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# **SPECIFIC CLAIMS MANUAL**

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## **OBJECTIVES OF SPECIFIC CLAIMS POLICY<sup>1</sup>**

The government's primary objective with respect to specific claims is to discharge its lawful obligation to Indian bands.

The government recognizes claims by Indian bands that disclose an outstanding lawful obligation—an obligation on the part of the federal government derived from the law. A lawful obligation may arise in any of the following circumstances:

- the nonfulfilment of a treaty or other agreement between Indians and the Crown;
- a breach of an obligation under the *Indian Act* or other statutes pertaining to Indians and regulations under them;
- a breach of obligation arising out of government administration of Indian funds or other assets; and
- an illegal disposition of Indian land.

The government also acknowledges claims arising from the following circumstances:

- failure to provide compensation for reserve lands taken or damaged by the federal government or any of its agencies under authority; and
- fraud in connection with the acquisition or disposition of Indian reserve land by employees or agents of the federal government where the fraud can be clearly demonstrated.

Examples of specific claims:

- The Big Cove Indian Band in New Brunswick asserted that the sale of 202 hectares from the reserve did not follow the conditions of the band's surrender of lands in 1879, and submitted its claim in 1973. The claim was settled, and cash compensation of \$3.2 million was paid to the band in 1988.
- The Lower Kootenay Indian Band asserted that 972 hectares of land promised in 1908 by Canada were never set apart as a reserve. The claim was submitted in 1984, and settled in 1989 for \$4.7 million.

Treaty Land Entitlement (TLE) claims represent a subset of specific claims. They relate to a group of treaties that were signed with Indian bands, mainly in the prairie provinces. Under these treaties the size of a reserve was based on a number of hectares (usually 51) per person in the band. The population of each band was to be determined and the reserve land fixed according to surveys. However, not all band populations and lands were measured promptly or accurately. As a result, some bands have claimed outstanding entitlement for those band members who were not originally counted. Such claims are categorized as TLE claims.

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<sup>1</sup> This section is copied from Federal Policy for the Settlement of Native Claims. Ottawa: Indian and Northern Affairs Canada, March 1993, pp. 19-20.

## **THE PURPOSE OF THIS MANUAL**

This manual is designed to assist First Nations in preparing their Specific Claims submissions. It provides a brief outline of the most common types of specific claims and explains the kinds of information and supporting documents that should be supplied with the submission. There is a separate section devoted to each of the basic types of claims.

Each section includes:

- a list of the main questions you should answer in telling the story of your claim;
- a checklist of basic documents that should be supplied with your claim; and
- a more detailed description of the kinds of documents and information that could be used to support the key issues of each type of claim.

Some issues are basic to most claims; however, not all issues are important to every claim. When documenting your claim it is important to concentrate on providing information and documents that are most closely related to the particular allegations raised by your claim.

Not all of the issues listed under a particular type of claim would necessarily have to be researched and documented with the same amount of detail. For example, if a surrender claim is based on allegations that the terms of a surrender were not properly carried out, it may not be necessary to thoroughly examine the issue of voter eligibility. On the other hand, if the claim hinges on the eligibility of voters, documentation on the identity of the voters would be most important, while the execution of the surrender would not necessarily form part of the submission.

When researching and documenting a claim it is important to be aware of the sections of the Indian Act and other statutes and regulations that pertain to the subject of the claim. For example, if a claim is related to a railway being built through a reserve, it is important to be aware of the Railway Act and sections of the Indian Act pertaining to railways and any related regulations in force at the time. The statutes and regulations specify the procedures that must be followed, types of compensation required, etc. The documents submitted with a claim should indicate whether or not the applicable statutes and regulations were followed.

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## **TYPES OF CLAIMS**

**Each section includes:**

- a list of the main questions you should answer in telling the story of your claim;
  - a checklist of basic documents that should be supplied with your claim; and
  - a more detailed description of the kinds of documents and information that could be used to support the key issues of each type of claim.
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# **I. TREATIES AND PURCHASES**

## **Basic Questions to Answer**

### **Background:**

1. Where are the lands that are being ceded or purchased?
2. Who are the aboriginal occupants of the land?
3. Who are the officials involved in making the treaty?
4. Was there an existing relationship between these players?

### **Negotiations/Meetings:**

1. Who took part, including interpreters?
2. What was said by the different parties?
3. What agreements were made?

### **Interpretation:**

1. How did the First Nation(s) understand the terms of the treaty?
2. How did the Crown understand the terms of the treaty?
3. How did other parties understand the terms of the treaty?

### **Fulfilment of Terms of Treaty:**

1. What was received by the First Nation(s)?
2. What was expected but not received by the First Nation(s)?

*If the allegations of non-fulfilment involve reserve land see the sections on "Establishment of Reserves", "Treaty Land Entitlement" or "Establishment of Special Purpose Reserves".*

