa's people protested against having their land bounded by "four posts," Sproat told them that if they agreed to this, the Queen would promise to send another messenger to make an agreement with them about their lands. To Chilliheetsa, who probably knew of the numbered treaties across the prairies, this likely would have meant a treaty for the extinguishment of Indian title in exchange for lands, annuities, and other benefits. Until that agreement, and perhaps even after it, Chilliheetsa and his people understood that their rights to the land, "their native titles," would remain intact.

Chief Chillihitza died several years after making his speech in Ottawa.¹³³ After its hearings in 1927, the Special Joint Committee concluded that the Indigenous peoples of the interior of British Columbia, whom Chief Chillihitza represented, were not making a claim based on "aboriginal title" at all¹³⁴, a conclusion that seems consistent with Chief Chillihitza's lawyer's statement¹³⁵, although perhaps not with Chief Chillihitza's own testimony quoted above.

¹³² *Ibid.*

¹³³ "Chief Chillihitza dead", *Merritt Herald* (16 November 2005, reprinting notice from 14 November 1930), online: <<http://www.merritherald.com/bad-beer-kills-one/>>, accessed 2 September 2017.

¹³⁴ All unattributed quotations in this paragraph from *Allied Tribes Special Committee Report*, *supra* note 125 at xiii-ix, xi.

¹³⁵ When Mr. MacIntyre, the lawyer, was explaining to the Special Joint Committee the position of the interior Indigenous peoples, he said, "[t]here is one question that I can explain more easily than the Indians; that is, as to tenure of land." When asked if he was referring to "aboriginal title," MacIntyre replied (at *Allied Tribes Special Committee Report*, *supra* note 125 at 141):

I am not going into that at all. They must have some sort of tenure, that is the only term I can apply to it; they must have some sort of holding so that they cannot be dispossessed of it because they reclaim too much of the land.

...

THE CHAIRMAN: What you are referring to is that they want some individual title to the land?

MR. MACINTYRE: Yes, individual title to the land for their lifetime, after they have reclaimed it. You can call it "Squatters Rights" or anything else you want to, but they want to be certain that if they fence in the land and build the ditches on the promise of the agent that it shall be looked upon as theirs, and their children's, they shall have that right. I do not know that I have any more to say.

Compare this, however, to MacIntyre's affirmative response to the Special Committee when asked, "Do your clients make any claims with respect to aboriginal title?," in *Allied Tribes Special Committee Report* at 73.

Further, despite the fact that the Allied Tribes had come to the Special Joint Committee seeking only a referral for a judicial decision on their petition, the Committee concluded that if the Allied Tribes had felt “they had an aboriginal title to the lands of the Province, there would have been tribal records of such being transmitted from father to son, either by word of mouth or in some other customary way. But nothing of the kind was shown to exist.” Instead, the Committee concluded that the Indigenous peoples of British Columbia “were consenting parties to the whole policy of the government both as to reserves and other benefits which they accepted for years without demur.” On these bases, the Committee rejected the entire claim (and did not refer it for a judicial decision): “[h]aving given full and careful consideration to all that was adduced before your Committee, it is the unanimous opinion of the members thereof that the petitioners have not established any claim to the lands of British Columbia based on aboriginal or other title.”

Chief Chillihitza’s testimony to the Special Joint Committee provides us a landing spot between Sproat and today, a bridge from Sproat’s work to the present, when agreements between Indigenous peoples and the Crown in British Columbia remain elusive. Chief Chillihitza’s words reflect the history of this continuing conflict. The matters Sproat pondered are pondered still: he considered, for example, that “there must surely be some remedy available in such cases of neglect of duty on the part of the Crown towards the Indians in times gone by. The Indians in fact say “[w]e do not want your presents or your help; give us land and water, we are men; you have taken away our water, we demand what is just; we wait your reply.”¹³⁶ Chief Chillihitza’s words remind us that we are connected to the past in that we live today with its effects. Certainly, we live today with some of Sproat’s and the JIRC’s reserve boundaries on the ground. But we also live with the reasons those boundaries came to be.

Cole Harris, in his final chapter of *Making Native Space*, considered the contemporary role of the history of Indigenous land matters. Without using the word, he urged reconciliation between settlers and Indigenous people over land and its jurisdiction. Practically speaking, he urged “the more generous allocation of land (resources) to Native people,” in order “to create conditions in which Native economies can thrive and Native people can regain the dignity and cultural confidence that colonialism largely destroyed.”¹³⁷ He also encouraged British

¹³⁶ Sproat to Superintendent General (26 November 1878), *supra* note 72.

¹³⁷ C Harris, *Making Native Space*, *supra* note 19 at 294, 322.

Columbia's settler society "to redress some of the damage that has been a by-product of its own achievements."¹³⁸ In the final paragraph of his book, he found encouraging signs that British Columbia seemed to be "in the process of redrawing the map, and something like what Sproat and the Nlh7kápmx envisaged more than 120 years ago may slowly be coming into being."¹³⁹ Given my conclusion that Sproat's goal was to have Indigenous people cast themselves in the image of settler society, I am less certain than Harris that Sproat's and the Nlha7kápmx's objectives are being realized or that we should hope for them to be. Rather, a deeper understanding of Sproat, his beliefs, and the motivations for his actions matter for the same reasons that legal history matters generally, reasons legal historian Jim Phillips has summarized in "Why Legal History Matters."¹⁴⁰ First, "legal history teaches us about the contingency of the law, about the fact that law is not a set of abstract ahistorical and universal principles, it does not exist in a vacuum. Rather, it is formed by, and exists within human societies, and its forms and principles, and changes to them, are rationally connected to those particular societies."¹⁴¹ This history of Sproat illustrates Phillips' point well: the law in the past – and decisions relating to law, like Sproat's – was influenced by other aspects of the past – cultural, social, gender, and economic ideas, to name a few – and thus reflects those other influences. This point leads Phillips to his next observation, that this contingency can liberate us: "[a]ppreciating the message of contingency demystifies the law, removes history as authority in itself, and makes it possible for current students and practitioners to envisage other worlds, other ways of doing things."¹⁴² And that observation leads to Phillips' third, that legal history matters, because if we understand that the law today has not always been the law, then we are better able to produce "alternative visions" of what the law might have been and what it could become.¹⁴³ If we follow Phillips' guidance, then, we will not look to Sproat or any other historical figures and try to replicate what they did or why they did it. As Phillips and others have pointed out, appreciating history's contingencies does not lead us to correct contemporary answers. Rather, "[f]or that we must exert all our other modes of interpretation and analysis, our sense of justice, our desire to

¹³⁸ *Ibid* at 323.

¹³⁹ *Ibid*.

¹⁴⁰ Jim Phillips, "Why Legal History Matters" (2010) 41 *Victoria University of Wellington Law Review* 293.

¹⁴¹ *Ibid*. at 295.

¹⁴² *Ibid*. at 305.

¹⁴³ *Ibid*. at 308-309.

see certain policies put into place that we think will benefit society.”¹⁴⁴ To return to a point I made in Chapter 1, our society has critical need for those who can envision the policies and laws it will take to achieve “our sense of justice.” But first understanding our collective legal history lays the foundation for that work.

8.4 DESCRIBING A NOTABLE MAN

It is something to arrange and present the events and incidents that, in long interrupted succession led to general settlement [in British Columbia]... - quite another to pick out and describe a notable man.... An attempt to mix the two functions tends inevitably to blur the whole presentation. In no case could it be more necessary than in this to remember Lowell’s aphorism, that, “knowing what to leave in the inkpot is the wisdom of the writer.” The central figure or monograph in any character-sketch of course is the person concerned. On him we fix our voluntary attention, waiting only for illuminative side lights, thrown more or less vividly on the central figure, from unconscious expressions, from things done or left undone, in circumstances that do not demand much explanation, particularly if the author furnishes a judicious commentary on the whole.¹⁴⁵

I opened this thesis with a passage from Sproat about the difficulty of writing history. I close the thesis with another passage in which Sproat, writing near the end of his life about his friend and mentor, Sir James Douglas, explained the difficulty of writing a piece that is part history and part biography. This is the same task I have attempted here, and in writing about Sproat, I have faced the same challenges: How to tell the history of British Columbia in which Sproat was involved, while also describing Sproat, without “blur[ring] the whole presentation?” How to “know [] what to leave in the inkpot,” when assessing an official who left tens of thousands of handwritten pages? And how to furnish a “judicious commentary” on the things Sproat did and left undone?

