

---

**FIRST NATION LAND SURRENDERS**  
**ON THE PRAIRIES**

**1896–1911**

---

**Peggy Martin-McGuire**

Prepared for the Indian Claims Commission

Ottawa  
September 1998

## CONTENTS

Executive Summary by Richard Spaulding	xiii
Map of Land Surrenders in the Prairie Provinces	2
<b>INTRODUCTION</b>	<b>3</b>
<b>1 SETTING THE STAGE</b>	<b>7</b>
THE DEPARTMENT OF INDIAN AFFAIRS	7
Policies: 1871 to 1896	7
Structure: 1897 to 1911	11
LEGAL FRAMEWORK FOR THE TAKING OF SURRENDERS	16
DOMINION LANDS POLICIES	26
RAILWAYS TO 1896	30
WESTERN SETTLEMENT TO 1896	35
<b>2 LAND AND COLONIZATION COMPANIES</b>	<b>37</b>
1882 TO 1887	37
1902 TO THE 1920S	44
THE COMPANIES	46
Saskatchewan Valley Land Company	46
Saskatchewan Valley and Manitoba Land Company	51
Canada Saskatchewan Land Company	53
Land Corporation of Canada	56
Canadian Prairie Land Company	56
Saskatchewan Valley and Alberta Land Company	57
Quill Plains Land Company	58
Canadian Northern Land Company	58
SALES AGENTS	59
Osler, Hammond and Nanton	59
Davidson and McRae	60
COMPANIES REQUIRING FURTHER RESEARCH	60
Northern Trusts Company	60
Western Trust Company	60
West Canada Land and Development Company	60

**iv / Contents**

Western Canada Land and Development Canada	61
The James A. Smart Company	61
COMPANIES THAT BOUGHT LAND IN INDIAN LAND SALES	62
Canada National Land and Development Company	62
Western Canada Colonization Company	63
Luse Land Company	64
White Land Company	64
Kamsack Land Company, Ltd.	64
Fishing Lake Land and Farm Company	65
Fenton Farms Ltd.	65
Taber Alberta Land Company	65
CONCLUSION	65
<b>3 CHRONOLOGY</b>	<b>66</b>
THE YEAR 1896	67
Western Development	67
Railways	68
Indian Affairs Organization and Policies	69
Depositions	71
Surrender Practice	71
Surrender Sales	71
THE YEAR 1897	73
Western Development	73
Railways	74
Indian Affairs Organization and Policies	74
Departmental Circulars	75
Patronage List	76
Depositions	76
Surrender Demands	76
Surrender Practice	77
Surrender Sales	78
THE YEAR 1898	79
Western Development	79
Railways	79
Indian Affairs Organization and Policies	79

Departmental Circulars	80
Patronage List	80
Depositions	81
Surrender Demands	81
Surrender Practice	82
THE YEAR 1899	82
Western Development	82
Railways	84
Indian Affairs Organization and Policies	84
Departmental Circulars	84
Patronage	85
Depositions	86
Surrender Demands	86
Surrender Sales	86
THE YEAR 1900	86
Western Development	86
Railways	87
Indian Affairs Organization and Policies	87
Departmental Circulars	87
Patronage	88
Depositions	89
Surrender Demands	89
Surrender Sales	90
THE YEAR 1901	90
Western Development	90
Railways	92
Indian Affairs Organization and Policies	92
Departmental Circulars	94
Patronage	94
Depositions	94
Surrender Demands	94
Surrender Practice	95
Surrender Sales	95
THE YEAR 1902	96
Western Development	96
Railways	97

vi / Contents

Indian Affairs Organization and Policies	98
Departmental Circulars	99
Depositions	100
Surrender Demands	100
Surrender Practice	100
Surrender Sales	101
THE YEAR 1903	101
Western Development	101
Railways	103
Indian Affairs Organization and Policies	104
Departmental Circulars	104
Depositions	105
Surrender Demands	106
Surrender Practice	106
Surrender Sales	107
THE YEAR 1904	108
Western Development	108
Railways	109
Indian Affairs Organization and Policies	109
Departmental Circulars	110
Depositions	111
Surrender Demands	111
Surrender Practice	112
Surrender Sales	113
THE YEAR 1905	114
Western Development	114
Railways	115
Indian Affairs Organization and Policies	115
Departmental Circulars	116
Surrender Demands	118
Surrender Practice	118
Surrender Sales	120
THE YEAR 1906	120
Western Development	120
Railways	121
Indian Affairs Organization and Policies	122

Departmental Circulars	122
Patronage	123
Surrender Demands	123
Surrender Practice	123
Surrender Sales	128
THE YEAR 1907	130
Western Development	130
Railways	131
Indian Affairs Organization and Policies	131
Departmental Circulars	131
Depositions	132
Surrender Demands	132
Surrender Practice	133
Surrender Sales	136
THE YEAR 1908	136
Western Development	136
Railways	137
Indian Department Organization and Policies	137
Departmental Circulars	138
Depositions	138
Surrender Demands	139
Surrender Practice	139
Surrender Sales	140
THE YEAR 1909	144
Western Development	144
Railways	144
Indian Department Organization and Policies	145
Departmental Circulars	146
Surrender Demands	146
Surrender Practice	147
Surrender Sales	150
THE YEAR 1910	152
Western Development	152
Railways	153
Indian Affairs Organization and Policies	153
Departmental Circulars	153

	Surrender Demands	154
	Surrender Practice	154
	Surrender Sales	155
	THE YEAR 1911	156
	Western Development	156
	Railways	157
	Indian Affairs Organization and Policies	158
	Departmental Circulars	158
	Surrender Practice	159
	Surrender Sales	161
<b>4</b>	<b>DEMANDS LEADING TO SURRENDERS</b>	<b>162</b>
	Passpasschase IR 136 (1888)	163
	Sharphead IR 141 (1897)	166
	Ocean Man and Pheasant's Rump IR 68 and IR 69 (1901)	170
	Enoch / Stony Plain IR 135 (1902)	173
	Roseau River IR 2 (1903)	177
	Michel IR 132 (1903)	180
	Cote IR 64 (1904)	183
	Cote IR 64 (1905)	186
	Mosquito / Grizzly Bear's Head / Lean Man IR 110 and IR 111 (1905)	188
	Carry the Kettle IR 76 (1905)	190
	Alexander IR 134 (1905)	192
	Michel IR 132 (1906)	194
	The Pas IR 21A (1906)	196
	Cote IR 64 (1907)	200
	Cowessess IR 73 (1907)	202
	Fishing Lake IR 89 (1907)	207
	Peguis / St Peter's IR 1 (1907)	210
	Swan Lake IR 7/7A (1908)	214
	Muscowpetung IR 80 (1909)	218
	The Key IR 65 (1909)	222
	Bobtail IR 139 (1909)	226
	Moosomin IR 112 (1909)	229
	Peigan IR 147 (1909)	234

	Blackfoot / Siksika IR 146 (1910)	237
	Mistawasis IR 103 (1911)	241
<b>5</b>	<b>CONSENT TO SURRENDERS</b>	<b>244</b>
	Passpasschase IR 136 (1888)	244
	Sharphead IR 141 (1897)	246
	Ocean Man and Pheasant's Rump IR 68 and IR 69 (1901)	247
	Enoch/Stony Plain IR 135 (1902)	253
	Roseau River IR 2 (1903)	256
	Michel IR 132 (1903)	259
	Cote IR 64 (1904)	260
	Cote IR 64 (1905)	263
	Mosquito / Grizzly Bear's Head / Lean Man IR 110 and IR 111 (1905)	265
	Carry the Kettle IR 76 (1905)	266
	Alexander IR 134 (1905)	267
	Michel IR 132 (1906)	269
	The Pas IR 21A (1906)	270
	Cote IR 64 (1907)	273
	Cowessess IR 73 (1907)	275
	Fishing Lake IR 89 (1907)	281
	Peguis / St Peter's IR 1 (1907)	285
	Swan Lake IR 7/7A (1908)	290
	Muscowpetung IR 80 (1909)	293
	The Key IR 65 (1909)	300
	Bobtail IR 139 (1909)	304
	Moosomin IR 112 (1909)	308
	Peigan IR 147 (1909)	314
	Blackfoot / Siksika IR 146 (1910)	321
	Mistawasis IR 103 (1911)	324
<b>6</b>	<b>TERMS AND IMPLEMENTATION OF SURRENDERS</b>	<b>327</b>
	Passpasschase IR 136 (1888)	327
	Sharphead IR 141 (1897)	329
	Ocean Man and Pheasant's Rump IR 68 and IR 69 (1901)	332

Enoch/Stony Plain IR 135 (1902)	341
Roseau River IR 2 (1903)	343
Michel IR 132 (1903)	347
Cote IR 64 (1904)	349
Cote IR 64 (1905)	350
Mosquito / Grizzly Bear's Head / Lean Man IR 110 and IR 111 (1905)	353
Carry the Kettle IR 76 (1905)	355
Alexander IR 134 (1905)	359
Michel IR 132 (1906)	361
The Pas IR 21A (1906)	364
Cote IR 64 (1907)	367
Cowessess IR 73 (1907)	371
Fishing Lake IR 89 (1907)	375
Peguis / St Peter's IR 1 (1907)	378
Swan Lake IR 7/7A (1908)	387
Muscowpetung IR 80 (1909)	392
The Key IR 65 (1909)	396
Bobtail IR 139 (1909)	400
Moosomin IR 112 (1909)	404
Peigan IR 147 (1909)	407
Blackfoot / Siksika IR 146 (1910)	412
Mistawasis IR 103 (1911)	422
<b>7 OBSERVATIONS AND CONCLUSIONS</b>	<b>427</b>
THE DEMAND FOR SURRENDERS: PATTERNS IN THE DATA	427
THE QUESTION OF INFORMED CONSENT	431
Negotiation	431
The Process of Soliciting and Acquiring Consent	436
EVIDENCE AND TESTIMONY	439
Written Evidence	439
Oral Testimony Evidence	441
UNDERSTANDINGS OF THE PROCESS: AFTERMATH OF SURRENDER	445
LAND SALES	451
Procedures	451
Patterns in Land Purchasing	455

	<b>Contents / xi</b>
<b>RECOMMENDATIONS FOR FUTURE RESEARCH</b>	466
Issues	466
Researching Land Sales	469
Sources	470
<b>KEY PEOPLE IN LAND DEMAND, CONSENT, AND ACQUISITION</b>	471
<b>REFERENCE LIST</b>	503
<b>APPENDICES</b>	511
A    Surrenders Research Project, Terms of Reference, July 24, 1996	513
B    Surrender Agreement, Affidavit, and Order in Council: Michel IR 132 (1903)	517
C    Land Sale Regulations	523
D    Clifford Sifton: Investments	548
E    Media Coverage of Ferguson Reports, 1913-15	553



## EXECUTIVE SUMMARY

*The only way they can be induced to release their holding is by purchase . . .*  
Superintendent General Frank Oliver, House of Commons, 1906

The Indian Claims Commission is currently investigating several claims founded on allegations that historical surrenders of land reserved to First Nations under the prairie treaties were unlawful. The Commission's interest in prairie treaty surrenders between 1896 and 1911 stems, first, from the sheer number and size of the surrenders that occurred during this brief and shameful period in Canadian history. Over 100 surrenders of treaty reserve land were obtained by the Crown in this region between the late 1890s and the 1930s. In the study period alone – 1896 to 1911 – 21 per cent of the lands reserved to prairie First Nations were surrendered to the Crown to make way for western expansion and an influx of immigrants.<sup>1</sup> These lands had been promised under treaties signed only a few decades earlier, in the 1870s, and in many cases had been set aside just a few years before their surrender.

