

## Opening Comments

***Presented by Kevin McKay, Chair, Nisga'a Nation***

Welcome. On behalf of the Land Claims Agreement Coalition, I welcome you to our symposium "Creating Canada: from the Royal Proclamation of 1763 to Modern Treaties."

Today, October 7<sup>th</sup> marks the 250<sup>th</sup> anniversary of The Royal Proclamation of 1763. At this gathering, we acknowledge the history of this important constitutional document which is still significant to Canadians and aboriginal peoples today.

### *Significance to Aboriginal People*

Not only is the Proclamation a historic document in the formation and development of Canada, but it laid down fundamental principles which continue to guide Crown-aboriginal relations today.

The Proclamation provides that it was just, reasonable and essential that the "Nations or Tribes of Indians" be protected by the Crown and be unmolested and undisturbed in their traditional lands.

The Proclamation recognized that Canada's first peoples were nations. It also recognized that aboriginal peoples had title and governance that predated European assertions of sovereignty.

The Proclamation formalized the obligation of treaty-making throughout Canada.

Its concepts were imported into the Constitution Act, 1982.

### *Significance to Nisga'a Nation - Petition*

As one illustration of its significance, the Royal Proclamation has made its appearance on two important occasions in the history of the Nisga'a Nation's struggle to resolve the Nisga'a Land Question.

First, in 1913, after our ancestors on the Nisga'a Land Committee lobbied provincial and federal officials in Canada to enter into a treaty with Nisga'a Nation without success, our elders bypassed the federal and provincial governments, and petitioned the Privy Council in England directly. In that 1913 Nisga'a Petition, our leaders specifically referred to the Royal Proclamation when they declared:

...the Crown has by Proclamation and otherwise recognized the right of the said Nation or Tribe so to possess, occupy and use the said territory, and, in particular, by the Proclamation of His Majesty King George the Third issued on the 7th day of October 1763, having the force and effect of a Statute of the Parliament of Great Britain...

The 1913 Nisga'a Petition goes on to explicitly incorporate the language of the Royal Proclamation into the Petition.

### *The Calder Decision*

The Proclamation made its second appearance in 1973, as part of the lawsuit launched by Nisga'a Nation for recognition of our aboriginal title in the *Calder* decision.

Our case went all the way to the Supreme Court of Canada, and established that aboriginal title existed in Canada as a matter of law.

As part of the *Calder* decision, Justice Emmet Hall made the following comments about the Royal Proclamation:

Its force as a statute is analogous to the status of Magna Carta which has always been considered to be the law throughout the Empire. It was a law which followed the flag as England assumed jurisdiction over newly-discovered or acquired lands or territories.

### *Modern Treaty-Making*

Finally, the treaty-making requirement in the Royal Proclamation has evolved into the modern comprehensive claims process. Collectively, modern-day treaties have had a

significant impact on the political and economic landscape of Canada. Taken collectively, modern treaties affect nearly half of Canada's land, waters and resources.

Modern treaties have removed the *Indian Act* from the daily lives of First Nations, and recognize the inherent right of Aboriginal title and governance. These agreements have fundamentally changed the relationship between Aboriginal peoples and the Crown, and launched those peoples onto the road towards sustainability.

Modern treaties are a demonstrated success, but are not without their challenges. Canada has failed to fully implement these agreements. In some instances, modern treaties are heading down the road of historic treaties in Canada: non-fulfillment and breach. In some cases, this is leading to litigation.

### *The Land Claims Agreements Coalition*

Both Inuit and First Nations who have entered into modern-day comprehensive claims have formed the Land Claims Agreements Coalition to press the government of Canada to put in place an effective modern treaty implementation policy.

While challenges remain, the Coalition is optimistic that these agreements will be fully implemented to the benefit of all Canadians.

Once we have a federal policy that ensures that modern-day treaties will be fully lived up to and implemented, we will then be taking significant strides towards realizing the original intent of the Royal Proclamation.