# **I. TREATIES AND PURCHASES**

## **Checklist of Important Documents**

- ☐ background information on traditional use and occupation of area ceded by First Nation(s)
- ☐ background on existing relationship between First Nation(s) and Crown or other officials or individuals involved in negotiating the treaty
- ☐ general government policy and regulations on treaties with First Nations
- ☐ instructions to persons negotiating treaty for the Crown
- ☐ requests by First Nation(s) to negotiate a treaty or indications that a treaty was not wanted
- ☐ reports and/or descriptions of meetings where treaty was discussed or negotiated; this could include oral history accounts of treaty meetings
- ☐ documents that identify the people participating at the treaty negotiations, including chiefs and headmen, missionaries, police or military officials, and government officials
- ☐ payroll for payment of treaty gratuity or first payment of annuity, and/or other documents identifying individual families or First Nation(s) adhering to treaty
- ☐ documents that identify any interpreters employed to translate the proceedings along with any background information or comment on the ability or competence of these individuals
- ☐ copy of written treaty or land purchase documents, including all of the signatures and/or marks of participants; identify totems where possible
- ☐ Order-in-Council approving treaty
- ☐ letters, reports, etc. commenting on any relevant aspect of the treaty, e.g., terms of treaty, inclusion or exclusion of a particular First Nation(s) or groups, fulfillment of terms of the treaty, territory included in the treaty, etc.
- ☐ letters, reports, etc. in which Crown officials comment on their interpretation or understanding of the treaty
- ☐ any documents or oral history material that demonstrate how the First Nation(s) understood the treaty
- ☐ any documents that relate to how the terms of the treaty were carried out (for claims regarding reserve land allotted under a treaty, see the sections on "Establishment of Reserves" and "Treaty Land Entitlement")

## I. TREATIES and PURCHASES

Shortly after the British assumed control of Canada, the Royal Proclamation of 1763 was issued by British authorities. This proclamation outlined British policy regarding trade with Indians and the right of aboriginal people to occupy their traditional lands. The Royal Proclamation acknowledged that these lands were protected and could only be ceded to or purchased by the Crown. Treaties and land purchases made subsequent to 1763 had to be taken by authorized representatives of the Crown at a public meeting or assembly of the Indians.

Treaties and land purchases provided for a variety of benefits including such things as reserve lands, annuity payments, gratuity payments, bulk payments, off-reserve resource use, and educational and medical benefits. Specific claims can be based on the proper fulfillment of treaty or land purchase obligations. The written terms of the treaty/purchase and/or the First Nation's understanding of the treaty/purchase could be the primary focus of the claim. As well, claims can be based on whether or not a group was adequately represented at treaty negotiations and if they or their ancestors actually joined or adhered to the treaty.

The following sections outline the types of information that should be provided with the claims submission.

### A. HISTORICAL BACKGROUND

1. Indicate the circumstances leading up to the land purchase or treaty. Document important factors influencing the transactions, such as: pressures to settle land; development or squatting in the area; government policy to remove First Nations from traditional territory; requests by First Nations to secure a treaty or cede land.
2. Provide background on the aboriginal people involved in the treaty or land purchase. Indicate the territory traditionally used and occupied by them, including information on areas of special significance or particular use and any other information related to their traditional use and occupation of lands<sup>2</sup> covered by the treaty or land purchase.
3. Provide background information on previous relations between the First Nation(s) and Crown officials or other third parties involved in making the treaty/purchase. Of particular interest are purchases or discussions preceding the formal treaty/purchase negotiations, and evidence of existing relationships between the Crown and aboriginal representatives which may have created an atmosphere of trust or expectation in either party.
4. Provide information on the Crown's policies with respect to treaties with First Nations. Typically this would include instructions as to who was authorized to make a treaty, how treaty meetings were to be called, and the witnesses who were required to be present.

### B. THE NEGOTIATIONS AND CONCLUSIONS

1. Provide information on the intent of the parties taking part in the treaty/purchase. Focus particularly on documents that indicate what each party hoped to achieve through the transaction.
2. Identify the locations and dates of the meetings and councils where the treaty/purchase was proposed, discussed, and concluded. Provide documents that indicate how the aboriginal people were notified about the meetings and their purpose.

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<sup>2</sup> The term "occupation and use of lands" could include use of surface and subsurface materials, fish, wildlife, water, and other natural resources.



3. Provide information on the participants. Identify the representatives of the Crown and provide the text of their authority to negotiate (e.g., instructions, Order-in-Council giving officials authority, etc.). Identify any third parties present (e.g., missionaries, land speculators, police) and describe their participation in the proceedings. Identify the aboriginal peoples and their representatives. Include any other information on the participation (or non-participation) of First Nations inhabiting the lands being ceded or sold.
4. Provide information on interpretation at the meetings. Identify any interpreters used and document their knowledge of English, French, and relevant Indian language(s). Indicate if any of the attending language groups were not provided with competent interpreters.
5. Provide documents that indicate what was said during the negotiations including any promises or terms that were not recorded in the written agreement. Documents that give this type of information may include reports from officials, third party observers, and newspaper accounts. In addition, memoirs or interviews with elders may yield information on traditional understanding of the treaty proceedings.
6. Supply the written text of the treaty/land purchase and the Order-in-Council accepting and approving the transaction.

### **C. INTERPRETATION of TERMS of the TREATY**

1. Provide information on the First Nation's understanding of the terms of the treaty. The aboriginal perspective may be indicated in oral testimony from elders, traditional accounts of the meaning and intent of the treaty, correspondence from representatives protesting the treaty or requesting fulfillment of particular obligations, and accounts or correspondence of missionaries, teachers or other parties requesting assistance or treaty benefits for treaty First Nation(s).
2. Provide information on the Crown's interpretation of the treaty/purchase. This information may be gathered from correspondence, reports, and the management and administration of treaty benefits, rights and obligations.