If the intensity of prairie surrender activity in this period draws the Commission's attention, so too do the emerging patterns that Commissioners have observed during inquiries into particular prairie surrenders. These perceptions have been reinforced by the Commission's findings in relation to two reports into prairie land surrenders inquiries, conducted while the Martin-McGuire study was in progress. In the Kahkewistahaw 1907 surrender report, and in the Moosomin 1909 surrender report<sup>2</sup> (whose recommendations to accept the claims for negotiation have since been adopted by the Minister of Indian Affairs<sup>3</sup>), the Commission found it critical to consider whether the Crown breached its statutory and fiduciary duties towards the First Nation in relation to the particular surrender in the broad light of practices, policies, attitudes, and objectives of the federal government which appear to have applied to many prairie surrenders of the time.

---

<sup>1</sup> This percentage does not reflect the few cases in which the proceeds of sale from surrendered lands went to purchase substitute reserve lands or land was exchanged as a condition of the surrender.

<sup>2</sup> Indian Claims Commission, *Kahkewistahaw First Nation Report on the 1907 Reserve Land Surrender Inquiry* (Ottawa, February 1997); Indian Claims Commission, *Moosomin First Nation Report on the 1909 Reserve Land Surrender Inquiry* (Ottawa, March 1997).

<sup>3</sup> Announcement, Hon. Jane Stewart, Minister of Indian Affairs and Northern Development, December 19, 1997.

The rationale for this work is stated in the Terms of Reference for the study (reproduced as Appendix A):

Many of these prairie surrender claims raise similar arguments relating to the validity of the surrender. First Nations often allege non-compliance with *Indian Act* surrender procedures, duress, undue influence, unconscionability, negligent misrepresentation, lack of informed consent, and breach of fiduciary obligations in the taking of the surrender itself and in the management and administration of the land and the proceeds after the surrender. In addition, they have alleged fraudulent conduct on the part of government officials. Case law relating to surrenders continues to evolve but the Supreme Court of Canada decision in *Apsassin* suggests these factual issues are relevant to whether there is evidence of “exploitation,” “tainted dealings,” or lack of informed consent between the Crown and Indians in the particular surrenders under review . . .

In view of the importance of obtaining information relevant to the historical context of these surrender claims, the Commissioners have decided to conduct supplementary research into the broader context of these issues. Accordingly, this research project will survey the factors and policies involved in this intense period of surrender activity. Regrettably, the time available for the project precludes developing a useable database of the one hundred or more surrenders. The project will begin the work, therefore, by focussing detailed data collection on examples from the years 1896 to 1911. These initial surrenders, taken during the Laurier period and under a Minister of Indian Affairs who was also the Minister of Interior, helped to establish the pattern of prairie surrenders for the next two decades.

The project is intended to assist Commissioners in their deliberations and to provide a broad historical context for the allegations raised by First Nations. It will attempt to identify the federal legislative and policy framework that prevailed from 1896 to 1930 and the extent to which social, economic, political and cultural factors influenced the practices of key government officials and agencies with respect to the surrender of Indian reserves. Where possible, it will identify First Nation’s understandings, attitudes, and values relating to surrenders.

Time constraints limited Dr Martin-McGuire’s study period to the years preceding 1911, at which point the surge in pre–World War I prairie reserve surrenders subsided.<sup>4</sup> The starting point of the study is 1896, the year Prime Minister Wilfrid Laurier and the Liberals were elected and Clifford

---

<sup>4</sup> The next peak occurred after the war, when a series of surrenders were taken in order to grant land to veterans. This period of intense surrender activity, up to the 1930s, would be a worthwhile subject to study at a later date since Dr Martin-McGuire suggests that several of the trends she has identified became precedents for subsequent practice and policy.

Sifton became both Superintendent General of Indian Affairs (SGIA) and Minister of the Interior. With a few notable exceptions, such as the Passpasschase surrender of 1888, the year 1896 marks the beginning of the process of taking surrenders of reserve land in the Prairie Provinces.

The study focused on 25 prairie reserve surrenders made for the purpose of sale in this period, and the key elements of their historical context. The study examined constitutional and statutory provisions setting forth the Crown's obligations; terms of the applicable treaties; relevant case law; and legal opinions the federal government solicited and applied. The study also looked at prevailing Indian Affairs and other departmental policies governing Indians and reserve lands; key officials involved; significant field instructions provided by senior officials; pertinent administrative policies and practices followed in connection with surrenders; and relations between Department officials and local and regional parties that may have affected surrender transactions.

Other factors examined in Dr Martin-McGuire's study include trade, settlement, immigration, disease, loss of the buffalo, railway development, agriculture, and land speculation; the circumstances, assumptions, and attitudes determining Indians' and non-Indians' land needs; the identity of purchasers and assignees of surrendered lands; key non-government actors, if any; and influence of provincial governments, financiers, land speculators, land colonization companies, municipalities, railroads, clergy, and the general (non-Indian) public.

It was also important to the Commission that Indian interpretations of the treaties and surrenders be investigated as fully as possible within the limitations of a study of this kind. Dr Martin-McGuire endeavoured to report on Indians' understandings of the surrender transactions and their premises in particular, and the circumstances under which the Indian understandings could be expressed and acted upon. The study's coverage of this key element of the surrender context, however, was curtailed by the dearth of written records available. Dr Martin-McGuire reviewed the oral testimony of elders and other Indian witnesses from inquiry transcripts and other sources but was reluctant to offer interpretations on the limited amount of oral history available, which might be taken out of context. She cautions that the study relies primarily on written sources and that the First Nations' perspective on these matters requires considerably more research.

The Executive Summary that follows does not try to be comprehensive. It concentrates, first, on the broad political and economic factors that appear to have encouraged the Department of Indian

Affairs to induce First Nations to surrender reserve lands set aside pursuant to treaties signed only a few years earlier, and second, on three aspects of the surrender transaction typically associated with allegations of unlawfulness: the demand for surrender, the validity of consent to the surrender, and the terms agreed upon (including their performance).

In the 1870s, the Government of Canada negotiated various treaties with the aboriginal peoples of the prairies in order to protect them and their way of life in the face of an incoming tide of settlers from the east. One of the crucial ingredients these treaties promised was land that would be reserved for the Indians. And yet, less than a dozen years into the new century, almost a quarter of those valuable reserves that were considered essential to enable Indians to make the transition to self-sufficiency through agriculture had been surrendered back to the government. What were the forces driving these surrenders, and how were they accomplished in practice? Answers to these questions can be sought in a sampling of 25 surrenders and their surrounding circumstances during the surge in surrender activity from 1896 and 1911.

## **THE POLITICAL AND ECONOMIC BACKGROUND**

### **An Imbalance of Power**

Canada entered into Treaties 1, 2, 3, 4, 5, 6, and 7 during the 1870s with Indian peoples of the prairies who were facing the imminent collapse of their buffalo-hunting economy and a coming wave of non-native settlement. Both the government and First Nations considered it critically important to include provision for the economic welfare of Indians and their adjustment to an agricultural way of life.

Both parties stressed that the reserves to be set aside under the treaties should anchor the new agricultural livelihood of Indian peoples on the prairies. For the most part, Indian settlement on the reserves would precede white settlement, and the government expected that the Indians would choose their reserve lands for their agricultural potential.

As well, the federal government promised under the terms of the treaties to fund education, annuities, specified agricultural assistance, other supplies, and, in the case of Treaty 6, rations for the destitute. As part of its treaty obligations and general Indian policy at the time, the government

supported the building of schools on reserves, and the development of farms, with the view to encouraging farming self-sufficiency.

After the treaties were signed, however, the relationships that evolved also reflected unilateral measures taken by the government, many harmful to the Indians' agricultural self-sufficiency on the reserves. Between 1871 and 1896, a series of policies and practices were adopted which placed the peoples newly settled on reserves in a position of extraordinary dependency on government and government officials. Behind these practices were the provisions of the *Indian Act, 1876*, and its successors, which regulated almost every area of Indian life, including matters as basic as who was entitled to be considered an Indian. The *Indian Act* derived not from the prairie treaties but from government measures developed in eastern Canada, and it applied to both treaty and non-treaty reserves.

The difficulties Indian peoples faced in switching their traditional economic base to an agricultural one were made worse by the "peasant farming policy" initiated in 1888. This policy, developed by Hayter Reed, the top bureaucrat in the Department of Indian Affairs, was based on the assumption that Indian farmers were not yet ready for modern machinery and would be better occupied in labour-intensive activities. Reed argued that Indians were at a backward level of social evolution, and ought not to miss the "peasant" step along the path towards industrial ways. Under the policy, money for farm machinery was withheld from Indians, reducing the Department's costs as well as forcing Indians to farm at subsistence levels, since large-scale farming was not possible without modern machinery and equipment. Some of the government's Indian Agents (the local officials responsible for implementing the Department's programs and policies on reserves) resisted this aspect of the policy, and it was scrapped in 1896. But where it was implemented, it left a legacy of underutilized land. In addition, a companion policy encouraged bands to divide their reserves into small plots so that Indian families could become landowners, similarly checking the expansion of farming on the reserves. These policies contributed to a stock of lands that officials would later consider "surplus" and therefore best surrendered for purchase by non-native farmers.

During the study period, the Department of Indian Affairs was headed in Cabinet by the Minister of the Interior, who also served in a dual capacity as the Superintendent General of Indian Affairs, and in its bureaucracy by the Deputy Superintendent General (DSGIA). Together, these two

senior officials presided over Indian policy formation and implementation. This combination of responsibilities over Indian affairs and land sales designed to encourage western expansion gave them both the knowledge and the opportunity to control land dispositions across the West. One of the two deputies, James Smart, also held a cross-appointment in the Department of the Interior.

Because interests defended by the Departments of the Interior and Indian Affairs were often fundamentally opposed, politicians and officials who served simultaneously in both departments were placed in a situation where their public duties conflicted, often to the detriment of Indians. For example, Frank Oliver, a minister from 1905 to 1911, for a time held both portfolios. During the course of a parliamentary debate in 1910, Oliver was asked if it would not be in the best interest of Indians to rent their lands to settlers rather than to sell it outright. The questioner pointed out that this policy would allow Indians to retain the land as security for rent paid by the tenant settlers. Oliver replied that the government's policy was to populate the land with owners, and that any proposal involving tenancy, "no matter how attractive," would not be in the "best interest of Canada and the west."

