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To

THE KING'S MOST EXCELLENT MAJESTY:

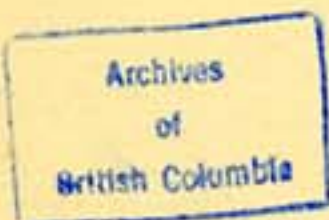
The Humble Petition of the Cowichan Tribe
of Indians in the Province of British Columbia in the
Dominion of Canada one of Your Majesty's Dominions
Beyond the Seas,

SHEWETH:

1. THAT from time immemorial the Cowichan Tribe
of Indians have been the possessors and occupants of the
territory including Cowichan Valley containing a large
area and situate within the territorial limits of the
said Province of British Columbia.

2. The Indian title to the said territory was
always recognized by Your Majesty's predecessors. This
Indian title was expressly recognized and affirmed by
the proclamation issued by your Majesty's predecessor
King George III on the 7th of October 1763. This
proclamation ordained among other things as follows:-

"And whereas it is just and reasonable and
essential to our interests and the security of
our Colonies that the several nations or tribes
of Indians with whom we are connected and who
live under our protection should not be molested
or disturbed in the possession of such parts of
our Dominions and territories as, not having
been ceded to or purchased by us, are reserved
to them or any of them as their hunting grounds;
We do therefore, with the advice of our Privy
Council, declare it to be our royal will and
pleasure that no Governor or Commander in Chief



in any of our Colonies of Quebec, East Florida or West Florida, do presume, upon any pretence whatever, to grant warrants of survey or pass any patents for lands, beyond the bounds of their respective Governments as described in their commissions; as also, that no Governor or Commander-in-Chief of any of our other colonies or plantations in America do presume for the present and until our further pleasure be known, to grant warrants of survey or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean from the west or northwest, or upon any lands whatever which not having been ceded to or purchased by us as aforesaid, are reserved to the said Indians or any of them."

"And we do further declare it to be our royal will and pleasure, for the present, as aforesaid, to reserve under our sovereignty, protection and dominion for the use of the said Indians all the land and territories not included within the limits of our said three new Governments, or within the limits of the territory granted to the Hudson's Bay Company as also all the lands and territories lying to the westward of the sources of the rivers which fall into the sea from the west and northwest as aforesaid; and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatever, or taking possession of any of the lands above reserved, without our special leave and license for that purpose first obtained."

"And we do further strictly enjoin and require all persons whatever, who have either wilfully or inadvertently seated themselves upon any lands within the countries above described or upon any other lands which, not having been ceded to or purchased by us, are still reserved to the said Indians as aforesaid forthwith to remove themselves from such settlements."

"And whereas great frauds and abuses have been committed in purchasing lands of the Indians to the great prejudice of our interests and to the great dissatisfaction of the said Indians."

"In order therefore to prevent such irregularities for the future and to the end that the Indians may be convinced of our justice and determined resolution to remove all reasonable cause of discontent we do with the advice of our Privy Council strictly enjoin and require that no private person do presume to make any purchase from the said Indians of any lands reserved to the said Indians within those parts of our Colonies where we have thought proper to allow settlement but that if ^{at} any time any of the said Indians should be inclined to dispose of the said lands the same shall be purchased only for us in our name at some public meeting or assembly of the said Indians to be held for that purpose by the Governor or Commander-in-Chief of our Colony respectively within which they shall lie."

3. The lands belonging to and claimed by the said Cowichan Tribe as aforesaid were never ceded to or purchased by the Crown nor was the Indian title otherwise

extinguished. These lands were not within the limits of the territory at the date of the said proclamation namely, 7th October 1763 granted to the Hudson Bay Company.

4. The said lands were, therefore, within the terms of the said proclamation lands reserved for the said Indians.

5. The said Cowichan Tribe as well as all Indians in North America have always regarded the said Proclamation of their great father King George III as the Charter of their rights.

6. This proclamation was decided in the case of Campbell v. Hall, 1 Cowper 204, by Lord Mansfield, Chief Justice England, to have the effect and operation of a Statute of the Imperial Parliament.