### **D. FULFILLMENT of the TERMS of the TREATY**

1. Provide information that indicates the degree to which specific terms of the treaty were fulfilled. Depending on the focus of the grievance, the following types of documentation should be supplied:
  - a. if the establishment of reserve(s) under treaty is at issue, supply information on any existing reserve land as described in the section on Treaty Land Entitlement.
  - b. if the payment of treaty annuities is at issue, supply available paylists which indicate who was paid, in what years, and where. Include in addition any correspondence or reports that explain who was (and who was not) paid under the terms of the treaty.
  - c. if the supply of particular equipment (e.g., farm stock, fishing nets) or services (teachers, medical services) under the terms of the treaty is the focus of the claim, provide documents such as agent's reports and correspondence that indicate what is being supplied under treaty and/or any information on items being withheld. In addition, include any correspondence indicating that the First Nation(s) expressed dissatisfaction with items supplied or withheld and government response to any complaints.
  - d. if use of off-reserve resources (e.g., fish, wildlife) is at issue, provide documents that indicate the First Nation(s) used those resources prior to treaty, and include information on the circumstances under which the use of those resources was curtailed.

## **II. ESTABLISHMENT OF RESERVES**

### **Basic Questions to Answer**

#### **Background:**

1. Where was the reserve land supposed to be set aside?
2. Who were the aboriginal occupants of the land?
3. How did they use the land?

#### **Survey or granting:**

1. Where was land surveyed or otherwise set aside?
2. How much land was made into a reserve?
3. Who was to have use of the land?

#### **Use and Administration:**

1. Who used the land and for what purposes?
2. Did the Crown (Indian Affairs) manage or administer the land as a reserve?
3. Did the First Nation(s) complain about the size, location or use of the reserve?
4. Did the Crown respond to those complaints?

*If the allegations of your claim involve loss of use of areas of established reserve land, see the sections on "Lands Surrendered for Sale", "Expropriations" or "Flooding and Compensation for Flooding".*

## **II. ESTABLISHMENT OF RESERVES**

### **Checklist of Important Documents**

- ☐ background information on who used the land in the area of the proposed/promised reserve
- ☐ documents that explain or describe reserve to be set aside (e.g., description in treaty, letter of intent or promise to establish a reserve, meeting records which discuss reserve to be established)
- ☐ maps or plans showing the intended location or established use areas
- ☐ reports or letters describing consultation with chief, headmen, First Nation(s) members regarding a reserve to be set aside
- ☐ reports or letters between department officials or correspondence between department officials and third parties (e.g., missionaries, local settlers) discussing reserve to be set aside
- ☐ instructions to surveyor to set aside a reserve
- ☐ surveyor's report and plan on survey of reserve, along with any other notes and diaries that may include information on the survey
- ☐ correspondence within the department or between department officials and other persons regarding the survey or location of the reserve
- ☐ Order-in-Council setting aside reserve
- ☐ if reserve lands or lands that later became reserves were granted or licensed or some interest was conveyed to a third party (e.g., church, charity), provide grants, letters patent, licenses of occupation or any other land documents relevant to the land
- ☐ if the status of the reserve lands is in question, provide government schedules of reserves, or other evidence that the land was administered and managed as a reserve by the Department of Indian Affairs
- ☐ maps and plans that show any changes to the reserve boundaries throughout the period in question are useful. Note, however, that it is not necessary to document all the changes in the boundaries unless it is relevant to the time period and allegations being made
- ☐ any pertinent statutes or regulations, including sections of the Indian Act which provide for surveys of reserves

## II. ESTABLISHMENT OF RESERVES

Indian reserves have been created in a variety of ways. Some reserves were set up before Confederation by a Royal Charter, which granted land either to a First Nation(s) or to a third party (such as a church) on their behalf. Some reserves were set aside under the written terms of treaties, while others were originally lands granted by colonial government licenses or patents to First Nations or private groups. In some cases, reserves were purchased by First Nations. Many of the reserves were confirmed by federal Orders-in-Council; in some provinces provincial Orders-in-Council were also involved. The true origin of some reserves is uncertain.

Department of Indian Affairs' Annual Reports have been issued yearly since 1864. They describe treaties, the setting up of reserves, land surveys, and other details related to the establishment of reserves. The annual reports, reports on pre-Confederation investigations into Indian affairs, the Department of Indian Affairs' reserve general register, and published reports on treaties are good places to get basic information on how particular reserves were first established.

The following sections outline the types of information that should be provided when submitting a claim based on allegations that reserve land was inadequately or improperly set aside.<sup>3</sup>

### A. NON-TREATY RESERVES

If there is no treaty, use historical or ethnological records, pre-Confederation reports on Indian affairs, the reserve general register, and secondary sources to determine the history of the use and occupation of the area and the identity of interested First Nation(s). Oral history may provide additional information on how a reserve was created.

1. Provide information on the traditional use and occupation of the area around the reserve in question. It is important to establish what lands were used and for what purpose, especially if the intended location of the reserve is in question.
2. Provide information on the identity of the people who used the land and how they are related to the First Nation(s) now interested in the reserve.
3. Supply documents that show how, by whom, for whom, and for what purpose the reserve was established or was promised. This may include documents such as: provincial or federal statutes, royal charters, licenses, letters patent, title deeds, grants, leases, permits, Orders-in-Council, etc., as well as reports and correspondence.
4. If the reserve was ever surveyed include information on:
  - a. instructions to the surveyor and the surveyor's notes, records, reports and plans;
  - b. the First Nation(s)'s participation in or knowledge of the survey;
  - c. subsequent protest and communication about the surveyed reserve;
  - d. plans and descriptions of the reserve in use before and after the survey.
5. Provide details that indicate government recognition of the land as a reserve. This information could include: statutes, Orders-in-Council, grants, federal-provincial Indian lands agreements, licenses of occupation, patents, listings in Indian Affairs' "Indian Reserve schedule", or correspondence and reports that show the administration and management of the lands as an Indian reserve.