Moreover, three of the four Superintendents General and Deputy Superintendents General of the Department of Indian Affairs during the study period used their positions for personal gain from the disposition of prairie reserve lands – a conflict of personal interest. According to the study, James Smart, DSGIA from 1897 to 1902, and Frank Pedley, DSGIA from 1902 to 1913, schemed together to buy land through intermediaries from several surrendered reserves. A federal Royal Commission later named Pedley as having profited from leases on the Blood reserve in Alberta. The same Commission showed that Oliver had acquired Indian lands through his son-in-law. The fourth member of this group, Clifford Sifton, Superintendent General from 1896 to 1905, was involved in the lucrative Saskatchewan Valley Land Company and had many close associates who were heavily involved in land speculation in western Canada. Many less senior officers and employees of the Department were also well connected to the business and political elites involved in western development.

The power of Indian Agents and other Department officials over life on reserves was impressive, and was an important influencing factor in the context of surrenders. Under the pass system that was employed after 1885, band members were required to obtain passes from the Agents

in order to leave their reserves. This system served to restrict movement between reserves and to prevent political and religious gatherings. Agents also supervised spending and distributed housing, clothing, and rations. In all these matters, Agents were given a good deal of discretion, loosely supervised by regional Inspectors.

Under the *Indian Act*, Indian Agents were given the power to control agricultural production and sales, regulating not only the collective revenues of bands but also, through a permit system governing the disposal of livestock, timber, and grain, the income of individuals and families. Agents acted as magistrates in disputes, at the same time performing the role of prosecutor. Agents also exercised the government's power, acquired in 1895, to depose Chiefs and headmen who held their positions on the basis of band custom. In one case, in 1910, an Agent deposed the Cree leader, Piapot, over the protests of the Governor General of Canada, who deplored the paternalistic conduct of Indian Affairs officials in the West. The report cites 30 incidents of Chiefs or headmen on prairie reserves being deposed during the study period, many on the ground that the leader was adjudged a "bad influence." In oral statements, elders recounted that at band meetings the Agent present was viewed as the "boss," the person with the power to override decisions of the Band Council. There are several documented cases of Agents purchasing surrendered land, despite the *Indian Act* provision prohibiting such purchases.

When bands turned to independent legal counsel to press their claims, Department officials were known to refuse to deal with the bands' lawyers. This happened twice in the case of the 1907 Cowessess surrender, where the Department insisted instead on dealing with an Indian Agent who was later fired and accused of neglect. In the highly contentious surrender of St Peter's, a Commission appointed in 1906 named former Superintendent General Clifford Sifton's cousin, a prominent Liberal and railway lawyer, to represent the interests of the band members.

### **Western Development**

Western settlement trends and economic conditions contributed greatly to Indian peoples' vulnerability to government policy and practice in the decades following the signing of the treaties.

During the treaty negotiation period, in the 1870s, western settlement by non-native people was sparse. Transportation was limited, and agricultural implements and seed varieties were

inadequate for the short growing season and semi-arid conditions in many parts of the West. Following a depression and poor crop conditions at the beginning of the 1880s, however, the West began to recover economically. Between 1881 and 1891, the population of Manitoba and the North-West Territories more than doubled, rising to 250,000. The movement west followed the Canadian Pacific Railway (CPR), which had received a land grant from the government of some 25 million acres in 1881. The CPR had put in a more southerly route than planned, and this route greatly increased the value of land in the drier southern prairie.

After another depression in the mid-1890s, following several years of drought, conditions for western settlement again began to improve. The development of new farming methods and grain varieties, along with rising grain prices and better weather, led to an economic boom in 1896 and 1897. This change ushered in a period of considerable population growth. From 1901 to 1911, the population of Alberta and Saskatchewan increased fivefold, and Manitoba's population doubled. With the economic boom and expanded settlement came an increased demand for land.

During this same period, Indian peoples struggled. The settlement of Indian people on reserves occurred against the backdrop of the demise of the buffalo-hunting economy, the outbreak of contagious disease, and harsh weather conditions. Studies of the paylists used for annuity payments to Indian bands show that frequent and profound changes in band structure were occurring, as people sought leaders who might protect them. They also show population loss due to disease, starvation, and cold, particularly between 1880 and 1885.

The success of agriculture in generating income for bands varied from one reserve to another. Bands were often hampered by the imposition of the peasant farming policy described above. By the turn of the century, however, many reserves had begun to recover from the era of enforced small-scale farming and managed to expand production and increase diversification. Some began to buy machinery; others turned to livestock operations. This rebound occurred almost a decade after non-native prairie farmers had come to realize that large-scale production was a necessary condition to successful prairie farming and had expanded their farms accordingly. In the case of Indian farming, however, the recovery coincided not with the securing or expansion of the reserve land base but with the period in which treaty land surrenders began in earnest.

## Government Measures to Promote Surrenders

As non-native interest in western lands increased, the federal government responded with a series of Orders in Council and amendments to the *Indian Act* which increased the government's control over reserve affairs and facilitated the surrender of treaty reserves. These measures stand to be viewed in the context of treaty understandings concerning reserves. While most prairie treaties did contemplate the consensual surrender of reserve lands to the Crown, both parties to the treaty negotiations treated the reserves under discussion as enduring homelands for Indian peoples. The subsequent government measures setting up surrenders of reserve land may indicate a fundamental shift in the federal Crown's Indian policy.

The stage was set in 1895 with amendments to the *Indian Act* that gave the Department broader powers to control band councils. While previously, Cabinet had the power to depose a Chief or headman of an elected council, the Department could now depose band leaders chosen by custom. The 1895 amendments also allowed the Department to spend a band's money on capital works without obtaining the band's consent. This included money from trust funds set up with the proceeds from sales of surrendered lands.

These legislative changes were reinforced by the policies implemented by Clifford Sifton, who took over the Indian Affairs and Interior portfolios in 1896. Sifton tightened the government's fiscal and social control of the reserves, with the goal of using education and economic development as means to eliminate the old tribal ways. Indian religions were suppressed, and Indian children continued to be placed in off-reserve boarding schools.

In 1906, the *Indian Act* was amended to raise from 10 per cent to 50 per cent the limit on the amount of the sale proceeds that could be distributed to bands after a surrender of their reserve land. The purpose of the amendment, according to Frank Oliver, Clifton's successor in the Department of Indian Affairs, was to help persuade bands to surrender reserve land. According to Oliver, this object was justified by the pressing needs of settlers and townspeople:

Some weeks ago . . . it was brought to the attention of the House . . . that there was a great and pressing need of effort being made to secure the utilization of the large area of land held by Indians in their reserves without these reserves being of any value to the Indians and being a detriment to the settlers and to the prosperity and progress of the surrounding country. . . . [O]ne step that might be taken would be to provide

for increasing this first payment to the Indians from ten per cent to as high as fifty per cent according to the judgement of the government. . . . Of course, the Indian Department or the government have no right or authority to interfere with their holding, although it is in excess of the amount contemplated by the treaty. The only way they can be induced to release their holding is by purchase, as they are proprietors in every sense. . . . The present conditions, (*sic*) when land is in demand, when towns are building up in many cases in close proximity to these reserves is certainly one which demands attention, and the purpose of this Bill is that it shall be given attention.<sup>5</sup>

The 1906 enactment gave the Department's desire to take surrenders priority over its policy of protecting band funds for the community's development. In practical terms, the amendment also made bands pay directly for farm machinery and rations, previously items for parliamentary appropriation. Oliver's assurance that the increased limit would not be distributed to Indians in the form of cash "to expend in any way they please" but would take the form of buildings, machinery, or other things "that will improve the condition of the Indians" was contradicted by departmental practice, which allowed lump sum cash payments to individual Indians on a per capita basis.

A related regulatory change occurred in 1910, when an Order in Council was made stipulating that interest from sales of surrendered lands could be distributed to bands rather than being placed in their capital account. The Order stated expressly that this would allow interest to be used for more immediate expenditures on farming operations and would lessen the need for parliamentary appropriations for this purpose.

In 1905 and 1906, Orders in Council were made specifically permitting cash from the Land Management Fund to be distributed to two bands which had surrendered their lands. Indian Affairs officials in western Canada understood the fund, which was maintained by imposing a 10 per cent charge on the sale of surrendered lands, to be a surcharge for the Department's handling costs in the sales of surrendered lands.

---

<sup>5</sup> Such reasoning is consistent with the comment made by Oliver respecting the proposed Crooked Lake surrenders, noted in the Indian Claims Commission's report on the Moosomin surrender (p. 26): "of course the interests of the people must come first and if it becomes a question between the Indians and the whites, the interests of the whites will have to be provided for."

In a 1911 amendment that directly contravened the treaties, the *Indian Act* allowed the government to take reserve land without consent, where the reserve was in or near a town of over 8000 people, or where the land was needed for public purposes.

During the study period, there was also a pattern of exempting the sale of surrendered lands from the Regulations for the Disposal of Surrendered Indian Lands (the Land Regulations), passed in 1888. These regulations set limits on the amount of land a single purchaser could buy, set out the number of payments and the amount of interest payable, and established a minimum residency requirement of three years on purchased land, along with a condition that the land be improved. An Order in Council in 1899, made in connection with the Sharphead surrender, reduced the residency period to one year, with no improvements required. In 1903, the sale of lands from Roseau River was specifically exempted by Order in Council from the Land Regulations, apparently the first time this was done. By 1905, such exemptions had become common practice in sales of surrendered land. In 1906, the Land Regulations themselves were relaxed, easing the payment and interest requirements for purchasers of Dominion land in the three Prairie Provinces. The end result of these relaxed conditions on the sale of reserve lands facilitated rampant land speculation during this period.

## **THE DEMAND FOR SURRENDERS**

### **Speculators or Settlers?**

Most of the early demand for surrenders came from speculators and from politicians who endorsed speculation. Demand was rarely generated by local farmers, probably because there was an adequate supply of land to purchase and to homestead. The study's analysis of purchasers shows that sales of surrendered land before 1906 were predominantly to speculators in the first instance. In the first sale examined, the 1891 Passpasschase sale, only nine individuals bought land, none of whom were from the area. All were probably speculators. The government was questioned in the House for allowing this result to happen. In the Enoch/Stony Plain surrender of 1902, 80 per cent of the land went to two Edmonton merchants who were friends of Frank Oliver; only 12 quarter sections went to local purchasers apparently interested in farming the land. Carry the Kettle lands were purchased entirely by two buyers from outside the area. The Roseau River surrender of 1903 was an exception. There

was considerable local settler demand for the fertile lands of this reserve, which was situated in a heavily populated area. Two-thirds of this surrendered land was purchased by local people.

The pattern of speculator-dominated demand continued into the later part of the study period, although local demand was increasingly important. The year 1909 marked a peak for sales in Indian lands. The economy was on an upswing from an earlier recession, land values were increasing, railway construction was picking up, and most of the desirable homestead lands were occupied. Still, buyers who were neither residents of the area nor farmers played a major part in purchasing surrendered lands.