7. Ever since the date of the said proclamation the Indians have continued to be the firm and faithful allies of the Crown and have rendered important military services especially in two wars, the war of the Revolution and that of 1812 and these services were expressly referred to in the judgment of Mr. Justice Strong in the St. Catharines Milling & Lumber Company v. The Queen, 4 Cartwright page 137.

8. The title of the Indians is recognized in various Imperial Statutes relating to British Columbia before the Confederation of 1867 in which the lands in question are referred to as "Indian Territories." This is also recognized by the fourteen Indian treaties made by Sir James Douglas as agent for the Hudson Bay Company which Treaties are set forth in the Sessional

papers of British Columbia for 1876 at page 165 et seq. The same state of affairs is recognized in the correspondence between the Secretary of State for the Colonies and Sir James Douglas during the years 1858 to 1861. These are set forth in the said sessional papers at page 172 and following.

9. In a report made by the Indian Commissioners appointed by the Governor of Canada dated 22nd January 1844 and made while the Indian affairs of Canada were still under the direction of the Imperial Government the Indian Commissioners say "The subsequent proclamation of His Majesty George III issued in 1763 furnished them (the Indians) with a fresh guarantee for the possession of their hunting grounds and the protection of the Crown. This document the Indians look upon as their Charter. They have preserved a copy of it to the present time and have referred to it on several occasions in their representations to the Government."

"Since 1763 the Government adhering to the Royal Proclamation of that year have not considered themselves entitled to dispossess the Indians of their lands without entering into an agreement with them and rendering them some compensation. For a considerable time after the conquest of Canada the whole of the Western part of the upper province with the exception of a few military posts on the frontier and a great extent of the eastern part was in their occupation. As the settlement of the country advanced and the land was required for new occupants x x x x x x x x x rendered their removal desirable the British Government made successive agreements with them for the surrender of portion of their lands."

10. The Indian title and rights were also fully recognized by the Legislature of Vancouver Island as shewn by the petition of the House of Assembly of Vancouver Island referred to in the Sessional Papers of British Columbia 1876 page 179 et seq. And in reply to the said petition the Right Honourable the Secretary of State for the Colonies in his despatch from Downing Street dated 19th October 1861 says "I am fully sensible of the great importance of purchasing without loss of time the native title to the soil of Vancouver Island."

11. In his judgment in the St. Catharines Milling Case, 4 Cart. 181 Mr. Justice Gwynne quotes from a report made in 1856 by Royal Commissioners appointed to investigate the Indian land question as follows:- "By the proclamation of 1763 territorial rights akin to these asserted by Sovereign Princes are recognized as belonging to the Indians, that is to say, that none of their land can be alienated save by Treaty made publicly between the Crown and them."

12. At the time of the union of British Columbia with the Dominion of Canada section 109 of the British North America Act 1867 was incorporated in the terms of the union and expressly reserves and protects the Indian title to the said lands.

13. The rights of your Petitioners in respect of said lands therefore at Confederation remained and still continue to be under the "Sovereignty, protection and dominion" of your Majesty by virtue of the said Proclamation of 7th October 1763.

14. In the St. Catharines Milling & Lumber Company

4. The Queen, 14 Appeal Cases pages 58 and 59 Lord Watson refers to the interest of the Indians in the land as a burden upon the estate of the Crown and an interest other than that of the Province in the same within the meaning of Section 109 of the British North America Act. It is contended, therefore, that the Indian title to the said lands remains in full force and effect.

15. This Indian title was referred to in the address of Lord Dufferin Governor-General of Canada to the Legislative Assembly of British Columbia made on the 20th day of September 1876-

"From my first arrival in Canada I have been very much pre-occupied with the condition of the Indian population in this Province. You must remember that the Indian population are not represented in Parliament and consequently that the Governor-General is bound to watch over their welfare with especial solicitude. 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 recognize 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 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 our stipulated price often times 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 an acre. The result has been that in

Canada our Indians are contented well affected to the white men and amenable to the laws and Government."

16. The title of your petitioners has been wrongfully repudiated and ignored by the Government of the Province of British Columbia.