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<sup>3</sup> Treaty Land Entitlement claims are claims from treaty areas where reserve lands were to be set aside according to a formula of a particular number of acres per person. This type of claim is discussed in a separate section called "Treaty Land Entitlement".

## **B. TREATY RESERVES**

1. Identify the treaty under which the reserve was set aside. Was the reserve described in the treaty or were reserves to be set aside according to a particular formula (i.e., a specified acreage per person)? Did the treaty outline a consultation or selection process? Did the treaty include any other directions or promises regarding reserves?
2. Some claims are based on the way in which the reserve was described in the written text. This could include grievances based on the size or location of the reserve, the purpose of the reserve, or the people for whom the reserve was set aside. If this is the case, see Section LB. and LC.1. of this manual on the negotiations and interpretation of treaties and provide that information. The documents provided should illustrate the difference between the reserve as established and the reserve that the First Nation(s) expected to receive.
3. If the reserve was surveyed, provide the following information for the survey. (This information should also be provided for any amending or conflicting surveys that affected the boundaries, location or size of the original reserve.)
  - a. indications that the First Nation(s) was consulted regarding the location, boundaries and extent of the reserve prior to survey;
  - b. instructions to the surveyor;
  - c. information on the survey including fieldnotes, diaries, reports, and plans;
  - d. acceptance and registration of plans; the plan referred to in (or appended to) the Order-in-Council formally setting aside the reserve as an Indian reserve under the Indian Act.
4. Any protest or comment by the interested First Nation(s) or any other First Nation(s) regarding the size, boundaries, location, or nature of the reserve and any response by government officials to such protests.
5. Provide the history of the interested First Nation(s) or any other First Nation(s) using the reserve before or after the survey and formal setting aside of the land as an Indian reserve.
6. Document other issues that may affect the establishment of a reserve including delays in surveying and confirming reserves, amalgamation or division of First Nation(s) for whom the reserve was intended, changes in population between the time of treaty and the survey of the reserve, uncontrolled squatting on land intended for a reserve, errors in describing the lands in a treaty. In these cases, the circumstances should be documented in as much detail as possible.
7. Document any indications of government recognition of the reserve. Recognition could include legal instruments such as the confirming Orders-in-Council, title deeds, grants, intergovernmental agreements, licenses of occupation, patents, etc. Administrative factors such as being listed in Indian Affairs "Indian reserve schedule" or being managed as a reserve by the Department of Indian Affairs may also suggest recognition.

Events that took place after the establishment of a reserve which affected the size, boundaries or location of a reserve are addressed under the sections on surrenders, expropriations, flooding, etc.

Claims that are based on allegations that the Crown failed to supply adequate reserve land based on acreage formulas contained in treaties are outlined in the section on "Treaty Land Entitlement".

### **III. TREATY LAND ENTITLEMENT**

#### **Basic Questions to Answer**

##### **Background:**

1. What formula for providing reserve land was included in the treaty?
2. What First Nation(s) was to receive a reserve under the treaty?

##### **First Survey:**

1. When was the reserve in question first surveyed?
2. Who was counted as part of the band at that time?
3. How much land was set aside?

##### **Entitlement:**

1. How many people were not allotted land?

### **III. TREATY LAND ENTITLEMENT**

#### **Checklist of Important Documents**

- ☐ the text of the treaty and any additional reports or correspondence that show the amount of land that was to be set aside for each band
- ☐ the report of the first survey that shows the number of acres set aside
- ☐ a list of people who were considered to be band members entitled to reserve land
- ☐ an analysis of paylists and other genealogical material that shows the number of entitled people who were not allotted land on the reserve. The paylists and other census and genealogical material upon which the analysis is based should be provided with the submission
- ☐ any pertinent statutes or regulations

### III. TREATY LAND ENTITLEMENT

Treaty Land Entitlement claims arise from the alleged failure of the Crown to set aside sufficient reserve land under the terms of a treaty. Under the numbered treaties, the size of reserve land to be set aside was based on a formula of a specific number of acres (now expressed as hectares) per band member. The band population was to be established and the reserve surveyed in accordance with the population. However, not all band populations were counted accurately and not all reserves were surveyed promptly or according to the actual population of the band. As a result, some bands have claimed outstanding land entitlement for band members that were not originally counted.

#### A. HISTORICAL BACKGROUND

1. Provide the text of the treaty and other documents that explain the formula upon which reserves were to be established. The formula will be expressed as a certain number of acres per person or a certain number of acres per family of five.

#### B. SURVEY

1. Supply details of the survey including the date of first survey, the number of acres set aside, and the number of individuals or families considered to be interested in the reserve.
2. Provide a paylist, census or band list that shows the names and number of people interested in the reserve.

#### C. POPULATION ANALYSIS

1. Provide an analysis of the population that your claim alleges should have been included in the population for which the reserve was set aside.
2. Provide all paylists, census material, and other genealogical material upon which the analysis is based.