Much that could be written about Sproat is still “in the inkpot.” I have focused on understanding Sproat’s beliefs about Indigenous peoples and their relationships to settler society, settler law, and land, and how those beliefs influenced his reserve-allotment decisions. The focus on Sproat as the “central figure” is the strength and the weakness of this thesis. Sproat is the leading man, and my thesis invites readers to take a seat and watch him; everything and

¹⁴⁴ *Ibid.* at 306.

¹⁴⁵ Sproat to E.O.S. Scholefield, Provincial Librarian and Archivist (18 August 1908), commenting on a book profiling Sir James Douglas and in reply to Mr. Scholefield’s request that Sproat “scroll something about Douglas personally, as he was my [Sproat’s] personal friend for many years”, in Victoria, BC Archives (PR-0562, MS-0001.25.25).

everyone else are “illuminative side lights” to better reveal him. My “judicious commentary” assesses Sproat, but in focusing on his role in constructing British Columbia’s Indian reserve geography, it only partially assesses “the whole.”

Another work that shone the spotlight on Chilliheetsa, or on all the Indigenous chiefs or peoples amongst whom Sproat worked, would likely provide a very different interpretation of events and lead to very different conclusions. If Sproat became part of the “illuminative sidelights” and Chilliheetsa the “central figure,” how would we understand the Indigenous-settler conflict over land in the Okanagan and Nicola valleys? Or, if the attention, instead, were on “the whole” – the many years of Indigenous opposition to the ways in which non-Indigenous people were settling themselves and their laws over the land – how would the history differ? How would our understanding of the British Columbia reserve-creation process change, if the leaders of those organizations were the central figures in the story? These questions and perspectives suggest directions for further scholarship, but they are also fundamental questions for our society to consider as we grapple today with, as Sproat put it, the “neglect of duty on the part of the Crown towards the Indians in times gone by.”¹⁴⁶

¹⁴⁶ Sproat to Superintendent General (26 November 1878), *supra* note 72.

Bibliography

Legislation and Orders-in-Council

An Act for the gradual enfranchisement of Indians, 31 Vic, c. 42.

An Act to amend and consolidate the laws respecting Indians, SC 1880, c 28.

An Act to amend "The Indian Act, 1876", SC 1879, c 34.

An Act to encourage the gradual Civilization of the Indian tribes in this Province, and to amend the Laws respecting Indians, 20 Vic, c. 26.

An Act to provide for the establishment of "The Department of the Interior", SC 1873, c 4.

British Columbia Terms of Union, RSC 1985, App II, No 10.

Constitution Act, 1867 (UK), 30 & 31 Vict c 3, reprinted in RSC 1985, Appendix II, No. 5.

Indian Act, SC 1876, c 18.

Indian Act, RSC 1927, c 98.

The Indian Advancement Act, 1884, SC 1884, c 28.

Land Ordinance, 1870, RSBC 1871, c 144.

Military and Naval Settlers Act, 1863, RSBC 1871, c 43.

PC 1869-0312.

PC 1869-0313.

PC 1869-0705.

PC 1871-0715.

PC 1872-0907.

PC 1873-0275.

PC 1873-1737.

PC 1874-0582.

PC 1875-0246.

PC 1875-1088.

PC 1878-0170.

PC 1879-1761.

PC 1883-1394.

PC 1885-2340.

PC 1886-1435.

PC 1889-0069.

PC 1894-0562.

PC 1938-1036.

Jurisprudence

Reference re: British North America Act, 1867, s.109 (Ont.) (1888), 14 App. Cas. 46 (PC).

St. Catharines Milling and Lumber Co. v. Ontario (Attorney General) (1887), 13 S.C.R. 577.

Secondary Material: Monographs

Anderson, Alexander C. *The Dominion At The West: A Brief Description of the Province of British Columbia, Its Climate and Resources -- The Government Prize Essay, 1872* (Victoria, B.C.: Province of British Columbia, 1872).

Anderson, Nancy Marguerite. *The Pathfinder: A.C. Anderson's Journeys in the West* (Toronto: Heritage House Publishing Company Ltd., 2011).

Banner, Stuart. *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, Massachusetts: Harvard University Press, 2005).

Cail, Robert E. *Land, Man, and The Law: The Disposal of Crown Lands in British Columbia, 1871-1913* (Vancouver: UBC Press, 1974).

Carlson, Keith Thor. *A Stó:lo Coast Salish Historical Atlas* (Vancouver: Douglas & McIntyre, 2001).

---. *The Power of Place, the Problem of Time: Aboriginal Identity and Historical Consciousness in the Cauldron of Colonialism* (Toronto: University of Toronto Press, 2010).

Carstens, Peter. *The Queen's People: A Study of Hegemony, Coercion, and Accommodation among the Okanagans of Canada* (Toronto: University of Toronto Press, 1991).

Christophers, Brett. *Positioning the Missionary: John Booth Good and the Confluence of Cultures in Nineteenth-Century British Columbia* (Vancouver: UBC Press, 1998).

Colonial Office, United Kingdom. *Correspondence Relative to the Present Position of Her Majesty's Indian Subjects in British Columbia* (Colonial Office, May 1875).

Daugherty, Wayne and Dennis Madill. *Indian Government under Indian Act Legislation, 1868-1951* (Ottawa: Department of Indian and Northern Affairs Canada, 1980).

- de Kiewiet, C.W. and F.H. Underhill, eds. *Dufferin-Carnarvon Correspondence, 1874-1878* (Toronto: The Champlain Society, 1955).
- de Vattel, Emerich. *The Law of Nations or the Principles of the Law of Nature applied to the Conduct and Affairs of Nations and Sovereigns* (Neuchatel, 1758), English translation ed. J. Chitty (London, 1834).
- Eyford, Ryan. *White Settler Reserve: New Iceland and the Colonization of the Canadian West* (Vancouver: UBC Press, 2016).
- Fisher, Robin. *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890*, 2nd ed. (Vancouver: UBC Press, 1992).
- Fitzmaurice, Andrew. *Sovereignty, Property and Empire, 1500-2000* (Cambridge: Cambridge University Press, 2014).
- Gibbs, George. *Dictionary of the Chinook Jargon, or, Trade Language of Oregon* (New York: Cramoisy, 1863).
- Green, Jonathan. *Green's Dictionary of Slang* (London: Abecedary Limited, 2010, online 2011), online: <<https://greensdictofslang.com/entry/b4wflra>>, accessed 6 October 2017.
- Good, Reverend John Booth. *A Vocabulary and Outlines of Grammar of the Ntlakapamuk or Thompson Tongue, the Indian language spoken between Yale, Lillooet, Cache Creek and Nicola Lake, together with a Phonetic Chinook Dictionary* (Victoria, B.C.: St. Paul's Mission Press, 1880).
- . *The Morning and Evening Prayer, And the Litany, with Prayers and Thanksgivings translated into the Neklakapamuk Tongue, for the use of the Indians of the St. Paul's Mission, Lytton, British Columbia* (Victoria, B.C.: St. Paul's Mission Press, 1878).
- Hall, D.J. *From Treaties to Reserves: The Federal Government and Native Peoples in Territorial Alberta, 1870-1905*. Montreal & Kingston: McGill-Queen's University Press, 2015.
- Harris, Cole. *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: UBC Press, 2002).
- Harris, Douglas. *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia* (Toronto: University of Toronto Press, 2001).
- . *Landing Native Fisheries: Indian Reserves and Fishing Rights in British Columbia, 1849-1925* (Vancouver: UBC Press, 2008).
- Hartley, LP. *The Go-Between* (London: Hamish Hamilton, 1953).
- Helmcken, John Sebastian. *The Reminiscences of Doctor John Sebastian Helmcken*, Dorothy Blakey Smith, ed. (Vancouver: University of British Columbia Press, 1975).