The government also did what it could to increase settler demand by promoting western immigration from Canada, the United States, and Europe. The Interior Ministry's mandate in this period was to open up western Canada for non-native settlement. Interior Minister Sifton made extensive efforts to solicit immigration from abroad, starting in 1897. Interior Minister Oliver's policy of encouraging settler land ownership continued this trend, which Oliver viewed as directly linked to the pursuit of treaty land surrenders.<sup>6</sup>

### **Indian Affairs Officials' Personal Interests**

Personal interest on the part of Department officials also played a part in generating demand for the surrender of Indian lands in this era, although more research is required to measure this influence.

It was not uncommon for Department employees, their families, and business associates to purchase surrendered lands, despite the fact that this practice was prohibited by the *Indian Act*. In the Cowessess surrender of 1907, no fewer than four Department employees purchased land. In some cases, senior officials were involved. In the sale of Enoch/Stony Plain land, tenders for every quarter were submitted under the name of George Angus by Frank Pedley, James Smart, and William White. White was a business associate of Minister Sifton who also held appointments in the Departments of Interior and Immigration. Pedley was the current DSGIA, while Smart had just finished serving in that

---

<sup>6</sup> The study notes that before he became Minister of the Interior, Oliver was the editor of the *Edmonton Bulletin* and an ardent advocate of reserve surrenders for the purpose of making way for non-native settlement. In this capacity and as a Liberal MP, Oliver himself was a major factor in pressing the government for some of the early surrenders in the Edmonton area, including Passpasschase, Sharphead, Enoch/Stony Plain, Michel, and Alexander. After the sale of the Passpasschase lands, Oliver announced in his newspaper that these lands had become a "tax-paying," not a "tax-eating" proposition.

capacity and was still Deputy Minister of the Interior. The three had formed a syndicate to purchase land from the Ocean Man/Pheasant's Rump and Chacastapaysin surrenders of 1901-02. They succeeded in purchasing most of the land, at prices far below the rate being paid for adjacent railway lands. Their involvement in these surrenders attracted the scrutiny of the federal Royal Commission known as the Ferguson Commission, which concluded in 1915 that the three had placed themselves in a position of conflict of interest.

At Enoch/Stony Plain, however, the offers of Pedley, Smart, and White were bested by John A. McDougall and Richard Secord, Liberal businessmen and friends of then MP Frank Oliver. The successful purchasers, who acquired some 70 per cent of the land for sale, submitted bids that largely matched the confidential valuation obtained by departmental officials. In a number of cases where a policy of confidentiality was in place, the supposedly confidential "upset price," or minimum price acceptable, appears to have been disclosed to well-placed insiders in advance of the sale.

In 1910, the Department issued a notice that no departmental officials or their wives or dependents should purchase Indian land. Any such purchase would be nullified and the official dismissed. Nonetheless, the record reveals a clear pattern of lower-level officials purchasing surrendered lands at this time. Apart from the examples mentioned above, however, the overall record is not clear regarding the involvement of more senior officials positioned to generate and then benefit from the demand. This is because information about purchasers is not always sufficiently detailed in the primary documents. The report recommends that, in order to determine whether senior officials were involved in conflicts of interest in connection with surrender demands, further research be done to reveal who ultimately acquired an interest in these lands.

### **Removing Reserves from Settled Areas**

In the relative absence of "real" early demand for surrendered land based on land value, another factor in creating demand was the sense of discomfort many non-native people felt about having Indians near their settlements. This was particularly true of the surrenders in the Edmonton area, where Frank Oliver's *Edmonton Bulletin* led a vociferous campaign in the early 1880s to remove all Indians to a location farther from the city. "Now is the time," wrote the future Superintendent General, "for

Government to declare the Reserve open and show whether this country is to be run in the interests of the settlers or the Indians.”

Another example can be seen in the events surrounding the St Peter’s surrender. This surrender took place during a complex and protracted dispute over the status of 17,000 acres of river lots near the town of Selkirk, Manitoba. Tension between band members, who claimed the land formed part of the reserve, and occupants of the disputed land, who asserted it was private property, led to demands that the reserve be surrendered and its occupants moved away from Selkirk. Hector Howell, the man appointed by Minister Oliver in 1906 to head the Commission looking into the dispute, formed the same view. He was later to say about his involvement:

I made up my mind that for the good of the Indian tribe beyond any question they ought to get off the reserve, and as for the neighbourhood it would be a vast advantage. I felt the Indian reserve there was a black spot.

### **Containing the Department’s Costs**

A key element spurring demand for surrenders was the Department’s desire to contain rising reserve administration costs. This wish to contain costs coincided with a growing inclination to view such costs in isolation from treaty commitments. There had been numerous earlier attempts to cut costs through office closings and staff layoffs, which were unsuccessful.

In a 1900 debate in the House of Commons concerning the cost of rations and supplies for destitute Indians, a Conservative Member of Parliament made the point that these supplies were not “charity” but a treaty obligation. More typically in this era, however, the Opposition pressed the government to reduce its costs, arguing, for example, that government should respond to diminishing populations on many reserves by lowering expenditures. In 1901, Superintendent General Sifton acknowledged that the Department’s expenditure was large, but asserted that it was necessary to “bring the Indians into a state of civilization or comparative civilization.” Sifton often praised the work of Agent William Graham, especially Graham’s use of withholding rations as an incentive to turn the Indians towards farming. In 1904, Sifton appointed Graham to the post of Inspector, noting how Graham’s work had eliminated the need to distribute supplies to Indians in the Qu’Appelle area.

It was in this budget-conscious spirit that the Department began to use the sale of reserve land to generate an income from which the Department could pay for items it would otherwise have to

provide under any but the narrowest interpretation of its treaty obligations. In 1902, Indian Commissioner David Laird suggested that money received from sales of the Enoch/Stony Plain surrender be used to discontinue departmental funding of rations and farm outfits. In 1906, the Department Secretary wrote to the Commissioner regarding his budgetary estimates, informing Laird that

those bands which have surrendered lands and consequently have funds at their credit sufficient to supply their needs should not be provided for in the Estimates beyond the provision called for by Treaty stipulations. . . . Indians having funds of this nature at their credit should not any longer be a charge upon the country. Their interest moneys should be used to supply their wants.

In this period, the wording of surrender agreements gave the Department the final discretion and a trust obligation to control the spending and investment of land sales revenue.

### **The “Excess Lands” Rationale**

During the study period, the Indian Affairs Department sought to justify the impact of reserve surrenders upon Indian peoples themselves. The rationale that emerged was that the Indians affected no longer required the full extent of the lands set apart for the bands under the treaties. There was a swift transition from a Deputy Superintendent’s response to the prospect of the early Passpasschase surrender – that there was no need on the part of the Indians and that vast cessions had already been made at treaty – to the argument that reserves had been too large to begin with and that the need for reserve lands declined along with declines in population due to poverty and disease.

The conviction that many bands had more land than they ought to have appears to have originated with Hayter Reed’s policy of allotting reserve land to band members based on individual needs, which in turn created the perception among politicians, bureaucrats, and the general public that the remaining lands were “surplus.” This appears to have led to the view, soon prevalent in the Department, that as band populations declined, any land in excess of the per capita formula originally applied to the determination of treaty reserve lands should be surrendered back to the Crown.

The logic of the Department’s view was followed to its extreme conclusion by Inspector J.A. Markle, who recommended in 1905 that when treaty reserve land became “surplus” in this sense

because of a decrease in population, the land should be taken without consent. An 1886 Department of Justice opinion, however, had already ruled out this alternative, noting that the *Indian Act* required band consent for reserve surrenders. However, for policy purposes at least, the Department adopted the view – contrary to the clear intent of the treaties – that rather than guaranteeing Indian peoples a minimum economic base, the treaties placed a ceiling on lands to which their Indian signatories might be entitled, which should be adjusted if populations declined. The Department used a version of the “excess lands” rationale in at least 10 of the 25 surrenders studied.

A Department surveyor used the per capita formula from the treaty to press for the Crooked Lakes surrenders in 1899 on the basis of a quantity he deemed “surplus” to the bands’ current requirements. Senior Department officials used the same rationale to justify pursuing the surrenders at Moose Mountain in 1901. By 1905, this was the explanation being offered by Superintendent General Oliver to the House of Commons to explain why the Department was pursuing so many surrenders of reserve lands on the prairies. Speaking about the surrender at Carry the Kettle, Oliver announced:

At other places also efforts are being made to induce the Indians to part with portions of their reserve which they do not need, and for which they will receive the full prices that may be received by the government acting as their trustee. It is not possible for the government to enforce a surrender because the land is absolutely the property of the Indians.

The following year, Oliver stated flatly that the quantities of land reserved to bands under the prairie treaties “is in excess of the amount contemplated by treaty.” The claim was not so much that a legal entitlement under the treaties had been exceeded as that the Indians on reserves currently containing more than the per capita share of land no longer possessed any moral claim to the “surplus.” Oliver conceded that even the “surplus” lands are “absolutely the property of the Indians,” and that even an oversized initial survey of treaty reserve lands would form the basis under the treaties of “the absolute sacred right of the Indians to that land.” But he argued that, at the time the treaties were negotiated in Alberta and Saskatchewan, “land was of very little consideration.” From a moral and policy point of view, carelessly oversized surveys, which he claimed were common, needed correcting, and a subsequent decrease in the Indian population “makes the disparity between

the people and the land just that much greater.” Oliver informed the House that fully one-third of the treaty reserve base in the three Prairie Provinces should be considered excess land on this basis. Surrenders offered the government the means to remedy what it portrayed as an inequity created by the technicalities of the *Indian Act* and the treaties.

At the same time, in most of the cases in which the Department invoked the “excess land” rationale for pursuing surrenders on inhabited reserves, bands were expanding their agricultural production, for these were the post-Reed years when prairie reserve farmers were regaining economic ground. Moreover, prospective purchasers prized the land in question for either farming or railway development. An example is the 1909 Moosomin/Thunderchild surrenders. The Moosomin reserve was located on excellent farming land, and the Band had achieved self-sufficiency by 1906. Interest in taking a surrender grew as non-Indian settlement increased in the area, followed by railway development across the reserve. Department officials took the position that Moosomin had a land deficit, while Thunderchild had a land surplus, and that the Bands should surrender both reserves to acquire two new reserves in a different location of a more appropriate size. In the end, the Moosomin Band acquired a new reserve of approximately the same size but of much inferior quality. In the words of William Graham, who was later appointed as Indian Commissioner, the new reserve was “practically useless as a farming proposition.”<sup>7</sup>

In some instances, Department officials opposed proposed surrenders out of concern for the negative impact of a surrender on the band in question.<sup>8</sup> These appear in the study, however, as isolated cases. At least at the peak of the study period, the Department appears to have tended to downplay the negative impacts of prospective surrenders on the Indian party, in favour of benefits to non-Indian interests.

---

<sup>7</sup> See also the Indian Claims Commission’s report on this surrender, *Moosomin First Nation Report on the 1909 Reserve Land Surrender Inquiry* (Ottawa, March 1997).