## **IV. ESTABLISHMENT OF SPECIAL PURPOSE RESERVES**

### **Basic Questions to Answer**

#### **Background:**

1. Why and when was the reserve promised or granted?
2. Who was to have an interest in the reserve?
3. What was the intended purpose of the reserve?

#### **Establishment:**

1. Was the land ever surveyed?
2. Are there any documents granting or otherwise establishing the reserve?

#### **Use of Reserve:**

1. Who used the land (aboriginal and non-aboriginal)?
2. How was it used, including changes over time?
3. Was it ever administered or managed as Indian land?

#### **Loss of Use:**

1. Did the First Nation(s) suffer loss of use of the reserve?
2. Who was using the land and in what way?
3. Did the First Nation(s) complain about loss of use or destruction of resources?
4. Did the government (Department of Indian Affairs) respond to any complaints?

## IV. ESTABLISHMENT OF SPECIAL PURPOSE RESERVES

### Checklist of Important Documents

- ☐ documents that describe the special reserve to be set aside (e.g., description in treaty, condition of a land surrender, meeting notes, etc.)
- ☐ maps or plans showing the intended location
- ☒ reports or other documents that explain the intended use of the special reserve or the rationale for having it set aside. Documents showing an established use of the area by the First Nation(s)
- ☐ reports or other documents that indicate the First Nation(s) interested in the special reserve
- ☐ reports or letters describing consultation with chiefs, headmen, First Nation(s) members regarding location, nature, and purpose of the special reserve
- ☐ instructions to surveyor to survey the special reserve
- ☐ surveyor's report and plan of survey of reserve, along with any other notes and diaries that may include information on the survey or nature of the location
- ☐ Order-in-Council setting aside reserve or any other legal authorities related to the establishment and use of the special reserve including permits, licences of occupation, grants, leases, etc.
- ☐ if the legal status of the special reserve is in question, provide government schedules of reserves, or other indication that the land was administered and managed as a reserve by the Department of Indian Affairs
- ☐ if the grievance involves alleged trespass, provide documents that show the special reserve was used in trespass and how the land or resources were used and/or destroyed
- ☐ maps and plans that show any relevant changes to the reserve boundaries throughout the period in question
- ☐ pertinent statutes and regulations

#### **IV. ESTABLISHMENT OF SPECIAL PURPOSE RESERVES** (e.g., fishing reserve, hay lands, timber reserves, burial grounds, etc.)

A First Nation or group of First Nations often have individual or shared interests in reserves that were created for special purposes. Timber reserves, fishing stations, hay lands, hunting reserves, and burial grounds are examples of such lands. Special purpose reserves were often specifically described in treaties or surrenders. In some cases, these reserves were established by an administrative process as the result of a First Nation(s)'s request or because of a perceived need.

Claims arising from special purpose reserves might be on the basis of unfulfilled treaty or surrender obligation, or from loss of use due to expropriation, unauthorized alienation, disputed surrender, inadequate compensation, etc.

##### **A. HISTORICAL BACKGROUND**

1. Provide documents that explain the context in which a special purpose reserve was established or was intended to be set aside for the use and benefit of a particular First Nation or group of First Nations.
2. If the establishment of the special reserve was an obligation under a treaty or surrender, supply the information on that surrender or treaty.
3. Include information on the identity of the First Nation(s) interested in the special reserve.

##### **B. ESTABLISHMENT OF SPECIAL RESERVES**

1. If the reserve was ever surveyed, supply details of the survey as outlined in section on "Establishment of Reserves".
2. If reserve was not surveyed but otherwise recognized and described, provide any descriptions, sketches or notes available.
3. If reserve was not surveyed or set aside, provide documentation that explains circumstances surrounding failure to have the special purpose reserve formally established.
4. Supply any other information relevant to the establishment or failure to set aside the special purpose reserve.
5. Provide all legal instruments such as licenses of occupation, Orders-in-Council, grants, leases, etc. related to the establishment of the reserve.
6. Describe the area set aside as a reserve (or intended to be set aside) including location and boundaries, and pertinent features such as timber resources (in the case of timber reserves), fish and wildlife, pre-existing uses (e.g., burial ground).

##### **C. USE OF RESERVE:**

1. Describe how the reserve was used by the interested First Nation(s) other First Nation(s) or non-Indians.
2. In the case of non-Indian use, was the use in trespass, was the use authorized by any parties, was the interested First Nation(s) aware of non-Indian use?
3. Describe any limitations attached to the use of these reserves (such as limitations on sub-surface rights). Were the limitations specified in the treaty/surrender, or in any statute, or introduced by administrative practice?
4. If alienation of a special reserve is at issue, see the sections on surrenders and expropriations. Address the issues of appropriate procedures as outlined in those sections. The most relevant issues are First Nation(s) knowledge and consent in

surrendering their interests in the land and proper compensation and procedures in the case of expropriation.

5. If failure to establish a reserve in accordance with a treaty or surrender is at issue, document the history of the use of the land that was intended for reserve status, including use by the interested First Nation(s) and others, reasons why the land was not set aside, First Nation(s) protests and government responses, etc.

## **V. LANDS SURRENDERED FOR SALE/LEASE**

### **Basic Questions to Answer**

#### **Background:**

1. Where is the reserve and what are its boundaries?
2. What First Nation(s) has an interest in the reserve?
3. Who wanted the land surrendered and why?