- Hickford, Mark. *Lords of the Land: Indigenous Property Rights and the Jurisprudence of Empire*, Oxford Studies in Modern Legal History (Oxford: Oxford University Press, 2011).
- Ignace, Marianne & Ronald E Ignace. *Secwépemc People, Land and Laws : Yeri7 re Stsq'ey's-kucw*, McGill-Queen's Native and Northern Series 90 (Montreal & Kingston: McGill-Queen's University Press, 2017).
- Lester, Alan & Fae Dussart. *Colonization and the Origins of Humanitarian Governance* (Cambridge: Cambridge University Press, 2014).
- Loo, Tina. *Making Law, Order, and Authority in British Columbia, 1821-1871* (Toronto: University of Toronto Press, 1994).
- McHugh, Paul G. *Aboriginal Societies and the Common Law: A History of Sovereignty, Status, and Self-Determination* (Oxford: Oxford University Press, 2005).
- . *Aboriginal Title: The Modern Jurisprudence of Tribal Land Rights* (Oxford: Oxford University Press, 2011).
- Milton, Henry, ed. *Speeches and Addresses of the Right Honourable Frederick Temple Hamilton, Earl of Dufferin* (London: John Murray, 1882).
- Okanagan Rights Committee & The Okanagan Indian Education Resource Society, *We Get Our Living Like Milk From the Land*, Lee Maracle et al, eds. (Canada: Theytus Books Ltd., 1993).
- Papers Connected with the Indian Land Question 1850-1875* (Victoria: Queen's Printer, 1875).
- Pope, Sir Joseph. *Correspondence of Sir John Macdonald: Selections from the Correspondence of the Right Honourable Sir John Alexander Macdonald, G.C.B., First Prime Minister of the Dominion of Canada* (Toronto: Doubleday, Page & Company, 1921).
- Pritchard, Allan, ed. *Vancouver Island Letters of Edmund Hope Verney, 1862-65* (Vancouver: UBC Press, 1996).
- Rothenburger, Mel. *The Wild McLeans* (Victoria, B.C.: Orca Book Publishers, 1993).
- Smith, Keith D. *Liberalism, Surveillance, and Resistance: Indigenous Communities in Western Canada, 1877-1927* (Edmonton: AU Press, Athabasca University, 2009).
- Sproat, Gilbert Malcolm. *British Columbia - Information for Emigrants* (London, 1873), online: <<https://babel.hathitrust.org/cgi/pt?id=aeu.ark:/13960/t18k7tn10;view=1up;seq=7>>, accessed 16 August 2017.
- . *British Columbia - Information for Emigrants* (London, 1875), online: <https://archive.org/details/cihm_14494>, accessed 16 August 2017.
- . *Memorandum on Indian Reserves in the District of Yale* (Victoria: Colonist Steam Presses, 1878), Victoria, B.C. Archives (NW 970.52 S771).
- . *Scenes and Studies of Savage Life* (London: Smith, Elder and Co., 1868).

---. *The Nootka: Scenes and Studies of Savage Life*, Charles Lillard, ed. (Victoria: Sono Nis Press, 1987).

Tennant, Paul. *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989* (Vancouver: UBC Press, 1990).

Secondary Material: Articles and Book Chapters

Balf, Mary. "Hwistesmetxe'qen," in *Dictionary of Canadian Biography*, vol. 8, University of Toronto/Université Laval, 2003–, online:

<http://www.biographi.ca/en/bio/hwistesmetxe_qen_8E.html>, accessed 18 September 2017.

Barrett, Stanley R. "Peter Carstens (1929-2010)", (2010) 52:2 *Anthropologica* 389.

Blake, Lynn A. "Oblate Missionaries and the 'Indian Land Question'" (August 1998) 119 *BC Studies* 27.

Blomley, Nicholas. "Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid" (2003) 93:1 *Annals of the Association of American Geographers* 121.

Boas, Franz. "Fifth Report on the Indians of British Columbia" in *Report of the Sixty-Fifth Meeting of the British Association for the Advancement of Science* (Ipswich, 1895).

Brealey, Kenneth. "Travels from Point Ellice: Peter O'Reilly and the Indian Reserve System in British Columbia" (Autumn/Winter 1997-98) 115/116 *BC Studies* 181.

Brownlie, Robin Jarvis. "A Persistent Antagonism: First Nations and the Liberal Order" in Jean-François Constant & Michel Ducharme, eds, *Liberalism and Hegemony: Debating the Canadian Liberal Revolution* (Toronto: University of Toronto Press, 2009).

Brent, Marie Houghton. "Indian Lore" (1966) 30 *Okanagan Historical Society Annual Report* 105.

Cottam, S. Barry. "Indian Title as a 'Celestial Institution': David Mills and the St. Catherine's Milling Case" in Kerry Abel & Jean Friesen, eds, *Aboriginal Resource Use in Canada: Historical and Legal Aspects*, *Manitoba Studies in Native History* (Winnipeg, Manitoba: University of Manitoba Press, 1991) 247.

Dawson, George M. "Notes on the Shuswap People of British Columbia" in *Transactions of the Royal Society of Canada* (Section II, 1891) 3.

Duff, Wilson. "The Fort Victoria Treaties" (Fall 1969) 3 *BC Studies* 3.

Dyck, Noel. Book Review of *The Queen's People: A Study of Hegemony, Coercion, and Accommodation among the Okanagans of Canada* by Peter Carstens, (1992) 34:2 *Anthropologica* 285.

- Fisher, Robin. "An exercise in futility: The Joint Commission on Indian land in British Columbia, 1875-1880" (1975) 10:1 *Historical Papers* 79.
- . "Trutch, Sir Joseph William," in *Dictionary of Canadian Biography*, vol. 13, University of Toronto/Université Laval, 2003–, online:
<http://www.biographi.ca/en/bio/trutch_joseph_william_13E.html>, accessed 20 September 2017.
- . "Joseph Trutch and Indian Land Policy" (Winter 1971-72) 12 *BC Studies* 3.
- Foster, Hamar. "Aboriginal Title and the Provincial Obligation to Respect It: Is *Delgamuukw v. British Columbia* "Invented Law"?" (March 1998) 56:2 *The Advocate* 221.
- . "Letting Go the Bone: The Idea of Indian Title in British Columbia, 1849-1927" in Hamar Foster and John McLaren, eds., *Essays in the History of Canadian Law, Volume VI: British Columbia and the Yukon* (Toronto: University of Toronto Press for The Osgoode Society for Canadian Legal History, 1995) 28.
- . "Roadblocks and Legal History, Part I: Do Forgotten Cases Make Good Law?" (May 1996) 54:3 *The Advocate* 355.
- . "Roadblocks and Legal History, Part II: Aboriginal Title and S. 91(24)" (July 1996) 54: 4 *The Advocate* 531.
- . "Walkem, George Anthony," in *Dictionary of Canadian Biography*, vol. 13, University of Toronto/Université Laval, 2003–, online:
<http://www.biographi.ca/en/bio/walkem_george_anthony_13E.html>, accessed 12 June 2017.
- Fowler, W. Warde. "Passing Under The Yoke," *The Classical Review* 27, no. 2 (1913): 48–51.
- Francis, Mark. "The 'Civilizing' of Indigenous Peoples in Nineteenth-Century Canada" (1998) 9:1 *Jour World Hist* 51.
- Harkin, Michael E. "Potlatch in Anthropology" in *International Encyclopedia of the Social and Behavioral Sciences*, by Neil J. Smelser and Paul B. Baltes, eds. (Oxford: Pergamon Press, 2001) vol 17.
- Harris, Cole. "How Did Colonialism Dispossess? Comments from an Edge of Empire" (2004) 94:1 *Annals of the Association of American Geographers* 165.
- . "The Fraser Canyon Encountered," in Cole Harris, *The Resettlement of British Columbia: Essays on Colonialism and Geographical Change* (Vancouver: UBC Press, 1997) at 103, and originally published as Cole Harris, "The Fraser Canyon Encountered" (Summer 1992) 94 *BC Studies* 5.
- . "The Native Land Policies of Governor James Douglas" (Summer 2012) 174 *BC Studies* 101.

