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# Part 4A: 1858 to 1864 Establishing the Boundaries



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Part 1:	Fall	October 2002	Vol. 11,	No. 3
Part 2:	Fall	October 2003	Vol. 12,	No. 3
Part 3:	Winter	December 2003	Vol. 12	No. 4
Part 4:	Winter	December 2004	Vol. 13,	No. 4
Part 4A:	Spring	March 2005	Vol. 14,	No. 1

## Britain, in response, sent a ship of the Royal Navy to claim the islands as British.

The British officer in charge, knowing Great Britain did not want to go to war with the United States, delayed in implementing his orders from Governor Douglas to land his troops and take possession of the islands for the British Crown.

A diplomatic resolution resulted in both countries' jointly occupying the islands—with two separate garrisons—until a permanent solution could be reached. The dispute festered until it was referred to international arbitration and, in 1872, the German Kaiser decided in favour of the United States.

Douglas, for one, was bitterly disappointed in the Kaiser's decision. In 1846, he and other Hudson's Bay Company men had suffered the loss not only of the Company's interests in the lands north of the Columbia River, but also their own personal holdings in the Columbia District, when the Treaty of Washington fixed the boundary at the 49th parallel.

In 1846, the hope of the men of the Hudson's Bay Company had been that the

Columbia River would be the boundary. Britain, however, had little interest in a region so far away and of so little importance to her interests. But to Douglas the 49th parallel was not a victory, even though the United States had threatened to fight if the boundary was not "54° 40".

### Douglas, for one, was bitterly disappointed in the Kaiser's decision.

Meanwhile, the colonists felt threatened by the large number of American miners in the Mainland, many of them advocating annexation to the United States. So when the American Civil War started in 1861, Douglas proposed to London that the British forces stationed in the colonies, aided by the local militias, seize control of Puget Sound and thereby remove the threat to the colonies. He asked London to send out a few regiments of Her Majesty's Troops to march inland to the Columbia River and make it the permanent boundary, instead of the 49th parallel, between the colonies and the United States.

Needless to say, his proposals were not received with enthusiasm in London and he was ordered to maintain strict neutrality.

Douglas's proposal was coloured by his experiences with the United States in the Pacific North West. Throughout his career with the Hudson's Bay Company and later as Governor of the colonies, the United States was his rival and potential enemy.

As Chief Factor, he had experienced the bitterness of the loss of the Columbia District to the Americans. Now they were threatening to take over what remained of the lands that had once formed the heart of the great fur-trading empire of the Hudson's Bay Company in the Pacific North West. His proposal, however, would have ensured the loss of British Columbia to the United States and the end of the British presence in the Pacific North West because when the Civil War ended, the might of the Union Army would have been directed at recovering its lost American territory; it is doubtful the troops would have stopped at the 49th parallel.

In 1858 and afterward, the arrival of thousands of miners into the goldfields was a serious threat to British sovereignty. The majority of miners on the Mainland were American. Who was to prevent the Americans from taking control of the colonies? Even some of the British colonists thought that annexation to the United States was inevitable.

The Pig War exposed the military vulnerability of the colonists to the large American military presence south of the border that had been sent out to Washington Territory to quell the Indian wars. Beyond the Royal Engineers (about 140 in number) on the Mainland and the periodic visits of the Royal Navy to Esquimalt, there was practically no defence force in the colonies.

And the influx of Americans was not the only concern. Lawlessness at the goldfields threatened the civil authority. If law and order could not be enforced by the colonial administration, the lawlessness would provide an excuse for the United States to interfere to protect its citizens. Moreover, First Nations peoples were upset over the arrival of so many non-Aboriginal people onto their lands.

To provide an aid to the civil power, volunteer militia units were established, the first being the Victoria Pioneer Rifle Corps, known locally as the African Rifles, a group of 50 men from the black community who had travelled to Victoria from California in search of a better life.

In the early days, the administration of justice was in the hands of the Hudson's Bay Company. After 1849 the Governor, Richard Blanshard, who was a lawyer, administered justice on Vancouver Island. When Douglas became governor, the Legislative Council, controlled by Douglas, appointed his brother-in-law David Cameron as judge of the new Supreme Court of Civil Justice. David Cameron was not a lawyer; he had an unsuccessful career in business and had been a clerk at the Company's coalfields at Nanaimo.

Douglas also arranged for the appointment of four magistrates for the Court of Petty Sessions. In 1856 an order in council provided that the court had the authority to admit qualified barristers from England and solicitors of any court of record of Westminster and law students who had been instructed within the colony in the knowledge and practice of law. It also provided that solicitors could appear in court, if there were an insufficient number of barristers. Initially only one person was qualified to act as a barrister in a court of law in England; Henry Pering Pellew Crease, Esq., later Attorney-General of British Columbia, 1863 to 1870, was appointed senior *puisne* judge of Colony of BC, 1870.