#### **Negotiation of surrender:**

1. Who had authority to negotiate for the Crown? for the First Nation(s)?
2. How were interested band members informed of the meeting?
3. Who participated in the meeting(s)?
4. What was said at the meeting(s)?
5. What was agreed to at the meeting(s)?

#### **Assent:**

1. Was there a vote? how was it conducted? who voted and what were the results?
2. If there was no vote, who assented on behalf of the band?

#### **Terms of the Surrender:**

1. What was written in the surrender document?
2. Are there any other accounts of the terms of the surrender?

#### **Fulfilment of the Surrender:**

1. Were the terms carried out as written in the surrender document?
2. Were the terms carried out as understood by the First Nation(s)?

*If the allegations focus on the improper sale of the surrendered land, see the sections on "Land Sales" or "Use of Proceeds of Sale" or "Collection of Land Sales Proceeds".*

*If sub-surface rights form part of the allegations, see the sections on sub-surface rights.*

## **V. LANDS SURRENDERED FOR SALE/LEASE**

### **Checklist of Important Documents**

- ☐ Order-in-Council or other instrument setting aside reserve and/or official map of reserve to establish the pre-surrender boundaries and identity of the First Nation(s) interested in the reserve
- ☐ if more than one First Nation is allegedly interested in the reserve, additional documentation may be needed to establish the interest of each First Nation
- ☐ correspondence or reports requesting or suggesting surrender
- ☐ instructions to departmental officials to seek surrender from First Nation(s)
- ☐ notice or report showing how First Nation(s) members were informed of surrender meeting
- ☐ report or correspondence describing meeting, persons present, and terms of surrender discussed at meeting
- ☐ any other correspondence in which the proposed terms of the surrender and/or any aspect of the surrender process was discussed, including discussion of who was eligible to vote if this is an issue
- ☐ voters list or record of poll
- ☐ if the eligibility of voters is at issue, provide paylists or band lists that provide information on who should have been eligible to vote
- ☐ final signed surrender and any other drafts or version of surrender
- ☐ signed affidavit (form 66) attesting to validity of surrender
- ☐ map, plan or description of the land being surrendered
- ☐ Order-in-Council accepting and approving surrender, with any attachments
- ☐ correspondence or reports reflecting dissatisfaction with surrender or challenges to the surrender process, eligibility of voters, interested parties, lands involved or other terms of the surrender
- ☐ any correspondence, reports or records related to the way in which the terms of the surrender were carried out (for more details see sections on land sales, use of First Nation(s) trust accounts)
- ☐ any pertinent statutes and regulations

## V. LANDS SURRENDERED FOR SALE/LEASE

General rules for alienating Indian lands and taking land surrenders were outlined in the Royal Proclamation of 1763 and in various official colonial policy statements, instructions, proclamations and statutes issued at later dates. Since 1876, formal rules for surrenders have been embodied in the Indian Act. The Act outlines how the surrender meeting is to be held, how those negotiating the surrender must conduct themselves, how the vote is taken, and what documents are needed to approve and record it. Other parts of the Indian Act and related special regulations govern how the land or resources should be sold or leased. Finally, the Indian Act states how the money earned from the surrender is to be banked and used for the benefit of the First Nation(s) and what percentage of the proceeds can be distributed at the time of the surrender.

This section applies to surrenders for sale or lease of Indian reserves and other Indian lands, such as fishing stations and timber reserves. Surrenders for lease were often taken to allow the First Nation(s) to earn revenue on lands which they did not want to permanently alienate. Lands could be rented out to farmers or ranchers who would use the land for a certain period of time, during which they would pay rent to the band. The important issues in a surrender for lease are the negotiations, the surrender meeting and vote, and fulfillment of the terms of the surrender, including any provisions for renewal of leases or reversion of the land to reserve status at the end of the rental period. The major issues raised by surrender claims are outlined below. As explained in the introduction, not all claims require full investigation of every issue listed. Your claim submission should focus on documenting the specific allegations being made in the claim.

### A. GENERAL HISTORICAL BACKGROUND

1. Document the location of the reserve or Indian land and the identity of First Nation(s) for whom the lands were set aside.
2. Provide information on local circumstances leading to the request for a surrender by the government or a request by the First Nation(s) to surrender land. This may include factors such as squatters on Indian land, pressures from local settlers or business interests, the need to raise capital funds, desire by the First Nation(s) to relocate, amalgamation or division of First Nation(s), etc.
3. Outline the history of any prior attempts to obtain a surrender of the same land.

### B. NEGOTIATIONS and SURRENDER MEETING

1. Provide documents explaining events preceding a formal surrender meeting, including:
  - a. preliminary discussions between department officials or other interested parties and chief and council or other First Nation(s) members, including any discussion of proposed terms of a surrender;
  - b. correspondence within the government regarding the proposed surrender, including proposed terms, purpose of surrender, different government, municipal or other parties involved;
  - c. authority given to department officials to obtain a surrender along with any guidelines or instructions outlined by departmental headquarters;
  - d. notice of the time, place, and purpose of the meeting, including information on how the notice was posted or delivered to First Nation(s) members;
  - e. any other significant communications about the pending surrender.