- Harris, Douglas. "The Nlha7kapmx Meeting at Lytton, 1879, and the Rule of Law" (Winter 1995-96) 108 BC Studies 5.
- Haworth, Kent M. "Musgrave, Sir Anthony," in *Dictionary of Canadian Biography*, vol. 11, University of Toronto/Université Laval, 2003–, online: <http://www.biographi.ca/en/bio/musgrave_anthony_11E.html>, accessed 9 June 2017.
- Hendrickson, James E. "Fraser, Donald," in *Dictionary of Canadian Biography*, vol. 12, University of Toronto/Université Laval, 2003–, online: <http://www.biographi.ca/en/bio/fraser_donald_12E.html>, accessed 9 June 2017.
- Hewitt, Martin. "Why the Notion of Victorian Britain Does Make Sense" (2006) 48:3 Victorian Studies 395.
- Hickford, Mark. "'Decidedly the Most Interesting Savages on the Globe': An Approach to the Intellectual History of Maori Property Rights, 1837-53" (2006) XXVII:1 Hist Pol Thought 122.
- Johnson, J. K. and P. B. Waite. "Macdonald, Sir John Alexander," in *Dictionary of Canadian Biography*, vol. 12, University of Toronto/Université Laval, 2003–, online: <http://www.biographi.ca/en/bio/macdonald_john_alexander_12E.html>, accessed 19 September 2017.
- Leslie, John and Ron Maguire, eds. "The Historical Development of the Indian Act" (Ottawa, 1978), online: <http://publications.gc.ca/collections/collection_2017/aanc-inac/R32-313-1978-eng.pdf>, accessed 29 November 2017.
- Loo, Tina. "Bute Inlet Stories: Law, Crime, and Colonial Identity," in *Making Law, Order, and Authority in British Columbia, 1821-1871* (Toronto: University of Toronto Press, 1994) 134-156.
- . "McCreight, John Foster," in *Dictionary of Canadian Biography*, vol. 14, University of Toronto/Université Laval, 2003–, online: <http://www.biographi.ca/en/bio/mccreight_john_foster_14E.html>, accessed May 15, 2017.
- Mandler, Peter. "'Race' and 'Nation' in Mid-Victorian Thought," in Stefan Collini et al., eds., *History, Religion, and Culture: British Intellectual History, 1750-1950* (Cambridge: Cambridge University Press, 2000) 224.
- McKay, Ian. "The Liberal Order Framework: A Prospectus for a Reconnaissance of Canadian History" (2000) 81:4 The Canadian Historical Review 617.
- McKelvie, B. A. "Lieutenant-Colonial Israel Wood Powell, M.D., C.M." (1947) 1:11 BC Hist Quar 33.
- Milloy, John S. "The Early Indian Acts: Developmental Strategy and Constitutional Change" in *As Long as the Sun Shines and Water Flows: A Reader in Canadian Native Studies*, Nakoda Institute Occasional Papers (Vancouver: UBC Press, 1983) 56.

- Moloney, Pat. "Colonisation, Civilisation and Cultivation: Early Victorians' Theories of Property Rights and Sovereignty" in A.R. Buck, John McLaren & Nancy E. Wright, eds., *Land and Freedom: Law, Property Rights and the British Diaspora* (Hants, England: Ashgate Publishing Ltd., 2001) 23.
- . "Savagery and Civilization: Early Victorian Notions" (2001) 35:2 NZ J Hist 153.
- Ormsby, Margaret A. "Seymour, Frederick," in *Dictionary of Canadian Biography*, vol. 9, University of Toronto/Université Laval, 2003–, online: <http://www.biographi.ca/en/bio/seymour_frederick_9E.html>, accessed 9 June 2017.
- Perry, Adele. "Women, Racialized People and the Making of the Liberal Order in Northern North America" in Jean-François Constant & Michel Ducharme, eds, *Liberalism and Hegemony: Debating the Canadian Liberal Revolution* (Toronto: University of Toronto Press, 2009)
- Phillips, Jim. "Why Legal History Matters" (2010) 41 Victoria University of Wellington Law Review 293.
- Rickard, T.A. "Gilbert Malcolm Sproat" [1937] 1 BC Hist Quar 21.
- Rossiter, David A. "Lessons in possession: colonial resource geographies in practice on Vancouver Island, 1859-1865" (2007) 33 Journal of Historical Geography 770.
- Sahlins, Peter. Review of *Microhistory and the Lost Peoples of Europe*, by Edward Muir and Guido Ruggiero, eds., (1993) 23:4 Journal Interdiscipl Hist 768.
- Smith, Dorothy Blakey. Entry for "Alexander G. Dallas" in "Biographical Appendix" to Arthur Thomas Bushby, "The Journal of Arthur Thomas Bushby, 1858-1859," ed. Dorothy Blakey Smith (1957-58) XXI:1-4 BC Hist Quar 83.
- Sproat, Gilbert Malcolm. "On the Probability of a Bone Age" (1868) 6 Ethnological Society of London Transactions 253.
- . "The West Coast Indians in Vancouver Island" (1867) Ethnological Society of London Transactions 243.
- Teit, James A. "The Salishan Tribes of the Western Plateaus", ed. Franz Boas, Forty-Fifth Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution (1927-1928).
- Thoms, J Michael. "A Place Called Pennask: Fly-fishing and Colonialism at a British Columbia Lake" (Spring 2002) 133 BC Studies 69.
- Thomson, Duane. "Clexlixqen, Louis," in *Dictionary of Canadian Biography*, vol. 14, University of Toronto/Université Laval, 2003–, online: <http://www.biographi.ca/en/bio/clexlixqen_louis_14E.html>, accessed 12 September 2017.

- . "Opportunity Lost: A History of Okanagan Indian Reserves in the Colonial Period" (1978) 42nd *Okanagan Historical Society Annual Report* 43.
- . "The Response of the Okanagan Indians to European Settlement" (Spring 1994) 101 BC Studies 96.
- Tobias, John L. "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy" in *As Long as the Sun Shines and Water Flows: A Reader in Canadian Native Studies* (Vancouver: UBC Press, 1983) 39.
- Turnbull, Elsie G. "Recollections of Marie Houghton Brent" (1984) 18:2 British Columbia Historical News 21.
- Turner, Robert D. "Onderdonk, Andrew," in *Dictionary of Canadian Biography*, vol. 13, University of Toronto/Université Laval, 2003–, online: http://www.biographi.ca/en/bio/onderdonk_andrew_13E.html, accessed 23 March 2018.
- Vibert, Elizabeth. "Review Article: Determining Okanagan History," Book Review of *The Queen's People: A Study of Hegemony, Coercion, and Accommodation among the Okanagans of Canada* by Peter Carstens, (Winter 1992-93) 96 BC Studies 110.
- Ware, Reuben. "Silhitz's Petition to Governor James Douglas" (1978) 42nd *Okanagan Historical Society Annual Report* 53.
- Webber, Jeremy. "The Past and Foreign Countries" (2006) 10 Legal History 1.

Secondary Materials: Theses & Dissertations

- Cohen, William A. *School failed coyote so fox made a new school: Indigenous Okanagan knowledge transforms educational pedagogy* (PhD dissertation, University of British Columbia, 2010) [unpublished].
- Johnson, Michelle K. *S7imla7xw. n'!"qwcin (clear speech): 1,000 hours to mid-intermediate N'syilxcn proficiency (Indigenous language, Syilx, Okanagan-Colville, n'qilxwcn, Interior Salish)* (PhD dissertation, University of British Columbia, 2013) [unpublished].
- Mitchell, Darcy Anne. *Allied Indian Tribes of British Columbia: A Study in Pressure Group Behaviour* (MA thesis, University of British Columbia, 1977) [unpublished].
- Seymour, Anne. *Natives and Reserve Establishment in Nineteenth Century British Columbia* (MA thesis, University of British Columbia, 1995) [unpublished].
- Shankel, George. *The Development of Indian Policy in British Columbia* (PhD dissertation, University of Washington, 1945) [unpublished].