<sup>8</sup> According to the study, Deputy Superintendent Vankoughnet initially recommended against the Passpasschase surrender on such grounds. The Department took the surrender nonetheless, shortly afterwards. Indian Commissioner David Laird, though prepared to pressure bands for surrenders he considered in their best interest, opposed a number of surrenders he felt would not benefit a band. The study suggests that this appears to have led to a common and successful practice on the part of William Graham, in particular, to circumvent the prairie Indian Commissioner when seeking approval for his surrenders from Ottawa.

## **Railway Development**

As the case of the Moosomin/Thunderchild surrenders show, railway development was an important factor fostering demand for surrenders. Railway development raised land values in the vicinity and increased the attractiveness to speculators of reserve land located on or near prospective routes. In some cases, railway lines also led to a direct demand for lands by the railways for station grounds or by settlers and local politicians for a townsite.

## **Did the Bands Generate Surrender Demand?**

An important question for the study was, to what extent did Indian bands themselves initiate the demand for surrenders?

In the 25 surrenders studied, Department officials reported nine cases of band-initiated surrenders. But it is difficult to trace the origins of the proposals in several of these cases. In the Alexander surrender of 1905 near Edmonton, for example, Inspector Markle reported a request for a surrender of about one-third of the reserve in return for fencing, stock, equipment, and a building. The Chief of the band, however, had been deposed by Cabinet order for “intemperance and acting as a bad influence” two years earlier, and had not been reinstated despite the urging of the Bishop of St Albert. The reported request came through the Inspector and was not in the words of any band representative, leaving unanswered the question of who made the request to Markle on behalf of the Band. The former Chief was reinstated the following year. In the 1905 surrenders of Mosquito/Grizzly Bear’s Head/Lean Man, the demand purportedly came from bands for which there was no functioning band leadership at the time.

Apparently, some of these requests came after the band itself had opposed earlier proposals for the surrender. One example of such a reversal was the Michel surrender of 1906. After being unanimously opposed to the suggestion a few months earlier, the Band proposed a surrender that (taking account of another surrender given only three years earlier) brought to roughly 40 per cent the portion of the original reserve the Band had surrendered. Some researchers have suggested that the change of heart may have reflected frustration with the Department’s restrictions on agriculture and its failure to provide the benefits promised from the earlier surrender. The demand for the land in this case may have come both from the younger farmers in the Band and non-Indian purchasers.

Several factors may have influenced bands to forward requests for surrenders to the Department. These include:

- dissatisfaction on the part of some band members with the band leadership;
- the influence on the band of outsiders suggesting surrender;
- the conduct of certain Department officials, who initiated and negotiated “requests” from the band;
- unmet needs of the band for farming supplies and implements.

The last factor was the reason given most commonly in band requests for surrenders. Yet it is not at all clear why such bands, most of whose capacity to expand their farming operations was increasing for the first time, might have decided to give up farming land. In the case of the 1902 surrender of Enoch/Stony Plain, for example, a delegation of band members, led by a deposed headman, suggested a surrender to Frank Oliver, still editor of an Edmonton newspaper, after Oliver had campaigned for the surrender. The reason for making the request, conveyed by Oliver to the Department, was the need for cash for fencing and outfitting. Yet, at the time, the Department held \$42,000 in trust for the Band in its capital account from the Passpasschase surrender. In other situations, it was not uncommon during this period for Department officials negotiating surrenders to inform poorly capitalized bands that surrenders were necessary to obtain funds for farming supplies without making reference to treaty commitments.

The Swan Lake surrender of 1908, ostensibly requested by the Band, is an example of a request that was in fact negotiated by a Department official, in this case the Reverend John McDougall, who frequently initiated the surrender process in this way. Earlier in the same year, the Band had rejected McDougall’s proposal of the surrender in question. McDougall then worked through the local farming instructor to have the Band submit a proposal. In other cases, McDougall would personally negotiate the terms of a band “proposal” to the Department. In some cases this move gave McDougall leeway to exceed terms that the Department would have stipulated had McDougall waited for instructions. However, McDougall’s initial promises to the Band were not

always included in the “proposals” drafted, leading to disputes after the surrendered lands had been sold.

## CONSENT

### The Debate over the Meaning of “Consent”

Treaty 1, the first prairie treaty signed, contained no provision for the surrender of reserve lands. Of the six other treaties discussed in the report, five contained provisions for the surrender of reserve lands with the consent of the Indians entitled to those lands. However, none specified how consent should be obtained, or the standard by which it should be measured.

By contrast, the first consolidated *Indian Act*, in 1876, specified that consent had to be obtained from the “majority of the male members of the band of the full age of twenty-one years, at a meeting or council thereof summoned for that purpose according to their rules,” with voting limited to resident members having an interest in the reserve. In the absence of a stipulated procedure or measure of consent to surrenders in the treaties, the *Indian Act* was considered binding on Department officials.

Although it was clear from the *Indian Act* that a majority vote was required, there was much debate within government circles as to whether the “majority” referred to in the *Act* was a majority of only the qualified members attending the surrender meeting or an absolute majority of all eligible members of the band. The debate surfaced several times between senior officials of the Departments of the Interior, Indian Affairs, and Justice between 1876 and at least 1939. Superintendent General Oliver defended the Peigan surrender in the House of Commons on the basis of the former interpretation, notwithstanding the fact that this view was unsupported by the text of the *Act* and effectively negated the treaties’ requirement of collective band consent. In 1910, during debate on the St Peter’s surrender, Oliver declared that this interpretation was the policy of his Department. Despite continuing differences within the Department as to the validity of Oliver’s interpretation of the text, the Department repeatedly proposed draft amendments to the *Indian Act* between 1897 and 1909, all of which would have enshrined Oliver’s position in the legislation. None of the proposed amendments were enacted.

Oliver's interpretation of the text was rejected by the majority report of the 1910 Manitoba Royal Commission into the St Peter's surrender, which also rejected a middle-ground interpretation, first advanced in 1876, that was finally settled upon by the Supreme Court of Canada in its 1972 decision in *Cardinal v. The Queen*. In *Cardinal*, the Court determined that the surrender provision, now contained in section 49 of the *Indian Act*, required that at least a majority of the eligible members be present at the meeting, and that a majority of those members present vote in favour of the surrender.

It was not until 1914 that the Department sent out formal instructions to officials in the field indicating a clear standard for establishing consent. Previously, most officials at this level simply received a copy of the Act. They often appear to have interpreted its requirement loosely. Adopting the position of the 1910 Royal Commission, the 1914 directive required that any surrender be supported by an absolute majority of eligible members of the band.

For most of the surrenders examined in the study, there is no indication of the standard by which the Department measured the consent recorded.

### **Obtaining Consent in Practice**

Given the initial opposition of many bands to the idea of surrender, the questions arise, how was consent ultimately obtained, and upon what information were purported consents based?

The possible sources of prior band opposition include:

- an opposition to non-Indian settlement in proximity to reserve communities;
- a belief by the older leadership that the treaties protected reserve lands against sale and loss;
- a distrust of the Department;
- a belief that the land was and would be needed for the benefit of the community;
- the fear that agreement to surrender would lead to the loss of more reserve land in the future.

Indian leaders and band members were at a significant disadvantage in their land dealings with the Department. For the most part they had little experience with real estate and land development, and in their isolated state probably would not have been aware of factors affecting land value and

speculation (outside limited access to local real estate prices). Government officials conducting negotiations, on the other hand, were well connected with the business and political community, possessed greater knowledge of the factors affecting land values, and exercised some control over leaders' access to outsiders, through regulation of mobility, and also over a range of inducements and perceived inducements, through their management of departmental funds.

### *The Measure of Consent*

Little was recorded about the actual measure of consent in most cases. In the cases of Roseau River, the Michel surrender of 1906, and The Pas, no vote was recorded. In other cases, such as Mosquito, the fact that a majority of the members present at the meeting voted for surrender was noted, but not the size of the majority. Nor is there any mention of how many members were present relative to the total number of eligible band members.

There are a number of cases in which the record indicates that while a majority of voters at the meeting were in favour of the surrender, this was less than the majority of all eligible voters of the band. This was true at Enoch, where only 14 members signed the surrender document from a Band that had at least 35 eligible voters; at St Peter's, of 223 eligible voters, 107 were recorded as voting in favour; at Peigan, 40 out of 108 voters were in favour; and at Muscowpetung, 10 of 21 eligible voters supported the surrender. In the case of St Peter's, the Manitoba Royal Commission found that only half the band had the opportunity to hear the surrender discussions.

In some cases, there was uncertainty about who should be considered a band member for the purpose of voting on a surrender. In the surrender at Sharphead, for example, it was unclear whether some band members of the reserves had been unjustifiably deprived of their voting rights. A Department official determined that four band members who had transferred from the Band's new reserve at White Whale Lake to two other reserves had lost their voting rights by virtue of the double transfer. The rationale for this determination is unclear.

The popular view within the Department that surrender required only the consent of a majority of the voters attending the meeting implied that band members who had not attended a surrender meeting had given their tacit consent to the surrender. Yet this raises the question of whether absence from the meeting was the result of an informed decision, or even an informed

decision based on the understanding that a surrender proposal would need a substantial show of support to pass. Did absentees know of the meeting, or of its purpose? Was adequate notice of the meeting and its purpose given? In view of how little is known about the circumstances surrounding most surrender meetings, there is generally room for doubt on this issue. In the Fishing Lake surrender, there are allegations that a faction opposed to the surrender was away hunting during the meeting.

### *The Quality of Consent*

Was the consent obtained from the bands genuine?

Inducements, usually but not always monetary, were commonly used to sway reluctant band members to consent to surrender. Inspector S.R. Marlatt reported that at Roseau River in 1903, he was able to obtain consent only after offering an advance of \$500 to the band as soon as the surrender document was signed. McDougall appears to have instituted the technique of cash distributions as a term of the surrender at Cote in 1905, where 5 per cent of the expected sale price was to be distributed to the Band within 30 days of the surrender. This required the Department to obtain an Order in Council to advance money from the Land Management Fund.

In the 1906 surrender of The Pas, Commissioner David Laird recommended that Marlatt be authorized to distribute more than 10 per cent of the band's capital following surrender, despite the legislated ceiling of 10 per cent on such distributions. In 1908, Laird received the surrender of the entire Thunderchild reserve after repeated meetings over a few days, with cash placed in open view on the table. At St Peter's, in 1907, as the vote on the surrender was taking place, Inspector Semmens shouted to the band members, "Who wants \$90 let him go over there!" pointing to the location where those in favour of surrender were assembling.

William Graham was the official who appears to have used cash distributions at surrenders most often. At Cowessess, Graham reported, "I began paying these Indians their approximate one-tenth which was \$66.00. This payment continued well into the night and for several days following." Elders of bands with whom he dealt attested that, like Laird, Graham literally placed money on the table in order to sway voters. At Fishing Lake, Graham issued payments of \$100 per capita

immediately after the vote, and then collected back some \$4000 for the purchase of implements and supplies.