2. Provide documents explaining the specifics of the surrender meeting, including:
  - a. who attended on behalf of the government;
  - b. identity of any outside parties present at the meeting (e.g., missionaries, traders, settlers, land speculators, politicians, business interests);
  - c. official representatives of the First Nation(s) present at the meeting and/or number and identity of First Nation(s) members at the meeting;
  - d. minutes or notes on the discussion that took place at the meeting;
  - e. any evidence of undue influence being exerted at the meeting or immediately prior to the meeting. This could include factors such as distribution of cash, lobbying by outside parties, threats to remove chiefs or cut off rations, etc.;
  - f. any other factors which may have affected the outcome of the vote (for example if the meeting was called when a large proportion of the membership would be absent).

### C. THE SURRENDER VOTE

1. Before 1876, determine if First Nation(s) members voted or if the surrender was taken from leaders. If taken from representatives, is there any evidence that the leaders had authority to act for their First Nation(s). Provide all documents that explain the circumstances.
2. After 1876 (or in case of votes prior to 1876), provide details of the vote including:
  - a. how many people voted for and against the surrender;
  - b. the names of voters, their First Nation(s) affiliation, place of residence, age and sex (only males 21 years of age and older were allowed to vote until 1951);
  - c. any evidence that First Nation(s) members or department officials questioned the results of the vote or the eligibility of voters;
  - d. any evidence that any First Nation(s) other than those voting on the surrender had an interest in the lands being surrendered.

### D. TERMS of the SURRENDER and the SURRENDER DOCUMENTS

1. Provide documents that show the following details (most of this information will appear in the written surrender document).
  - a. description of the land being surrendered, including any maps or plans;
  - b. written terms of the surrender, i.e., the purpose of the surrender (sale, lease, right of way, sub-surface rights), method and terms specified for disposing of surrendered land, time limitations, how proceeds were to be disbursed and/or banked, alternate lands to be purchased or obtained in exchange, etc.;
  - c. signatories to the surrender—who signed for the government, who signed for the First Nation(s), identity of any witnesses or other outside parties signing the surrender;
  - d. affidavit (form 66) attached to the surrender, who swore to the authenticity of the signatories, surrender process, etc.; note place and date of affidavit;
  - e. provide any evidence that there were outside promises which were not written into the surrender document;
  - f. provide documents that indicate the satisfaction or dissatisfaction of the signing First Nation(s), or any other First Nation(s), with the terms of the surrender.

### E. OFFICIAL ACCEPTANCE of SURRENDER

1. Provide documents related to the formal approval of the surrender by the Crown:
  - a. record of departmental official forwarding the signed surrender and affidavit to headquarters;
  - b. submission of surrender to Privy Council or Governor General in Council for acceptance by Order-in-Council;
  - c. Order-in-Council with any attachments, e.g., maps/plans, correspondence.



## **F. EXECUTION OF TERMS OF SURRENDER**

1. If the claim hinges on some aspect of the fulfillment of the term(s) of the surrender, provide documents related to the grievance being claimed. This may include any or all of the following:
  - a. valuation of the surrendered land and improvements by a surveyor or other official (this may have taken place prior to the surrender);
  - b. any record of satisfaction or dissatisfaction on the part of the First Nation(s) regarding the valuation of land and/or improvements;
  - c. how and when the surrendered land was surveyed;
  - d. any record of satisfaction or dissatisfaction on the part of the First Nation(s) regarding the boundaries or location of the surrendered lands as surveyed;
  - e. distribution of cash at the time of surrender, including details on the amount distributed, to whom, and any indication that insufficient or excess amounts were given out or ineligible persons received benefits. Include record of compensation for improvements;
  - f. whether expenditures specified in the surrender were made as expected by the First Nation(s). Provide a record of money that was spent as a result of the surrender and compare to the expenditures that were specified in the surrender; how was surrendered land sold and/or offered for sale (e.g., auction, lottery, by tender) and terms of sale (e.g., percentage down payment, interest, time to pay). (For detailed claims based on sale of surrendered land, see the next section, "Land Sales");
  - h. if all the surrendered land was not sold, identify unsold surrendered land; also indicate any unpatented land under sales contract (i.e., lands that were sold but payment had not been completed and the lands have not been legally transferred to the purchaser);
  - i. any requests made by the First Nation(s) to have unsold land returned to reserve status;
  - j. third party interests in unsold surrendered lands; were proceeds of sale credited to First Nation(s)'s trust accounts (less amount distributed at time of surrender). Specify the name and number of the trust account into which proceeds were deposited;
  - l. payment of rents in a timely manner on lands surrendered for lease; deposit of rents into First Nation(s)'s trust account;
  - m. provisions for renewal of leases—was lease automatically renewable at end of rental period, or was it supposed to be renegotiated;
  - n. provisions for reversion of rented land to reserve status—could First Nation(s) give notice of resumption of land during or at end of rental period.

## **VI. LAND SALES**

### **Basic Questions to Answer**

#### **Background:**

1. What land was to be sold according to the surrender?
2. What were the terms of sale according to the surrender?
3. Who was to benefit from the sale according to the surrender?

#### **The Sale:**

1. What land was offered for sale?
2. How was the sale carried out?
3. What land was sold?
4. What were the terms or conditions of sale?
5. Did any sub-surface rights pass with the land?