Thomson, Duane. *A History of the Okanagan: Indians and Whites in the Settlement Era, 1860-1920* (PhD dissertation, University of British Columbia, 1985) [unpublished].

Vallance, Neil. *Sharing The Land: The Formation of the Vancouver Island (or "Douglas") Treaties of 1850-1854 in Historical, Legal and Comparative Context* (PhD dissertation, University of Victoria, 2015) [unpublished].

Wyatt, David. *The Indian History of the Nicola Valley, British Columbia* (PhD dissertation, Brown University, 1972) [unpublished].

Secondary Materials: Newspapers

With one exception (the article listed last in *The Daily British Colonist* list), none of the newspaper articles I cite have authors, so I have grouped the articles by newspaper and then by date.

The Daily British Colonist

online: <www.britishcolonist.ca>, accessed between 28 July and 20 September 2017.

- . "The Topic of the Day" (1 July 1861) 2.
- . "The Volunteer Movement" (1 July 1861) 3.
- . "The Rifle Corps" (21 February 1862) 3.
- . "Rifle Volunteers" (22 February 1862) 3.
- . "A Meeting of the Members of the Agricultural and Horticultural Society..." (9 July 1862) 2.
- . "Immigration Board Meeting" (5 August 1862) 3.
- . "Married" (25 December 1862) 3.
- . "Exports of Lumber, From Alberni, Barclay Sound" (4 February 1864) 3.
- . "Birth" (18 April 1864) 3.
- . "Flourishing" (10 January 1865) 3.
- . "The Mechanics' Institutes Lectures" (11 January 1865) 3.
- . "Mass Meeting in the Theatre" (3 February 1865) 3.
- . "A Case of Dog and Kettle" (6 February 1865) 3.
- . "Votes for Mr. Sproat are Thrown Away" (13 February 1865) 3.
- . "The Election: Death Blow to the Free Port – Union and Tariff Triumphant – DeCosmos and McClure Returned" (14 February 1865) 3.
- . "From Alberni" (30 March 1865) 3.

- . "Farewell" (15 August 1865) 3.
- . "Departure of Old Friends" (26 August 1865) 3.
- . "Retail Licences" (4 May 1866) 3.
- . "Business Cards" (28 June 1866) 1.
- . "Cruise of H.M.S. "Scout" round the Island" (21 August 1866) 3.
- . "The Capital Memorial" (15 November 1867) 1-2.
- . "Letter from Donald Fraser, Esq." (15 November 1867) 3.
- . "The Capital Memorial Meeting" (28 November 1867) 2.
- . "The Seat of Government" (29 November 1867) 2.
- . "Correspondence with the Colonial Office, with Reference to the Memorials on the Subject of the Capital and Seat of Government of British Columbia" (13 February 1868) 1.
- . "Legislative Council" (6 April 1868) 1.
- . "Barclay Sound and San Juan Island" (19 September 1871) 3.
- . "The Visit of Hon. Mr. Langevin, C.B., to Barclay Sound" (22 September 1871) 3.
- . "Does British Columbia Want Population?" (3 September 1872) 2.
- . "Land and Population" (8 October 1872) 2.
- . "Good Intentions" (11 October 1872) 2.
- . "More About the Prize Essay" (8 November 1872) 2.
- . "Mr. G.M. Sproat" (11 May 1875) 3.
- . "To Alberni and Back" (4 July 1875) 3.
- . "The Issue" (8 September 1875) 3.
- . "The Great Reform Victory" (14 September 1875) 2.
- . "Mr. Sproat and Public Sentiment" (14 September 1875) 3
- . "Mr. Sproat and Mr. 'Pan'" (17 September 1875) 3.
- . "Mr. Sproat and Mr. 'Pan'" (19 September 1875) 3.
- . "Walkem and Sproat" (1 October 1875) 3.
- . "Contradiction – Editor Colonist" (1 February 1876) 2.
- . "The Late Agent General" (9 March 1876) 3.
- . "Notice" (14 April 1876) 3.
- . "Back Again" (16 May 1876) 3.

Reverend Good, “The Indian Organization and the Press—A Challenge”, *The Daily British Colonist* (12 October 1879) 3, online: <www.britishcolonist.ca>, accessed 20 September 2017.

The Mainland Guardian (New Westminster)

“From Lytton”, *The Mainland Guardian* (New Westminster, B.C.) (19 July 1879).

The [London, England] Morning Post

“For the First Time since British Columbia Was Incorporated with Canada the Governor-General of the Dominion Has Visited the New Province”, *The [London, England] Morning Post* (22 August 1876) 4.

Merritt Herald

“Chief Chillihitzia dead”, *Merritt Herald* (16 November 2005, reprinting notice from 14 November 1930), online: <<http://www.merritherald.com/bad-beer-kills-one/>>, accessed 2 September 2017.

Other Materials: Archival Sources

British Columbia Archives (Victoria)

- British Columbia. Attorney General Documents, 1871-1872. GR-419.
- . Attorney General, Correspondence Inward. GR-429.
- . Provincial Secretary, 1876-78. GR-494.
- . Provincial Secretary. Correspondence Inward. GR-526.
- . Provincial Secretary. Letterbooks. GR-540.
- . Provincial Secretary. Letters in from Agent-General, 1872. GR-695.
- . Dept. of Lands and Works. Chief Commissioner of Lands and Works. Chief Commissioner’s correspondence inward. GR-868.
- . Dept. of Lands and Works. GR-1039.
- . Colonial Correspondence, 1857-1872. GR-1372.

Department of Indian Affairs and Northern Development fonds, PR-2104.
Census records, 1876-1897, GR-2928.

Joint Reserve Commission fonds, PR-2107.
---. Correspondence, 1877-1878, GR-495.
---. Reports (Journal of Proceedings), GR-1965.

Gilbert Malcolm Sproat fonds. PR-0258.

Gilbert Malcolm Sproat papers, MS-0257.

Vancouver Island. Office of the Surveyor General, 1860-1865, GR-1169.

Individual items

Bruce Alistair McKelvie papers, Series MS-0001; Sproat to E.O.S. Scholefield, Provincial Librarian and Archivist (18 August 1908), MS-0001.25.25.

“General Testimonials in favour of Gilbert Malcolm Sproat”, NWp 920 S771g

“Vocabulary” (copy, originally from Smithsonian Institution, National Anthropological Archives), Add. MSS. 518.2.35.

Sproat, Alexander. Typescript memorandum on Gilbert Sproat (c. 28 October 1935), MSS W/Sp85.

Sproat, Gilbert Malcolm. *Memorandum on Indian Reserves in the District of Yale*, NW 970.52 S771.

Wyld, J. “Emigration map of British Columbia shewing the mineral, agricultural and timber sections of the province”, 1873), Item 17736A.

Library and Archives Canada (Ottawa)

Canada. Department of Indian Affairs. Black Series. RG 10, volumes 1021, 1273, 1274, 1284, 2116, 3581, 3583, 3597, 3605, 3611, 3612, 3617, 3633, 3637, 3638, 3641, 3645, 3646, 3647, 3650, 3651, 3653, 3656, 3657, 3661, 3662, 3663, 3666, 3668, 3669, 3670, 3672, 3673, 3679, 3680, 3684, 3692, 3696, 3698, 3699, 3700, 3701, 3703, 3705, 3706, 3707, 3711, 3716, 10010, 10011, and 10012A.

---. Department of the Secretary of State. RG 6, G1, volume 667.

---. Department of Agriculture. RG 17, A III 2, vol. 2397.

---. Sir John A. Macdonald fonds. MG 26 A, vol. 364.