In 1858, when the Colony of British Columbia was established, Matthew Baillie Begbie was sworn into office as its first judge. Judge Begbie, a Cambridge man and a lawyer, then published an order of the Court, giving the first recognition to barristers and solicitors in the new colony. It was essentially the same as for Vancouver Island, where Governor Douglas himself had to call Crease to the Bar in 1858 because the Barrister's Bar was not yet established. The lack of qualified barristers resulted in a temporary measure, allowing people to practise who had qualified in other parts of Her Majesty's Dominions or from the Supreme Court of the United States.



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Although Judge Begbie allowed American lawyers to appear in court to defend American miners, he refused until 1863 to admit to the Bar lawyers trained in the British colonies.

In 1863 the first *Legal Professions Act* was enacted for the colony of British Columbia. In 1864, the Legislative Council for the Colony of British Columbia passed a motion requesting then-Governor Seymour to appoint Notaries Public for the Colony. This was done and a Notarial registry was established.

In 1865, lawyers called in either colony were allowed to practise in the other colony. Although in 1869 the Law Society of British Columbia was established as an association, it was not until 1884 that the current Law Society was established.

Law and order was a major issue, particularly in the mining camps. It was vital that to maintain the British presence, British justice be enforced. The key figures on whom this burden rested were the gold commissioners whose authority was supported by visits to their areas from Judge Begbie, who spent half the year travelling throughout the colony on circuit, dispensing justice in his tent or in the open air.

His traditional judicial robes, a wig, and black cap impressed the miners and townsfolk. Begbie's presence and enforcement of justice played a major role in preventing the lawlessness that became legendary in the gold camps south of the border. Begbie became known, albeit unfairly, as the "hanging judge."

In 1863 the British government also settled the boundaries of the Mainland—to the west was the Pacific Ocean, to the east the Rocky Mountains, and to the south, the boundary settled with the United States in 1846 by the Treaty of Washington. In the north, the Hudson's Bay Company had, since 1839, leased from the Russian American Company territory lying inland from the Alaska Panhandle, known as the Stikine. When gold was discovered in the region, the British government asserted sovereignty north to 60° and east to the 120th meridian. The boundaries of the Panhandle were to create problems later.

During his period of governance, there was much dissatisfaction to Douglas among some of the colonists. Petitions and delegations arrived at the Colonial Office deriding Douglas—not only his administration but also him personally. There is no question that Douglas's style encouraged opposition, especially among the newcomers who had no ties to the Hudson's Bay Company. As Chief Factor of the Company, Douglas had been accustomed to governing without having to account to anyone except the Company.

Many of the new arrivals were from other regions of British North America—from Canada and the Maritimes, where they had been governed by more representative political institutions. They demanded the same in British Columbia.

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Douglas also fuelled the rivalry between the two colonies when he preferred to maintain his official residence in Victoria. This might seem perfectly reasonable in the circumstances because, after all, he was governor of both colonies. But it also resulted in Judge Begbie residing in Victoria because Douglas wanted to consult with Begbie on a daily basis when the judge was not out on circuit. And when Douglas as Governor of Vancouver Island declared Victoria a free port in an effort to retain its trade with the incoming miners, the New Westminster merchants were furious. Being Governor of both colonies was not a simple task.

But Douglas's critics were not restricted to the Mainland. One of his most severe critics was Amor de Cosmos, editor of the Victoria *British Colonist* who, like his Mainland counterpart John Robson, of the New Westminster *British Columbian*, attacked not only Douglas's administration of the colonies, but the man personally.

Amor de Cosmos arrived in Victoria in 1858 from the California goldfields, where

he had changed his name from William Smith. He played a significant role in the politics of the colonial era, particularly in the union of the two colonies and in BC's joining Confederation. He became the second Premier of BC, 1872 to 1874. Although both Robson—who became the ninth Premier, 1889 to 1892—and de Cosmos battled Douglas, they later fell out over whether BC should become a province; Robson was opposed while de Cosmos was a strong supporter.

Before Douglas retired in 1864, the economic climate was changing—for the worse. As the new gold discoveries declined and the production from existing mines lessened or ceased, an economic recession descended. The combined debt of both colonies was half-a-million dollars. The fact that the largest portion of the debt belonged to the Mainland because of road building did not ease the prospects for future union of the colonies.

Relations between the colonies were not cordial. The Mainland did not appreciate what it perceived as the retention of the English class system by the British colonists in Victoria. And the Islanders did not trust those it perceived as "foreigners" on the Mainland. In 1864 there did not appear much hope of an amalgamation of the colonies, so the Colonial Office decided to tighten the economic noose by making each colony responsible for paying its civil list—the salaries of its officials.

Revenues were decreasing as the influx of miners rapidly waned. London refused to assist a colony so far away from its own strategic interests and, in 1863, the Royal Engineers were recalled for economic reasons. While all seven officers returned to Great Britain, most of the non-commissioned officers and sappers, 130 in total, elected to take their discharge in BC and take advantage of a free land grant of 150 acres.

In addition to their road-building efforts, the Royal Engineers played a major role in the early development of British Columbia—they had laid out the town sites of New Westminster, Lytton, Lillooet, Clinton, Quesnel, and Richfield. They also designed churches and published the

