

***Resource Management Workshop***  
***Notes by Joan Holmes,***  
***Joan Holmes & Associates Inc., February 1992***

**Land Surrenders**

**Establishing the status of reserve or other interested lands being surrendered or taken:**

- Establish how reserve was set aside and any particular specifications  
i.e. under treaty, purchased, granted, by proclamation, license or grant by other  
institution  
how it was described
- For whom was it set aside (list of names, name of band or group). If described as  
"Indians of locality" try to establish who was using the area, who was consulted about  
the reserve.
- How location and acreage of land was selected, was acreage based on population, or  
some other specification or formula, if land marks were used try to locate these on  
modern plans, maps. By whom was location selected, in consultation with agent,  
provincial or federal authorities, chief and headman, missionaries.
- Order-in council confirming reserve, how was it described and for whom, any special  
considerations, if specific plans are referred to collect these. If there is a longer period  
of time between survey/selection of reserve and confirmation by Order-in-Council  
collect any documents.
- Instructions to surveyor, survey plans, field notes and diary.  
Also seek any letters or petitions that dispute the boundaries, or inclusion/exclusion of  
particular lands.
- Any other evidence of how land was administered, and who had use of it and benefited  
from it, including inclusion on schedules of reserves at different periods.  
Who was consulted for any administrative matters, persons who voted on surrenders,  
disposal of assets, deposits in trust accounts, spending funds from resources

### Validity of surrenders:

- Consult Indian Act in effect regarding taking surrenders and distribution of cash, deductions for management, etc.  
Guidelines or instructions to agents.
- Evidence of notification of meeting time, date and place. Indication that purpose of meeting was indicated to members (printed notice, written notice, payment to runner or interpreter) or evidence that this was not done.
- Report on meeting (council) from agent, missionaries other locals, oral history. Especially note any evidence of pressure, threats, number of persons attending meeting.
- Voters' list - compare with band list or annuity payroll for years previous and following. Watch out for persons voting who were not band members, under 21, anything suspicious, e.g., marks on voters' list or pay list when other documents show person can write.

### Surrender documentation:

- Locate and study signatures, terms, anything added or deleted, compare terms with notes or oral history of pre-surrender meeting.  
Form 66 (sworn affidavit).
- Other correspondence and documentation that show any kind of duress, dissent, persons refusing to participate.
- Use of inducements - money paid to particular individuals, some extra distribution when it is above what was allowed under Act.
- Any other material that indicates duress, interests other than the band's being considered

### Sources for land surrenders:

- RG 10. See indexes under name of band, name of agency, name of reserve.
- Annual Reports of the Department of Indian Affairs, especially useful for period 1870's to pre World War I.
- RG 2. Privy Council, Orders-in-Council.
- RG 15. Department of Interior for western surveys.
- Maps and Plans. See Indian Land Registry under name of band. Also Energy, Mines, and Resources, Legal Surveys Branch. Also see National Map Collection, National Archives of Canada, for general and historical maps.
- Pre-confederation - see Colonial Office MG 11, Governor General's Office RG 7, Executive Council RG 1, especially land matters.

## **Land Sales**

- Examine terms of surrender, including terms and conditions for sale of land, method by which land was sold, any evidence of fraud (i.e., IA officials buying land), stipulations of portion of proceeds to be distributed and portion to be funded, specific expenditures to be made out of surrender proceeds.
- Was land sale price to be based on minimum price per acre, average price per acre, or a predetermined lump sum.
- Receive cost of land as sold at public auction or as sold auction not specified. When by auction difficult to make argument that land was not sold at proper prices - may be arguments around timing of auction, amount of land placed on market, or any fixing or fraudulent practice.
- Were terms of surrender where all fulfilled? If changes were made provide all correspondence and evidence of what changes were made and why, also protests and changes.
- Look at how money was collected and funded by crown. Lack of diligence in getting money, be aware of possible Crown arguments, and conditions of time e.g., depression. Note if purchasers of land did not make land payments but did pay other creditors.
- When improvements were paid for where did this money come from? If from land sales money, were improvements part of price paid by purchaser?
- Demonstrate that band did not receive adequate compensation for what was surrendered, fraud, someone else benefitting, negligence.
- Were valuations of land done by impartial party. If more than one valuation, which was used.
- Was all the land sold: see Indian land registry, letters patent (show acreage and price also sub-surface and road reservation, etc.) to determine if all was sold and what was unsold.
- Identified unsold unpatented lands. Has any unsold land been returned to reserve status, is any available for settlement, negotiation.
- Try to establish damages: not having funds (especially when money and/or interest was not collected), not having use of unsold land, improper alienation of sub-surface rights with surface. How did Band suffer from loss of land and resources and inadequate or untimely collection of money.

## **Sources:**

- RG 10 (correspondence, records), Indian Land Registry (patents, sales ledgers and records, maps, plans), Consumer and Corporate Affairs (recent patents), local land registry offices.