Indigenous and Northern Affairs Canada (Specific Claims Branch, Vancouver)

Federal Collection of Minutes of Decision, Correspondence and Sketches.

Provincial Collection of Minutes of Decision, Correspondence and Sketches.

National Archives (England)

Katharine Ann [sic] Sproat, Appellant, v. Gilbert Malcolm Sproat, Respondent, Wife's petition (30 July 1870); Kew, U.K., The National Archives (J 77/105/1634).

Other Materials: Government Publications

British Columbia

- British Columbia. Elections British Columbia, “An Electoral History of British Columbia, 1871-1986” (1988), online: <http://www.elections.bc.ca/docs/rpt/1871-1986_ElectoralHistoryofBC.pdf>, accessed 20 September 2017.
- . “Gilbert Malcolm Sproat, Esq., of 4 Lime Street Square, London, was, towards the end of the year 1872, appointed Agent-General in England for the Province of British Columbia.” (12 April 1873), XIII:15 *The British Columbia Gazette* 1.
- . Legislative Assembly, “Return to an Address of the Legislative Assembly, dated 14th March 1872, for copies of the Instructions to the Delegate who represented the Province of British Columbia, at the Immigration Conference held at Ottawa, last Summer, together with the Report of the said Delegate, and papers and correspondence touching the same” in *Sessional Papers*, No. 4 (1872).
- . G.M. Sproat, “Memorandum on the case of Mr. Cornelius O’Keefe, Head of Okanagan Lake” in British Columbia, *Sessional Papers* (2nd Parl, 3rd Sess and 3rd Parl, 1st Sess, 1878), 42 Vic, 715.

Canada

- Canada. Department of Justice. Bernard, Deputy Minister of Justice, concurred in by Fournier, Minister of Justice. “Report” (19 January 1875) in *Sessional Papers*, No. 141 (1882).
- . Department of Indian Affairs. *Annual Report of the Department of Indian Affairs for the year ended 31st December 1880* (Ottawa: Parliament, 1881).
- . ---. *Annual Report of the Department of Indian Affairs for the year ended 31st December 1881* (Ottawa: Parliament, 1882).
- . ---. *Annual Report of the Department of Indian Affairs for the year ended 31st December 1886* (Ottawa: Parliament, 1887).
- . Department of Interior. *Annual Report of the Department of the Interior for the year ended 30th June 1876* (Ottawa: Department of Interior, 1877).
- . ---. *Report of the Deputy Superintendent General of Indian Affairs for 1877* (Ottawa, Department of Interior, 1877).
- . Department of the Secretary of State for the Provinces. “Report of the Indian Branch” (2 February 1871) (Ottawa, Parliament, 1872).
- . House of Commons. *House of Commons Debates*, 1st Parl, 2nd Sess, vol 1 (27 April 1869).
- . ---. *House of Commons Debates*, 5th Parl, 2nd Sess, vol 1 (26 February 1884).
- . ---. Special Committees of the Senate and House of Commons meeting in Joint Session to inquire into the claims of the Allied Tribes of British Columbia, as set forth in their petition submitted to Parliament in June 1926, *Proceedings, Reports and the Evidence* (1927).

- . Indigenous and Northern Affairs Canada. “Maps of Treaty-Making in Canada,” <<http://www.aadnc-aandc.gc.ca/eng/1100100032297/1100100032309>>, accessed 16 February 2018.
- . Ministry of Public Works. British Columbia: Report of the Hon. H.L. Langevin, C.B., Minister of Public Works (Ottawa: Parliament, 1872).
- . Parliament. “Report of the Minister of Agriculture for the calendar year 1871” in *Sessional Papers*, vol. V (Ottawa: Parliament, 1872).
- . ---. Special Appendix E” in *Sessional Papers*, No. 10 (1878).
- . ---. “Correspondence regarding the non-fulfilment of the terms of Union with the Province of British Columbia” in *Sessional Papers*, No. 19 (1875).
- . ---. “Report of the Minister of Agriculture of the Dominion of Canada, for the calendar year 1874” in *Sessional Papers*, No. 40 (Ottawa: Parliament, 1875).
- . ---. “Annual Report of the Department of Interior for year ended 30 June 1875 – Special Appendix” (Ottawa: Parliament, 1876).
- . Privy Council Office. *Guide to Canadian Ministries since Confederation* (Ottawa: Privy Council Office, 14 October 2009), online: <<http://www.pco-bcp.gc.ca/mgm/lst.asp?lang=eng&=1>>, accessed 16 September 2017.

United Kingdom

United Kingdom. Colonial Office. “Correspondence Relative to the Present Position of Her Majesty’s Indian Subjects in British Columbia” (Colonial Office, May 1875).

Other Materials: Websites

- Adams Lake Indian Band, online: <<http://adamslakeband.org/>>, accessed 16 October 2017.
- Daybreak Kamloops. “Tk'emlups Indian Band honours momentous Chief Louis” (9 April 2015), online: <<http://www.cbc.ca/news/canada/british-columbia/tk-emlups-indian-band-honours-momentous-chief-louis-1.3026360>>, accessed 24 November 2017.
- Fitzmaurice, Andrew. The University of Sydney Faculty of Arts and Social Sciences webpage, online: <<http://sydney.edu.au/arts/staff/profiles/andrew.fitzmaurice.php>>, accessed 12 August 2017.
- Huu-ay-aht First Nations, online: <<https://huuayaht.org/>>, accessed 20 September 2017
- Memory BC. “Marie Houghton Brent fonds”, online <<https://www.memorybc.ca/marie-houghton-brent-fonds>>, accessed 17 December 2017.
- Neskonlith Indian Band, online: <<https://www.neskonlith.org/>>, accessed 16 October 2017.
- Nlaka’pamux Nation Tribal Council, online: <<http://nntc.ca/pages/home.aspx>>, accessed 29 August 2017.
- Nuu-chah-nulth Tribal Council, online: <<http://www.nuuchahnulth.org/>>, accessed 13 August 2017.

Okanagan Indian Band, online: <<https://okib.ca/about-us/our-history>>, accessed 16 October 2017.

Shuswap Nation Tribal Council, online: <<http://shuswapnation.org/>>, accessed 12 September 2017.

Simpcw First Nation, online: <<http://www.simpcw.com/>>, accessed 28 September 2017.

Skeetchestn Indian Band, online: <<http://www.skeetchestn.ca/home>>, accessed 12 September 2017.

Splatsin, online: <<https://www.splatsin.ca/about>>, accessed 17 October 2017.

Syilx/Okanagan Nation, online: <<https://www.syilx.org>>, accessed 18 September 2017.

Tk'emlúps te Secwepemc, online: <<https://tkemlups.ca/>>, accessed 28 September 2017.

Tseshaht First Nation, online: <<https://www.tseshaht.com/>>, accessed 20 September 2017.

University of British Columbia. Version 1.0 “Indigenous Peoples: Language Guidelines” (2016), online: <http://assets.brand.ubc.ca/downloads/ubc_indigenous_peoples_language_guide.pdf>, accessed 4 October 2017.

Appendices

Appendix A -- Nlha7káp̄mx Rules and Regulations¹

Rules and Regulations framed by the Nekla-kap-a-muk Council,
sitting at Lytton, British Columbia the 17th. July 1879, for their own people

School Tax	(1) Every man shall pay a school tax once a year which money shall go from the respective tribes into the hands of the government to be kept safe until the amount is large enough to be used for school purposes.
Amount of School Tax	(2) The Council shall decide after further inquiry how much the school tax is to be and the mode of collection.
Subjects to be taught	(3) When schools are established the children are to be taught arithmetic and to read and write English. They must be kept clean in their persons and clothes and have their hair brushed, and shall go to school for as many days in the week as the Government require, and their parents or friends shall not take them away from such school attendance without the leave of the tribal chief or the school teacher.
Compulsory attendance	(4) At each yearly meeting of the Council all the people present are to be told how much school money has been collected and what is being done about Schools.
Fines - one moiety to School Fund	(5) One half of all fines levied under these Nekla-kap-a-muk rules and regulations shall go to the School Fund.
School House	(6) A School House, with a room for meetings of the Council is to be built at Lytton within a year.