In several cases there are indications that cash advances or other financial inducements went to individuals, or differentially to different groups within a band. In the St Peter's surrender, Chief William Prince told his Band Council that in exchange for his support for surrender, he had been made promises that would make him "well off all the days of [his] life." The actual terms of the St Peter's surrender provided for a \$5000 advance and grants of various amounts of land to individual band members depending on their status: the Chief received 180 acres, councillors and ex-chiefs 120 acres, and others 80 acres. (The Manitoba Commission ruled in 1912 that the lure of money at St Peter's had distorted the vote.) At The Pas, Marlatt agreed to a special cash payment to the Chief, along with a free deed to half an acre of land. Elder testimony refers to one case in which it was said that one man came into a surrender meeting and broke the tie, because he was offered money. Elder testimony also refers to William Graham's use of money as a "bribe."

Department officials also regularly used non-monetary inducements, sometimes offering to exercise the Department's administrative authority in consideration for surrenders. For example, the Chief of the Swan Lake reserve, after surrender, reported that the Reverend McDougall had promised in the negotiations that banned religious dances would again be permitted. The reinstatement of the Chief of the Alexander reserve following surrender has led some to assert that Inspector John Markle may have promised that he would recommend reinstatement if the surrender was successful. In the case of the Moosomin surrender, elders testified that Josie Moosomin, who was recognized as Chief two months after the surrender, was told by Commissioner Laird that he would not achieve this recognition unless the surrender went through.

There are also indications that intimidation was sometimes used. The interpreter present at the 1901 Ocean Man/Pheasant's Rump surrender meetings alleged that Commissioner Laird threatened to have the Band "driven out by the police" unless they agreed to surrender. (Such threats could have had no basis in law before the 1911 amendment to the *Indian Act* that permitted the taking of reserve lands in limited circumstances.) Oral testimony also asserts that William Graham threatened on occasion to take the lands by other means if a surrender was not supported.

Oral testimony by elders also points to a less direct form of influence: the fear that band members had of Department officials, particularly the local Indian Agent, on account of their sweeping authority. Elders report that such fear made people reluctant to challenge the word of the officials. Graham, particularly, was disliked and viewed with suspicion.

Another practice that casts doubt on the authenticity of consent in several cases is the use of repeated and prolonged meetings in order to secure surrender. This was alluded to above in the case of the Thunderchild surrender. After the Peigan surrender, Chief Butcher wrote to Superintendent General Oliver complaining that Inspector Markle had held multiple meetings until surrender was achieved. At St Peter's, where opposition to surrender was strong, some eight meetings took place between February and September of 1907. The final surrender meeting extended into a second day, and it was later alleged that alcohol and bribery had been used overnight to weaken the opposition.

Although St Peter's is one of the most controversial surrenders in terms of the way consent was obtained, it is the only surrender reviewed in the report for which there is a solid record of the Band's discussions leading up to the vote. In most other cases, the record of discussion is vague or non-existent. A typical example is the 1905 Alexander surrender. The surrender meeting occurred on December 29, 1905, but there is no record of the notice of meeting, the number and names of those attending, the substance of the discussions, or the number of members who voted in favour of surrender. In several other cases, it is not even certain whether a formal surrender meeting took place.

Despite the *Indian Act's* lack of guidance on the matter, the Department adopted the practice of attempting to bar non-band members from surrender negotiations. Where successful, this practice weakened bands' bargaining positions by depriving them of independent advice and expertise. At Muscowpetung, Graham referred disparagingly to a local notary public, who was brought to a meeting by a dissident band member, as "a meddling half-breed." At Peigan, Inspector Markle was angered by the intervention of a lawyer acting for opponents to the surrender, and recommended amending the *Indian Act* to disallow the presence of anyone not authorized by the official taking the surrender.

There are signs that voters often did not fully understand the terms to which they were consenting. According to statements made later by band elders, for example, members sometimes

believed that the band would automatically receive money for the surrender of land, because the government was purchasing the land.

The belief that money would be forthcoming regardless of whether the land was sold and payment collected from the purchasers is a recurring finding of the report. As proceeds from the sale of Peigan lands faltered, rations to the Band were cut off in 1917. In a meeting to discuss the Band's protests, Inspector Markle revealed that the Chiefs on the Peigan reserve believed that the surrender would produce cash on a continuing basis, whether or not revenue was generated by land sales. Opponents of the St Peter's surrender testified before the Manitoba Commission that the Band believed that the cash distributions mentioned in the surrender agreement were a firm promise and that, if necessary, the government itself would buy any unsold land in order to meet this commitment.

Misunderstandings were in some cases compounded by problems with translation. For example, the Manitoba Commission inquiring into the St Peter's surrender found that the surrender discussions were plagued by poor translation.

Misunderstanding of the precise terms of surrender was further compounded by the extensive use by Department officials of oral and written promises that were not reflected in the surrender document but were often crucial in obtaining the band's consent. McDougall's practice of making such promises in order to obtain a band "proposal" for surrender is mentioned above. In the case of Blackfoot/Siksika, the Band's consent to surrender was largely motivated by its desire to secure rations for the indefinite future, but this term did not appear in the surrender document. When land sales fell off, the Department proposed cutting back on rations. In a letter in support of the Band, Agent Gooderham stated that the Indians had been assured "again and again, by the Inspector, the Agent, and Staff as well as by the Missionaries on the Reserve, and by Members of Parliament and by visiting officials" that rations would be supplied. In a letter written to Inspector Markle, DSGIA D.C. Scott stated that a reading of the surrender showed that there was "no obligation whatever to provide this ration unless the funds are available." Markle replied that he had told the Blackfoot people before the surrender that the payment of rations was contingent upon the receipt of interest payments from purchasers of reserve lands. Markle stated that he believed the Indians had knowingly consented to surrender, but added:

the clause in the surrender which reads “or in such other manner as the Government of Canada may deem most conducive to our welfare and that of our people” was not questioned . . . and I do not think that they were informed that the Government reserved the right to change any of the conditions contained in the surrender. My impression is that if they had then been so informed that a majority of the band would have refused to agree to the proposed release of land in question.

Inspector Marlatt also made verbal promises to the people of Roseau River in order to secure surrender over considerable opposition. It appears he promised a cash advance and annual interest payments. Neither appeared in the text of the surrender agreement. When no interest payments were forthcoming, the Band threatened to repossess the land. The situation was only resolved by an Order in Council in 1906. Marlatt had also made use of verbal promises at The Pas, to assure the Band that a certain percentage from sales would be distributed to band members. In that case, when the Band protested the failure to raise the distribution rate from the lower rate stipulated in the text of the surrender to the higher rate that had been promised verbally, the Department consented to amend the agreement in 1910 to more closely reflect Marlatt’s promise.

Many Indians appear to have taken a different view from departmental officials of the significance of leaving a promise out of the written surrender document. In oral accounts of the surrender process, elders said they viewed surrenders as being akin to treaties, in that

- the terms were to last in perpetuity;
- Department officials were honour-bound to keep their promises;
- the fulfilment of terms was not contingent on the sale of land but upon the government’s honouring the agreement, if necessary by buying the land itself;
- the surrender involved the band relinquishing land rights;
- the decision was taken at a meeting, in most cases, of both parties.

Although Department officials generally treated the surrender as a form of agreement, it was not unheard of for them to change the terms to be approved by Cabinet, following the surrender’s acceptance by the band. This occurred in the Mistawasis surrender of 1911, where Agent Thomas Borthwick forwarded the surrender with a recommendation that an important term be altered. The

original agreement called for an advance against proceeds from future sales for the purchase of machinery, thus giving the Band full ownership of the machinery itself. Borthwick decided that it would be preferable to use departmental funds to purchase the machinery, so that other bands would have access to it. This change was approved. Another example of this practice occurred at St Peter's, where the Manitoba Commission found that the surrender document had been altered following the vote.

### *The Procedure for Obtaining Consent*

Under the *Indian Act*, band members had to consent to surrender at a meeting called for the specific purpose of considering the surrender. There is little in the record to indicate whether notice of this key event was adequate. In the only case where a fairly complete record of the process exists, the Manitoba Commission found in 1912 that there had been only one day's notice given for the St Peter's surrender meeting.

As noted above, in several instances there is no conclusive evidence that the meeting required by the Act ever took place. In Moosomin, elders testified that there was no meeting, and that people were simply asked to sign the document. Inspector Markle, at Peigan and Blackfoot, conducted votes by polling, leaving no record of whether a meeting took place.

The *Indian Act* also required that a surrender be certified before a judge or magistrate by a representative of the Department and "by some one of the chiefs or principal men" present at the surrender meeting and entitled to vote. In six of the surrenders examined in the study, there was no elected leadership at the time of the surrender, and the record does not show whether the signatories otherwise qualified as Chiefs or principal headmen. In one surrender, at Pheasant's Rump in 1901, there is no evidence of a vote of any kind having been taken; an interpreter subsequently attested that the people never consented to the surrender.

### *Formal Requirements for Processing Surrenders*

Once a surrender was obtained, the *Indian Act* required that the document be signed by representatives of both sides attending the surrender meeting. The report cautions against assuming that the signatures represented consent: it is possible that band members voting against the surrender

then signed in order to go along with the majority decision, or that, where advance payments were being offered, the signatories believed they had to sign in order to receive payments.

In many of the surrenders covered in the report, the statutory declaration by the parties' representatives before a judge or magistrate is the only evidence of consent. This declaration was the primary means the Department used to verify that the surrender was validly taken. But although the declaration was evidence of consent, it did not in itself establish consent, and the Department was not in the practice of going behind this testimonial to determine the validity of the consent represented. The surrender document and sworn declaration were then submitted for Cabinet approval, which would be made through an Order in Council. In some instances, such as the Mistawasis case, the surrender was submitted with the recommendation that it be accepted with modifications.

## **THE AFTERMATH OF SURRENDERS**

### **The Department's Interests**

All of the surrenders discussed in the report contained a clause stating that the Department would sell the land "upon such terms as the Government of the Dominion of Canada may deem most conducive to our welfare and that of our people." As a result, while the government had the responsibility to dispose of the land on terms that would benefit the band, it also had the authority to determine what those terms would be. The Department tended to resist Indian demands to have a say in determining the minimum price below which the land could not be sold. This was the case, for example, in Mistawasis, where the Band urged a \$15-per-acre minimum. This was overruled by the Agent, who valued the land at \$12.

The Department also tried to include terms that gave the government control over the spending of land sale revenues, often with a view to reducing departmental costs. In the case of Carry the Kettle, the terms specified a variety of uses to which the proceeds from sales would be put, including reimbursing the Department for money spent on a wire pasture fence. When the Band complained some two years after the surrender that it had received none of the promised cash distributions from interest generated by land sales, the Department Secretary replied that the surrender said nothing about cash distributions, only that the money would be managed in the Band's interest. Inspector Graham, who had taken the surrender, denied setting the condition asserted by the

Band. Noting that principal could be made available for emergency distributions, Graham recommended in this case that the interest be allowed to accumulate for several months until the fall, and then be used to aid the destitute. The Department sided with Graham, and agreed to allow the interest to be used for rations and clothing for the old and destitute, thereby sparing the Department this particular expense.