### **Mineral Surrenders:**

#### **Establish status of minerals underlying reserve or other Indian land:**

- Check establishment of reserve to note any reference, gold and silver (precious minerals usually reserved to crown). Any prior history of use of minerals or awareness of value of underlying minerals by band.

#### **Surrenders:**

- Terms of surrender, for lease or sale
- Validity of surrender same as for other surrenders.
- When land surrendered for sale: Did subsequent sale of land respect bands reservations of sub-surface rights
- Note as well degree of knowledge at the time of what sub-surface rights were on part of Band and Crown (e.g., evidence of exploration or exploitation activity around reserve, inquiries by mining companies).

#### **Compensation:**

- Compensation - was it in keeping with legislation, fair compensation relative to existing conditions and costs.
- Look at losses because leases not offered in reasonable way, i.e., uneconomical spacing.
- Note application of provincial regulations

#### **Sources:**

- RG 10, Indian Land Registry (patents and records of sales and leases), Department, Indian Oil and Gas.

### **Trust Accounts and Indian Monies**

- Using trust funds for questionable expenditure; including expenditures for other Bands, non-Band purposes, that should not be paid for.  
Using capital accounts and depleting capital when Band had money in revenue.  
Depositing funds in revenue that should be funded to capital (see Indian Act).  
Misleading band as to amounts in accounts, or uses to which it could be put.

#### **Sources:**

- RG 10, Department, Trust Account Records.

**Selected Indian Acts & Policy**  
**related to Land Surrenders and Sales**

This is an incomplete list showing selected significant changes. The Acts should be consulted for complete wording and meaning.

**Royal Proclamation, 1763**

Can only be surrendered to Crown (as represented by authorized person).  
No purchases by individuals allowed.

Repeated in instructions to officers from Colonial Gov't. e.g., Haldimand's Instructions, 1774.

**1876 Indian Act**

Sec. 26 majority of male members aged 21 at a meeting summoned for that purpose according to Band's rules in presence of authorized official. No one allowed to be present or to vote unless habitually residing in or near and interested in the reserve. This is the first legislative requirement for taking surrender by vote.

Sworn statement by authorized official and one of chiefs or headmen.

Sec. 27 unlawful to introduce liquor before, during or after meeting to discuss or take a surrender. Anyone introducing or tolerating use of intoxicants a week prior, during, or a week after surrender meeting to be punished by fine.

Sec. 30 no agent for the sale of Indian land can become interested in land in his division which he is appointed to sell.

Sec. 39 Up to 10% of proceeds of sale can be distributed to members.

Sec. 40 Proceed of sales and leases to be paid to the credit of the Indian fund.

**Indian Act, 1906**

Sec. 48 and 49 repeats in substance the requirements of 1876 Act.

Vote to be taken at a meeting, what constitutes a meeting.

Act requires signed surrender and form 66 (affidavit); may need more than one chief or headman's signature, this is unclear.

Right to vote - any male of 21 normally resident on or near the reserve and interested in that reserve ( this is critical when reserve abandoned).

Sec. 57 no agent for the sale of Indian land can purchase land in his division or become in interested in land which he is appointed to sell.

Sec. 70 payment of up to 50% of proceeds of sale could be distributed as cash payment, the balance to be funded and interest distributed. Previously the limit was 10%.

**Policy directive - Jan. 1910 (Pedley)**

no officer of DIA, his wife or dependent can directly or indirectly purchase or become interested in any Indian land.

**General instructions to Indian Agents - Oct. 1913 (Scott)**

Quotes Indian Act 1906, sec. 57 as above and cites Jan. 1910 circular

**Instructions for Guidance of Indian Agents in Connection with Surrenders- May 1916 (Scott)**

Details of how a surrender is to be sought including:

officer authorized to take surrender must prepare a voters list;  
call a meeting for consideration of surrender by rules of the band or according to DIA rules;  
DIA rules outlined - posted one week prior, verbal or written notice to be delivered to each member three days prior; terms of surrender to be interpreted at meeting; surrender must be assented to by majority on voters list, who must be present; officer to keep a poll book recording votes, surrender and affidavit to be signed by chief and one headman or two headmen.

These instructions are the first record of detailed requirements for record keeping and guidelines for calling meetings.

**1951 Indian Act**

Sec. 37-41 surrender must be made to Crown

Assented to by majority of electors of band at a general meeting called by council or minister and must be accepted by O.C.;

If at first surrender meeting majority of electors of band did not vote but those voting assented to surrender, minister can call another vote giving 30 days notice. This surrender shall carry if those voting assent in majority.

Vote can be done by secret ballot at request of Band Council

Certificate of surrender signed by official of DIA and chief or member of council.

Sec. 53 no employee of DIA or anyone appointed to sell, lease, manage surrendered land may gain an interest with out authority of Governor in Council.

Sec. 59 minister may with consent of council reduce or adjust amount payable in respect to sale or lease of surrendered lands

Sec. 62 all monies from sale of land deemed to be capital funds.

Sec. 64 cash distribution not to exceed 50% of capital moneys derived from sale of surrendered lands.

**1970 Indian Act**

Sec. 39 surrender can also be taken by referendum under regulations.