¹ “Rules and Regulations framed by the Nekla-kap-a-muk Council, sitting in Lytton, British Columbia the 17th July 1879 for their own people” [Nlha7káp̄mx Rules] enclosed with Sproat to Superintendent General (26 July 1879), Ottawa, Library and Archives Canada [LAC] (RG 10, vol. 3696, f. 15,316) [Sproat, “Letter to SGIA enclosing Rules & Regulations” (26 July 1879)].

Medicine Tax	(7) Every man also shall pay a medicine tax once a year when the Council has decided on the amount and the mode of collection which money shall go from the respective tribes into the hands of the Government to be kept safe until the amount is large enough to be used for medical purposes. The school matters are to be attended to first, and then the medical matters.
Fines - one moiety to Medical Fund	(8) One half of all fines levied under these Nekla-kap-a-muk rules and regulations shall go to the Medical Fund.
Duties of Tribal Committees of the Council	(9) The tribal Committees of Council (consisting each of the tribal chief and not fewer than three Nekla-kap-a-muk Councillors sitting with him) shall adjudicate upon and attend to the following matters.
Drunkenness Fetching Liquors	(10) Every person who gets drunk shall be fined not more than \$50 for the first offence \$75 for the second offence and \$100 for the third offence. Indians who give other Indians the means of getting drunk shall be punished as if they themselves were drunk.
Cessation of the old custom of the "Patlach"	The "Patlach" is to come to an end and every person who "patlaches" shall be fined \$50, and (if the Queen thinks fit) shall be disqualified for life or for a term of years, for the office of chief or Councillor or constable.
Gambling for articles of value forbidden	(11) Every person who plays cards, or gambles, for articles of value shall be fined not more than \$50 for each offence, but Indians may play cards for amusement.
Betting at Horseraces	(12) The Council this year have made no rule against betting on horseraces, but they desire that moderation should be observed in this matter, and they propose to think further about it.
Subdivision of reserves	(13) The arable portions of the reserves are to be subdivided or prepared for subdivision into individual holdings in a fair way as to values of the respective portions and in reference also to existing interests. (14) The number of useless dogs is to be reduced.
Clean Villages and crops	(15) The villages must be made to look well and the ground and houses kept clean, and the fences are to be neat and strong. (16) Every person who, after being warned, keeps a dirty house, or leaves

dirt near the houses shall be fined not more than \$5 and everyone who after being once warned, leaves his crop unweeded or his fences too weak or ugly shall be fined not more than \$10.

- Trespass (17) If any animal belonging to an Indian trespasses on the land of another Indian and does damage, the Committee shall decide who is to blame and shall make the one who is to blame pay a reasonable sum of money to the other for the damage done.
- Less fieldwork for women (18) The women are not to work so much in the fields as has been the case hitherto, when the men were doing nothing. The women are to look more after the houses.
- Fish Roe and Fish Traps (19) No person is permitted to take fish roe, or to place fish traps entirely across streams.
- Hunting out of season (20) No person is permitted to kill game between the following times.
Deer, elk, reindeer, cariboo or hare -- 10th Jany and 10 Augt
Grouse, partridge, prairie fowl, quail, meadow lark, thrush and robin -- 20th Feb and 10 Augt
Waterfowl known as Mallard Duck -- 1 March and 15 July
- Proceedings of Tribal Committees of Council (21) The tribal Committees of Council must give notice to the tribe that they are going to sit to hear a case and they must hear it and state their minds and their decision in open court and their decision must be noted at the time so as to be remembered, and must not be changed after the sitting of the Court. They are not empowered to imprison or whip persons, but if anyone does not pay taxes fines or assessed damages the Committee may take his property for the same and sell it, and if the person has not sufficient property or the Committee choose for good reasons, not to press for all the fine at once they may give the person time to pay it in but the whole amount of the fine must be paid and the particulars of all outstanding fines or portions of fines or monies due in respect of taxes or assessed damages must together with the names of the defaulters be reported by the Tribal Chief to the Council at its annual meeting.
- Recovery of Fines &c. (22) Every person in a tribe is strictly enjoined to respect the proceedings of the Committee of Council and to assist in enforcing their decisions.

Appendix B -- Nlha7kápmx Resolutions²

Resolutions adopted by the Nekla-kap-a-muk Indians
in a meeting at Lytton, British Columbia,
summoned by themselves according to their rules,
and held in the presence of Commissioner Sproat on the 17th July 1879

The Council

(1) Our affairs shall be managed by a Council consisting of the Queen's Commissioner or agent, the Head Chief, the chiefs of the several tribes, and thirteen Councillors. The Council shall meet at least once in every year at such time and place as the Queen may direct, and shall proceed to business on the day appointed notwithstanding the absence of any chiefs or Councillors.

The Head Chief

(2) The Head Chief shall be elected at such time and place and in such manner as the Queen may direct, and such Head Chief shall do what the Queen directs him to do, and he shall hold office for three years (unless the Queen removes him for incompetency or misconduct) and he shall be eligible for re-election.

(3) Michel of the Spuzzum tribe is elected as Head Chief.

The Tribal Chiefs

(4) The present tribal chiefs as mentioned in the census shall continue to hold office until their death resignation or removal by the Queen. On any tribal chief ceasing to hold office, the tribe shall, as directed by the Queen elect a chief in his place by the vote of a majority of the male adults. Such chief shall hold office for three years (unless sooner removed by the Queen) and shall be eligible for re-election.

The Councillors

(5) The thirteen councillors shall be elected in the same manner and hold office on the same conditions as the head chief for a term of three years. In the event of any councillor ceasing to hold office, the head chief and a majority of the remaining councillors shall appoint a successor to hold office until the end of the term. A new election of Councillors shall take place on the Head Chief ceasing to hold office.

² “Resolutions adopted by the Nekla-kap-a-muk Indians in a meeting at Lytton, British Columbia,” enclosed with Sproat, “Letter to SGIA enclosing Rules & Regulations” (26 July 1879), *supra* note 1.

(6) The rules and regulations made by the Council shall be observed by all the people, and in each tribe shall be put in force by a tribal committee of Council consisting of the chief and not fewer than three of the Councillors. The following Indians are elected as Councillors.

- (1) Skah-ki-yoo
- (2) Tim-il-a-kweetsa of Lytton
- (3) Sna-kwi-a-ya [of Lytton]
- (4) Choo-way-lk of Ashcroft
- (5) Teet-li-neets-sa of Pe my noose
- (6) Nuk-ah-jesk-et of Lower Nicola
- (7) Kah-ahp-kein of Stryne
- (8) Kway-a-ortls
- (9) Skoo-tachen [of Lilloet [sic] trail]
- (10) Kwil-kwil-soot-lum of Spuzzum
- (11) Francois of Upper Similkameen
- (12) Baptiste [of Upper Similkameen]
- (13) Jim [of Upper Similkameen]

(7) No church matters shall be introduced at any meeting of the Council or tribal committee of Council, except proposals connected with schools.

Appendix C -- Dominion instructions to Anderson (and Sproat)³

Memorandum of Instructions to the Dominion Commissioner on the British Columbia Indian Land Question 25th August 1876.

You will assure the Indians of British Columbia of the friendly feeling of the Government of the Dominion towards them, and that it is the anxious desire of the Government to deal justly and reasonably with them in the settlement of their reserve [sic]. The aim and object of the Dominion Government in their general Indian policy in British Columbia, as in other portions of the Dominion, is to assist the Indians in their efforts to raise themselves in the social and moral scale, so that they may ultimately enjoy all the privileges and advantages which are enjoyed by their fellow white subjects.