The Department's desire to control the use of land sale revenues also appears to have been influenced by its trust responsibility to manage the funds in the bands' best interests. This can be seen in its reaction to Band protests about poor distributions from Roseau River and The Pas (in 1903 and 1906 respectively) based partially on verbal promises made by Inspector S.A. Marlatt. When the Band at The Pas protested the small distributions made from sale proceeds, Department Secretary McLean initially resisted honouring Marlatt's promise of a 30 per cent distribution, on the basis that the larger per capita distribution would not be in the Band's best interest. Later, he agreed to a compromise of 25 per cent, which led to the surrender agreement being amended in 1910 to increase the distribution rate.

In many instances, the Department believed that the interests of the Indians would be better served by directing the proceeds of land sales towards the bands' capital accounts than by distributing cash to individual band members. The 1906 Order in Council that required the Department to pay for some of Marlatt's promises to the Roseau River people stated that Marlatt had verbally promised band members annual distributions of interest from land sales. In a succinct statement of the Department's view of its obligation to protect the capital and interest derived from land sales from distribution to the Band, the order went on to say that Marlatt had made these promises because he was unaware of departmental policy:

[Marlatt's promise] was made without knowledge of the fact that the Department of Indian Affairs has for many years capitalized the interest on these deferred payments [for surrendered land] as well as the principal sum. This practice was doubtless adopted in what was considered the best interests of the Indians as it would tend to build up their capital funds and render unnecessary the distribution of relatively large sums of interest which had been found to be of no particular benefit, and, in some respects, to be a positive detriment to the welfare of the Indians. On the other hand the building up of capital which might, from time to time, be used in permanent improvement on the reserve would better conserve the interests of those interested in the fund.

When Superintendent General Oliver explained to the House of Commons the 1906 amendment to the *Indian Act* that raised the ceiling on the distribution of a band's capital, the government presented itself – and in some measure, attempted to act – as the trustee for the collective welfare of the band, even while it was moving to permit greater distributions to individual band members. The report notes that, in fact, Oliver's amendment allowed the Department to place its perceived need to take a surrender above the need to protect band funds. As noted above, Oliver's assurance to the House that distributions would not take the form of cash fell by the wayside in the surrender activity of the next few years.

### **Band Complaints**

The objections and complaints made by Indian leaders about the implementation of surrender terms can largely be grouped around the themes of (1) payments being either too slow, too little, or nonexistent, and (2) the use to which the government insisted the money be put.

Payments many bands believed they were entitled to were in fact contingent on the land being sold and the payments from purchasers collected. The complaints by band members at Roseau River, Carry the Kettle, Swan Lake, The Pas, St Peter's, and Peigan concerning payments have already been described.

The Cowessess people also complained about unreceived payments, and linked them to the Department's having held a late auction and agreed to defer many buyers' payments. Similar complaints about the department's slow handling of land sales were made by the people of Fishing Lake, who, as Inspector Graham acknowledged in 1909, had been led to believe at the time of surrender that the government would soon take steps to sell the land and use the proceeds to help the Band start farming. The Blackfoot Band, which also disputed the cutting off of promised rations, complained that the Department was lax in selling the land and in collecting payments from purchasers. This was alleged by a lawyer acting for the Band, who argued that the Department was honour-bound to carry out the conditions of the surrender.

The protests of the Cowessess, Fishing Lake, and Blackfoot Bands raise the issue of the Department's conduct of land sales. There were many protests at the time about the lack of competitiveness of land sales. Critics pointed to the fact that advertising was often limited to Liberal

newspapers and that some land sales were held at less than ideal times in terms of market demand. Before 1905, most surrendered land was sold by tender rather than by auction, giving Department officials more latitude over selection of the winning bid.

The report indicates as well that many land sales show a pattern of lack of diligence in pursuing collections from purchasers, and a tendency to grant payment deferrals to political or business associates of government officials. In some cases, especially when western land values began to decline, purchasers failed to pay the full purchase price and the Department did not collect the total amount due. In 1906 there was a striking disparity between the prices obtained for surrendered lands and higher rates at which other land was sold to the public by the government, the Hudson's Bay Company, and the railways. There was repeated criticism of this phenomenon in the House of Commons over the next few years.<sup>9</sup>

The second main issue of concern to the bands was the fiscal control exercised by the Department over the money it collected. Bands tended to be surprised when money from interest payments went to repay cash advances made by the Department at the time of surrender. This troubled the Samson Band, which some five years after the surrender had received only one-third of the per capita distribution it had been promised, because the advance had still not been recouped. The Band asked the government to purchase the unsold land itself in order to make up the shortfall. The Cote Band threatened legal action in 1909, claiming that it had not understood that payment of interest was contingent on paying off the cash advance made in 1907. It was supported in this claim by Inspector Graham.

The people of Carry the Kettle expressed dissatisfaction with Graham's recommendation that interest derived from land sales be used to pay for rations for the destitute and elderly rather than being applied towards cash distributions. And the lawyer representing the Cowessess people argued that the Department should not use sale proceeds to fund medical expenses, as this was a treaty obligation.

In other instances, the complaints concerned the government's preference for earmarking interest payments to the band's capital account. This was one of the Band's concerns in the Roseau River dispute. In a similar vein, the people of Fishing Lake were surprised to learn that livestock

---

<sup>9</sup> The study does not analyze comparative sale prices in detail.

purchased with surrender funds were band, rather than personal, property. Finally, in both the Mistawasis and the 1907 Cote surrenders, the Bands demanded cash distributions in order to pay off their debts. In both cases the Department refused, responding that debts should be paid off through wage work and sales of cattle and grain.

## CONCLUSION

Dr Martin-McGuire was asked to examine what practices, policies, attitudes, and objectives of the Department of Indian Affairs applied to prairie surrenders between 1896 and 1911; how prevalent these factors were; how influential they were on the results of the surrenders generally; and, finally, whether the factors indicate a distinctive character in the Crown–First Nations relations that informed prairie surrenders of this period.

The report finds that, when prairie treaty reserve land was surrendered between 1896 and 1911, the relationship between First Nations and the government was one of dependency on the one hand, and control on the other. Prairie bands were struggling for their economic and political survival. The Department of Indian Affairs was simultaneously managing bands' needs, non-Indian demand for recently allotted reserve lands, and its own resolve to reduce its cost of administering reserves.

The legal framework governing treaty reserve surrenders was reshaped by Parliament and the federal Cabinet just before and during the study period. The changes made surrenders of treaty reserve lands more likely, either by encouraging or by directly facilitating them. Changes to the *Indian Act*, which had already granted substantial control over reserve life to Department officials, gave them authority to depose customary band leaders and to spend the trust moneys earned through sales of surrendered reserve lands on capital works without band council consent. Another change raised the proportion of sale proceeds that the Department could distribute directly to bands on the sale of surrendered lands from 10 per cent to 50 per cent. The legal rules governing the sale of surrendered lands were also relaxed so that purchasers could more easily qualify for and finance a purchase. At the end of the period, contrary to the treaties, an amendment to the *Indian Act* dispensed altogether with the requirement of a surrender where reserve lands were being taken in order to make space for large municipalities or for other public purposes.

Dr Martin-McGuire's report suggests that departmental policy and practice in this period also favoured or promoted the surrender of recently acquired prairie reserve lands. Top level cross-appointments were made between the Department of the Interior, which was dedicated to western non-Indian settlement, and the Department of Indian Affairs, charged with protecting treaty Indians. With support from the Department, Indian Agents and other officials endeavoured to restrict band leaders' access to off-reserve advocates, particularly at surrender meetings. Personal conflicts of interest in surrender transactions are also evident: many Indian Affairs representatives and employees – some at the highest levels of responsibility – purchased or attempted to purchase surrendered land.

More directly, during this period, the Department adopted a policy of advocating and seeking to induce prairie reserve surrenders wherever it considered the lands in question “surplus” to a band's needs or entitlements. This policy was influenced in part by the Department's view that the reserve allotments made under the treaties had been overgenerous to bands and therefore unfair to incoming settlers. Strain on the Indian Affairs budget also clearly narrowed the Department's conception of bands' land needs, despite the fact that most prairie bands were beginning to expand their agricultural production. At the same time, the Department broadened its notion of bands' cash needs that could be met through the sale of surrendered lands, taking in heads of expenditure previously considered government services, including some services promised in the treaties.

Although western settlement by non-Indian people did stir the Department's interest in obtaining surrenders, market demand for reserve land in this period was driven largely by speculators seeking to buy up land in advance of the boom. The extent to which bands themselves initiated surrenders of their lands is difficult to assess: Department negotiators commonly presented negotiated terms to the Department as band “proposals”; several band proposals followed on the heels of clear opposition to the surrender; and in some cases the bands reported as initiating surrenders were without Chiefs at the time. Moreover, the reason most commonly cited in band “proposals” for surrender was the need for equipment and supplies: the report finds that officials commonly informed bands that the equipment and supplies they needed could not be obtained unless their reserve lands were surrendered and sold. To the extent that band members supported surrender proposals, the report suggests that, in addition to unmet needs for equipment and supplies, this may have reflected

internal dissatisfaction with band leaderships, pressure from local non-Indian interests, and frustration with the slow progress of reserve farming.

Several times, the Department proposed to amend the *Indian Act* to reduce the required level of voter support for surrenders. It was not until after the study period, however, that it instructed its field officers how to apply the Act's majority requirement. In the interim, many officials held that support by a majority of the eligible voters showing up at a meeting would suffice. This standard met neither the stringent test laid down by a Royal Commission a few years later nor the intermediate test finally laid down by the Supreme Court of Canada. Nonetheless, even this minimal standard may not have been applied reliably. In several cases examined in the report, it is unclear whether a surrender meeting took place; in others, no vote was recorded; in yet another, it is not clear that any vote was held. In the majority of the cases studied, there is no record of the standard by which officials applied the requirement of majority assent.

Many of the Department's surrender negotiators interpreted the policy of inducing surrenders broadly. It was common practice for them to offer material inducements. The incentive was often cash, to be paid when the surrender documents were signed, or when the proceeds of sale were due. In several cases, officials are reported to have placed cash on the table at the surrender meeting. Payments were often offered or made to individuals or particular groups, rather than the band. In one case, cash was offered to individuals as a stated condition of voting in favour of a surrender. Non-monetary inducements were also common. The report finds that one official threatened to drive a band off its reserve if a surrender was not made; another said the government would take the land with or without a surrender. In several cases in which initial opposition to surrender appears to have been strong, surrender meetings were held repeatedly, with some continuing for many hours until a surrender was obtained.

There is evidence in many cases that voters may have misunderstood some important terms of the decision they were being asked to make. Side promises, commonly made by Department officials, that were not incorporated into the surrender documents, often compounded such misunderstandings. In light of these possible misunderstandings and the frequency of offers of cash payments to individuals, the report cautions that the signatures of band leaders on the surrender document written at the conclusion of the meeting may not in all cases signify informed consent.