17. By the Thirteenth Article of the terms of admission of British Columbia into Confederation it is provided "The charge of the Indians and the trusteeship and management of the lands reserved for their use and benefit shall be assumed by the Dominion Government and a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the union" and it was further provided "to carry out such policy tracts of land of such extent as it has hitherto been the practice of the British Columbia Government to appropriate for that purpose shall from time to time be conveyed from the local to the Dominion Government in trust for the use and benefit of the Indians on application of the Dominion Government; and in case of disagreement between the two Governments respecting the quantity of such tracts of land to be so granted the matter shall be referred for the decision of the Secretary of State for the Colonies."

18. The Dominion Government endeavored to have such reserves set aside but did not succeed in so doing and such reserves have not up to the present time been conveyed by the Provincial Government to the Dominion Government.

19. In a Memorandum dated the 2nd day of November 1874 and approved by His Excellency the

Governor-General on the 4th November 1874 the Minister of the Interior says "The undersigned would respectfully recommend that the Government of the Dominion should make an earnest appeal to the Government of British Columbia if they value the peace and prosperity of their Province -- if they desire that Canada as a whole should retain the high character she has earned for herself by her just and honourable treatment of the red men of the forest to reconsider in a spirit of wisdom and patriotism the land grievances of which the Indians of that Province complain apparently with good reason and take such measures as may be necessary promptly and effectually to redress them."

Up to the present time this appeal has been unsuccessful.

20. In the report of the Deputy Superintendent of Indian Affairs 31st December 1877 referring to British Columbia he says "The non recognition in some instances by the Provincial Government of the title of the Indians to land occupied by them has for some time agitated the minds of the Indians of this Province. Some of these lands have already been and others are being sold without reference to the Indian title thereto. Unless the equitable claims of the Indians in respect to the lands in question are recognized and met in a liberal spirit serious trouble may be the result."

21. The memorandum of the Attorney-General of the Province of British Columbia dated the 26th day of February 1907 and approved by the Executive Council on the 28th of February 1907 (included in the papers and correspondence between the Government of Canada and the Government of British Columbia) comprised in a return called for by the House of Commons on January 28th

1908 the British Columbia Government says that the Dominion Government holds no proprietary rights in the reserves and denies the power of the Dominion to deal even with the reserves. These propositions of the Provincial Government were controverted by a report of the Committee of the Privy Council approved on the 19th day of December 1907 and the Dominion Government stating that it was ready to facilitate the Government of the Province of British Columbia in any steps it may be advised to test the question involved before the Courts. Subsequently by Order-in-Council dated the 8th day of August 1908 certain questions were submitted to the Supreme Court of British Columbia for hearing and a consideration. These questions do not include the question of the Indian title but the frame of the question submitted substantially amounts to a repudiation of your petitioners title and rights.

22. On the argument of the said questions before the Supreme Court of British Columbia the Dominion Government took no part. Your petitioners are informed that counsel for the Attorney-General on the said argument repudiated your petitioners title and stated that the St. Catharines case leaves little room for argument. In your petitioners view the judgment in that case is not applicable because the territory there in dispute was acquired by Great Britain from France and in the second place because there the Indian title to lands in question had been surrendered to the Dominion by treaty and in consideration of substantial money payments and other advantages satisfactory to the Indians.

23. Your petitioners have waited patiently

for long years in the hope and expectation that their rights would be recognized and justice done to them by the Government of British Columbia but have at length exhausted all other constitutional means known to them.

24. Your petitioners as a last resort appeal across the Seas to Your Majesty the fountain of justice fully assured that Your Majesty in exercise of your Sovereignty and Dominion will protect your petitioners in their extremity.

YOUR PETITIONERS THEREFORE HUMBLY PRAY that steps be taken to protect the usufructory right of your petitioners in all of the said land, or, that in the alternative the whole question of the rights of the said Tribe be submitted to the Judicial Committee of the Privy Council for decision and determination.

AND YOUR PETITIONERS WILL EVER PRAY:

Of Counsel for the Petitioners.

Dated 15th March 1909.