The general view of the Dominion Government on the land question are [sic] sufficiently explained in the documents on the subject printed in the last annual report of this Department, copy of which has already been furnished you. Your attention to these documents is especially directed and by them your conduct generally should be governed. You should bear in mind that the Dominion Government think it very important that in the settlement of the land question nothing should be done which could interfere with or militate against the establishment of friendly relations between the Dominion Government and the Indians of British Columbia. You should therefore, endeavor to allay the fears existing among the Indians in reference to land matters, and in all your subsequent dealings with them you should carefully avoid anything which might be calculated to alarm or disturb the Indian mind.

While it appears theoretically desirable as a matter of general policy to diminish the number of small reserves held by any Indian nation, and when circumstances will permit to concentrate them on three or four large reserves, thus making them more accessible to missionaries and school teachers, you should be careful not even for this purpose to do any needless violence to existing tribal arrangements, and especially not to disturb the Indians in the possession of any villages, fishing stations, fur-trading posts, settlements or clearings, which they may occupy and to which they may be specially attached, and which may be to their interest to retain. Again, it would not be politic to attempt to make any violent or sudden change in the habits of the Indians, or that those who are now engaged in fishing, stock-raising, or in any other profitable branch of industry should be diverted from their present occupations or pursuits, in order to induce them to turn their attention to agriculture. They should rather be encouraged to persevere in the industry or occupation they are engaged in, and with that view should be secured in the possession of the villages, fishing stations, fur-posts or other settlements or

³ Laird (Minister of Interior), "Memorandum of Instructions to the Dominion Commissioner on the British Columbia Indian Land Question 25th August 1876", Ottawa, LAC (RG 10, vol. 3633, f. 6425-1).

clearings which they occupy in connection with that industry or occupation, unless there are some special objections to so doing, as for example, where the Indian settlement is in objectionable proximity to any city, town, or to a village of white people.

Should circumstances require that the number of reserves for a particular nation be three, or even more, from the fact of the nation being divided by natural physical barriers, or from differences in the habits, pursuits and modes of life of different portions of the nation or for other causes, you will in determining the number of reserves to be assigned to any particular Indian nation be guided rather by the special circumstances of that nation, their habits, tastes, pursuits and physical surroundings, than by any fixed theoretical rule.

With respect to that part of Clauses 5 and 6 (Agreed upon by the two Governments) relative to the diminution or surrender of reserves once granted to the Indians, you must bear in mind and have it clearly understood ab initio that these clauses must be read by the light of the provisions of the 31 Victoria, Chapter 42, extended and made applicable to British Columbia by the 37 Victoria, Chapter 21, and re-enacted in effect by the Indian Act of last Session, whereby it is provided distinctly that no part of any Indian reserve once appropriated can be surrendered or alienated in any way without the sanction of the Indians to whom it has been assigned. [marginal note: See Clauses 25 & 26]

The commissioners should lose no time in conferring with the Indian Superintendent in British Columbia, as to the general mode of proceeding in carrying out the labours of the Commission, after such conference, they will be in a position to decide as to the order in which they should proceed and as to the particular nation with whom it is most important they should deal at once.

The Superintendents have been instructed to co-operate in every way with the commissioners in the execution of their labours and will be authorized, each in his own Superintendency, to accompany the commissioners wherever it may be practicable so to do for the purpose of assisting them in their labours.

Reports of the proceedings of the Commission should be made from time to time to the Government, and I must impress upon you the importance for many reasons, of the labours of the Commission being brought to a close as early as may be practicable and consistent with the satisfactory adjustment of this grace [sic] and long pending controversy.

(Sgd) D. Laird,
Minister of the Interior

Alexander Anderson, Esq.
[illegible]
Victoria, B.C.

Appendix D -- Provincial instructions to Sproat⁴

Memorandum of Instructions to Gilbert Malcolm Sproat Esquire the Joint Commissioner for the Dominion of Canada and the Province of British Columbia on the Indian Reserve Commission.

23 Oct 1876

You will in your dealings with the Native Races of British Columbia in connection with the settlement of the reserves, take every opportunity of repeating to them that which has been conveyed to them under each and every administration since the earliest settlement of this Province, viz., the anxious desire of the Local Government to deal justly and reasonably with them, and to see them raised both morally and physically until they are in a position to enjoy all the privileges and advantages belonging to their white brethren.

You will also assure them that the fact of their having been placed immediately under the charge of the Government of the Dominion instead of the Local Government as heretofore, has not lessened the Interest of the latter in their welfare, or their desire that, in settling their Reserves, every indulgence should be shewn them compatible with the welfare and advancement of the rest of the Community.

In dealing with the Indian Reserves there are two points which would appear to demand your special attention – 1st The size of the Reserves – 2nd Their locality.

With regard to the former point this Government does not desire to see apportioned any unnecessarily large Reserves such as would interfere with the progress of white settlement.

You are aware from a perusal of the paper on Indian matters that has been placed in your hands that the dispute about the Indian Reserves which in your capacity as Joint Commissioner for the Dominion of Canada and the Province of British Columbia you are now engaged in settling, took its rise in the different views entertained by the Government of the Dominion and of the Province respectively, as to the amount of lands that should be allotted to each Indian family. The Dominion Government by Order in Council March 1873, contending for 80 acres, the Government of British Columbia demurring to this as an excessive grant and suggesting 20 acres, (being 10 acres over that what [sic] had been usual before Confederation) as a proper grant.

The Agreement under which you are acting was finally arrived at by which no particular acreage is fixed upon, but each Nation has to be dealt with severally,

⁴ Charles Good, "Memorandum of Instructions to Gilbert Malcolm Sproat Esquire the Joint Commissioner for the Dominion of Canada and the Province of British Columbia on the Indian Reserve Commission" (23 October 1876), Ottawa, LAC (RG 10, vol. 3633, f. 6425-1, reel C-10111).

regard being had to the spirit of the British Columbia terms (which contemplate a liberal policy being pursued towards the Indians) – to the habits, wants and pursuits of each nation – the amount of available territory in each region – and to the claims of the white settlers.

It is therefore incumbent to point out to you in your capacity as a Joint Commissioner the necessity for extreme care and for the exercise of mature and unbiased judgment in carrying out the arrangement, so that while you endeavor in all cases to act with a liberal spirit toward the Indians, you do not imperil the progress of white settlement by conceding unnecessarily large Reserves.

With reference to the second point, the locality of the Reserves, they should in all cases where convenient be in such spots as are endeared to the Indians by habit or association; nor would it be advisable in any scheme for consolidating a Reserve to deprive them, without cogent reasons, of any small isolated or particular spots, of no real value in themselves but endeared to the race who have occupied them.

With reference to your personal dealings with the Native Races, you will on all occasions endeavor to treat them with friendliness and conciliation, listening with the utmost patience to their wishes and complaints, complying with the former and remedying the latter when possible, advisable, or necessary.

You will avoid disturbing them in their proper and legitimate avocations whether of the chase or of fishing, whether pastoral or agricultural, and you will seek to avoid on all occasions either disturbing their minds or unnecessarily raising their hopes.

It would not be advisable that you should lay down any fixed theory for your dealings in connection with this commission. The circumstances, locality, habits and surroundings of one Tribe or Nation may and do differ materially from those of another, and you should be guided rather by the habits, tastes, pursuits and physical surroundings of each Nation than by any fixed preconceived determined rule.

In the event of compensation being demanded by them for any surrender or diminution of a Reserve contemplated by the Commission you will be careful in every instance before acceding to the same to communicate fully with the Government of the Province with a view to securing their definite instructions on the subject of such compensation, and with a further view of enabling them to communicate on the subject with the Dominion Government.

The sooner the labors of the Commission are over the less the expenses will be – You must therefore use the greatest diligence and all convenient speed.

The amount of compensation you receive, viz. \$10 a day is very liberal and should insure a constant and unremitting attention to your duties.

In your capacity as a Joint Commissioner the Government desire that your influence should be used on all occasions in Council against incurring any

excessive or unnecessary expenditure, the burden entailed upon the Province by the Commission being in reality far beyond her capacity.

You will report your proceedings from time to time and communicate any action on the part of the Commission which in your opinion may tend to militate against the interests of the Province or may require remedying.

G.M. Sproat

Sd. Charles Good

Dep. Prov. Sec.