Finally, several trends emerge from the record of the Department's performance of the terms of surrenders. The Department generally drafted surrender documents so as to leave itself broad discretion in the spending of sale proceeds. Disagreements often arose between bands and the Department over the use to which sale proceeds were put. In several cases, as well, bands found the sale proceeds were less than expected. Between 1906 and 1909, the opposition charged in the House of Commons that surrendered Indian lands were being sold by the government at prices below those paid by the public for government, Hudson's Bay Company, or railway land. The Department tended to resist band efforts to influence the minimum price set for surrender sales, and in at least one case the Department sold the land for 20 per cent less than the minimum urged by the band.

In summary, the report suggests that, during the study period, there was pressure within the Department to obtain surrenders of recently surveyed reserve land. Such pressure reflected demand for Indian lands, internal pressures to reduce departmental costs, structural conflict, and to some extent personal conflict. According to the report, this pressure contributed to or was intensified by changes to the legal and policy framework governing surrenders, and changes to practice in the field. Further, questionable activities on the part of some Department officials that tended to encourage surrenders were not controlled effectively by the Department in the study period. From the resulting activities of Department officials, the report finds that there is evidence to suggest that in many of the surrenders studied there was some degree of inducement on the one side, and some misunderstanding, lack of information, and experience of pressure on the other. The report suggests that such evidence raises questions about the Department's compliance with its legislative and treaty obligations in these transactions.

Dr Martin-McGuire's report is an excellent starting point for an analysis of the broad historical context during this intense period of reserve land surrender activity among prairie Indian bands. Although it is important to bear in mind that each case must be assessed on its own merits, the Commission is confident that this study will provide First Nations, researchers, government officials, and the Commission itself with useful information on government policies and practices during the study period, which will assist in the assessment and resolution of these long-outstanding claims.

**FIRST NATION LAND SURRENDERS ON THE PRAIRIES**

**1896-1911**

## INTRODUCTION

This report, prepared for the Indian Claims Commission, is a comparative historical study of Indian land surrenders in the years 1896 to 1911.

It does not read like a book. I have attempted in my reporting on surrenders to maintain an objective stance and I have organized the material as a reference tool. The advantages will be that readers can identify parts that may be particularly useful, and cross-reference sections to gain the information they need. The disadvantages are that some searching will be needed to discover where specific issues are to be found, along with a great deal of page flipping.

Chapter 1 provides some of the background to the general history of the report: dominion lands policies, railway development, colonization companies, treaties, and Indian Affairs legislation and policy before 1896. This information is meant to provide a general context for understanding the taking of surrenders, beginning in 1896.

Chapter 2 is an attempt to chronicle some of the land and colonization companies that were important in land acquisition during this period. Again, the presentation of data is uneven, and some explorations of corporate history are still tentative. Although most of the companies did not deal in surrendered lands, it is still important to understand how they worked, simply because they were central to the market and shared some of the same actors.

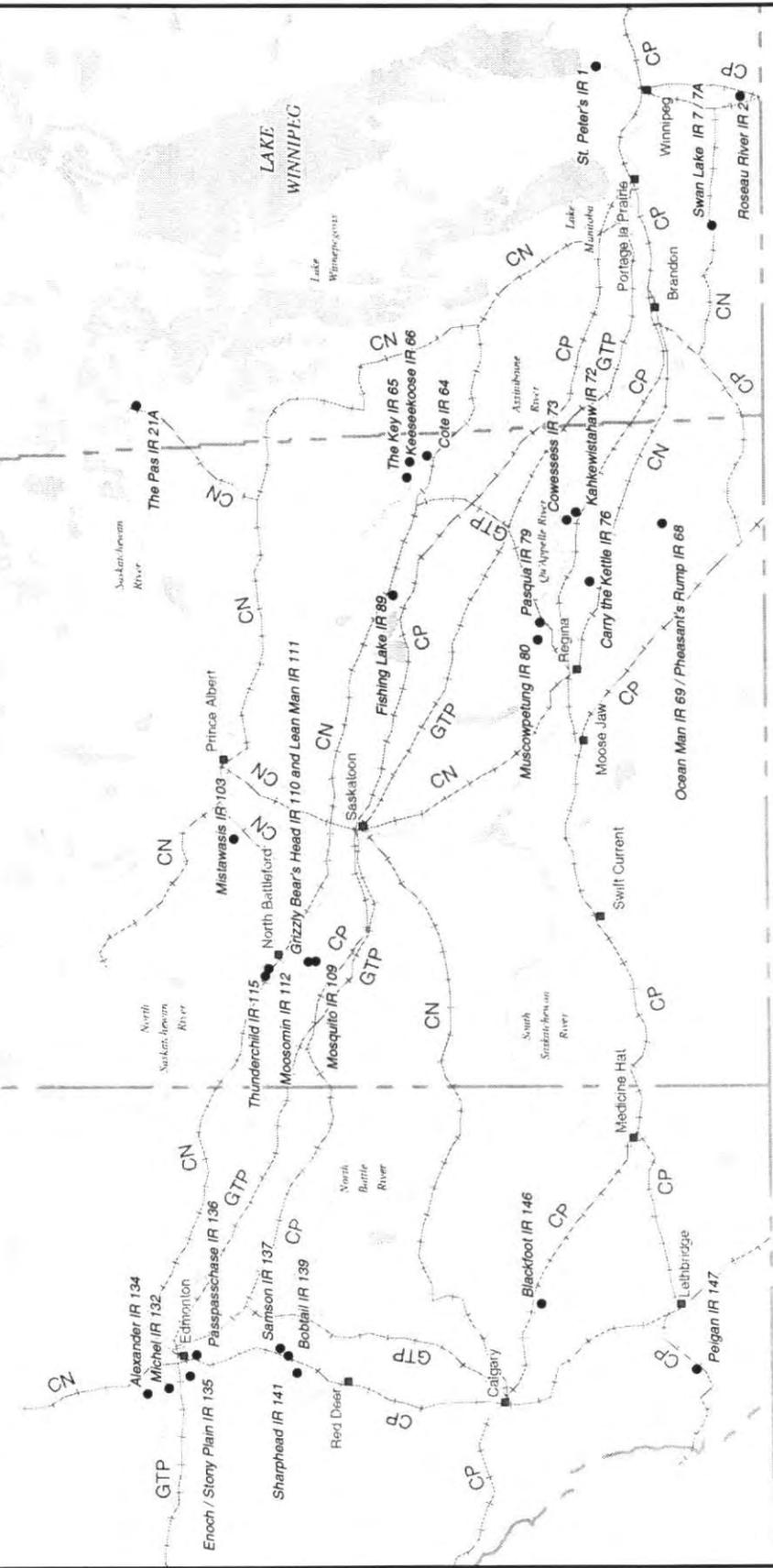
Chapter 3 is a year-by-year chronology of the period 1896 to 1911, divided into sections which, when read sequentially, contain a story of their own: western development; railway expansion; Indian Affairs organization and policies (including debates of the House of Commons, Department circulars, and depositions of band leadership); summaries of demands for surrenders; summaries of surrenders taken, including a few not covered in the succeeding sections; and summaries of land sales practices. The reader can treat each year as an entity and compare information presented under the various headings, or can cross-reference the development of issues in each heading over the years. The selection of detailed information was arbitrary, to some extent, although I tried to include some issues, particularly in the Indian Affairs section, that are rarely summarized, such as the circulars and the changes in accounting practices.

Chapters 4, 5, and 6 contain the core of the surrender data, dealing, respectively, with the demand for the surrenders, the taking of the surrenders, and the terms of the surrenders and how these terms were implemented. Each surrender is divided into these three sections, although the

Manitoba

Saskatchewan

Alberta



- CP - Canadian Pacific Railway
- CN - Canadian National Railway
- GTP - Grand Trunk Pacific Railway
- Indian Reserve
- Town

#### **4 / First Nation Land Surrenders on the Prairies, 1896-1911**

reader can turn to the surrender in each chapter and read it as a whole. Alternatively, issues of demand, negotiation, or terms can be read in each chapter in comparative perspective. There is some overlap among the chapters, because it is difficult to separate the demand for a surrender from its negotiation, or the protests made about the implementation of a surrender from the understandings surrounding the negotiations. This overlap, in itself, is telling. The surrenders included are listed in the Contents.

Chapter 7 provides an overview of some of the patterns that can be found in the data on land surrenders in the years 1888 to 1911, along with my own observations and conclusions.

The compendium of Key People in Land Demand, Consent, and Acquisition is arranged alphabetically and contains mostly non-Indian people – a mixture of officials, politicians, and land buyers. Information was procured from biographical sketches (see References), from the Department's Establishment Books (National Archives of Canada [NA], RG 10, Reels T-1778, T-1779, T-1780, T-1781, T-1782, T-1783), from the body of the report itself, and from specific referenced sources. Some individuals are described in sufficient detail, but others are still quite mysterious. We need more genealogical and biographical work in this area.

The Reference List includes secondary sources, both those used in the report and those that might be of interest to the reader. Some sources are annotated.

Appendix A sets out the terms of reference of this project. In the other appendices I have selected a few of the key legal and historical documents that will be of use to those interested in surrenders. The surrender agreement, affidavit, and Orders in Council for Michel Indian Reserve 132 (1903) is provided as an example in Appendix B. Land regulations (for land sales) are in Appendix C. I have put together a miscellaneous collection of notes about Clifford Sifton's investments in Appendix D, and in Appendix E I have included some of the media coverage on the release of the Ferguson Reports in the years 1913-15.

Although I have tried to honour the expectations set forth in my terms of reference for this project, some conspicuously missing pieces are explained by the fact that I did not have time to do them, given the limited timeframe I had in which to research and write the report (June to December 1996). The following points in particular require clarification:

- The years before 1896 are not dealt with as exhaustively as the years after that date. However, a number of works that summarize Indian policy in the early period, as well as the general history, are listed in the References.
- Specifically, the period of pre-Confederation surrenders is not described here, although it should be. It will be obvious that, from the Department's point of view, surrenders were not a discrete issue.
- Many surrenders were not included in the study. For the most part, their absence was a function of time and energy; some First Nations, however, specifically asked that their histories not be included.
- There is not as much primary research on the surrenders as there should be. I worked with primary and secondary documents, but was unable to fill major holes in the research that is available, particularly in band economics, the implementation and aftermath of surrenders, land sales, and trust accounts. The presentation of the surrenders in Chapters 4, 5, and 6 is, therefore, somewhat uneven in type and quality of information.
- The study stops in 1911, with only a few comments on the years that followed. In the end, I felt it better to omit them than to cover this period in a cursory fashion. The era of the Soldier Settlement Surrenders, 1918-20, needs a study of its own.
- The biographical and corporate histories that are necessary to complete the story are presented in only rudimentary form.
- Most important, the perspective of the First Nations is missing. Although I have had the privilege of talking to contemporary First Nations researchers and reviewing bits of oral history taken from various sources, there is still a need to tell these stories from the First Nation point of view. In essence, this work has relied on the written word, and the biographies of the business, political, and government people who made surrenders happen.

I would like to thank many people from the Indian Claims Commission, First Nations, Indian and Northern Affairs Canada Specific Claims Branch, as well as other researchers who made invaluable contributions to the production of this report. They are too numerous to name, but I appreciate their assistance, patience, and cooperation.