*If the allegations involve sub-surface rights, see the section on "Sale and Transfer of Sub-Surface Rights".*

*If the allegations involve the use of the proceeds of sale, see the section on "Use of Proceeds of Sale".*

*If the allegations involve how the funds from the sale were collected, see the section on "Collection of Land Sales Proceeds".*

## **VI. LAND SALES**

### **Checklist of Important Documents**

- ☐ description and/or plan of lands surrendered for sale to establish what lands could be legally sold
- ☐ surrender document or other documentation that establishes the identity of the First Nation(s) who should receive the benefit of the land sales
- ☐ surrender document or other documentation that describes any terms attached to the surrender, such as how the land is to be sold, minimum prices, requirement of settlement duties, any reservations of sub-surface rights, etc.
- ☐ any relevant appraisals (valuations) of the land for sale and/or existing improvements
- ☐ any correspondence discussing valuations or upset price and reasons for changes if this is relevant to the grievance
- ☐ any correspondence discussing status of sub-surface rights, if this is relevant to the grievance
- ☐ auction notice, call for tenders or other documents describing land to be sold and conditions of sale
- ☐ plan depicting the lands offered for sale
- ☐ report describing the sale of the lands
- ☐ correspondence or reports which describe any dissatisfaction with the sale of the lands, the terms of the sale, etc.
- ☐ land sales records (ledgers) showing details of sale and the date and amount of all payments actually made by the purchaser
- ☐ letters patent for completed sales
- ☐ pertinent statutes and regulations

## **VI. LAND SALES**

Before 1876, there were no specific guidelines governing how sales were made, and no standard system of land sales records. Consequently, the documents and accounts describing the sales in the early period are often scattered and incomplete. Good summaries of the way in which land sales were managed are contained in the pre-Confederation reports on investigations into Indian Affairs. The records after 1876 are more uniform and detailed. Important information regarding land sales is held at the Department of Indian Affairs Indian Lands Registry, individual First Nation(s) trust account records, and in the annual reports of the department.

Statutes and regulations governing the sale of Indian lands and management of the proceeds of sale vary throughout the historic period. It is important to be aware of the terms of the Indian Act and associated regulations that cover the period of the claim.

In order to establish the terms under which the lands were to be sold, most claims regarding land sales will also require a study of the surrender or alienation of the land offered for sale. (See the section on "Lands Surrendered for Sale"). A land sales claim could focus on a grievance related to the lands offered for sale, the method by which the lands were sold, the terms of the sale, fair market value, the individuals or First Nation(s) that benefitted from the sale, the collection of the proceeds of sale, the expenditure of the proceeds of sale, and/or the disposition of unsold and/or unpatented surrendered lands. The type of information provided with the claim will depend on the focus of the grievances.

### **A. DESCRIPTION of LAND**

1. Provide the location, acreage and description of land being offered for sale.
2. If the acreage or location of the land is important to the claim, supply information that shows any discrepancies in acreage and/or location of the land offered for sale and that which was surrendered.

### **B. METHOD of SALE**

1. Describe how the sale was intended to be carried out. This could include auction notices, instructions to the official responsible for the sale, correspondence planning the sale, conditions specified by the First Nation(s) in the surrender document or during discussion leading up to the surrender.
2. Provide a description of the actual sale (auction sale or lottery). This could include newspaper accounts, agent's reports, letters, memoirs or correspondence from persons attending the sale.  
In the case of lands being sold on an individual basis or sold by tender, provide lists of lands for sale including any information on upset prices and any correspondence or reports that indicate how sales were made, tenders selected, prices determined, etc.
3. Provide correspondence or reports that indicate there was any dissatisfaction with the method of sale or the manner in which the sale was carried out.
4. If the way in which the lands were sold is at issue, provide information that indicates that the First Nation(s) would have received greater benefit if the lands were sold by some other method and/or that any deviation from the method of sale stipulated in the surrender had an adverse effect on the First Nation(s)'s interest.

### **C. TERMS of SALE**

1. Describe the terms of the sale, including:
  - a. percentage down payment required;
  - b. installment payments—dates and percentage to be paid;
  - c. interest rates—note especially if there is a different rate for annual interest and arrears;
  - d. payments for improvements;
  - e. settlement duties required.

This information may appear in a sales contract, auction notice, agent's report, or on the record of sale for each land sale.

2. If upset prices were established, document the following:
  - a. how the upset price was arrived at;
  - b. any changes in upset prices and how changes were made;
  - c. compare upset prices with any minimum values for land discussed in surrender meetings or specified in surrender documents.
3. If the status of sub-surface rights (e.g., rights to oil, gas, coal, precious metals, etc.) is at issue, it should be noted through the following documentation:
  - a. instructions given to the official in charge of the sale and correspondence mentioning sub-surface rights on sale lands;
  - b. information given to prospective purchasers regarding the status of sub-surface rights. This information may appear in a sales contract, auction notice, agent's report, or on the record of sale for each land sale. Note what rights are reserved and to whom. Compare this information with terms of surrender or alienation of land and identify any discrepancies.

### **D. ACTUAL SALES**

1. For most claims involving land sales, it will be necessary to provide documents that give the details of sales. Depending on the nature of the grievances, general statements regarding the sales may be sufficient. If the claim depends on the fine details of each sale, the records of each sale should be provided. Information of importance regarding sales includes the following:
  - a. legal description of parcels sold;
  - b. date of sale, price per acre, total price of land and improvements;
  - c. payments, including date and amount of each payment (principal and interest) and interest rate charged;
  - d. fulfillment (or non-fulfillment) of settlement duties;
  - e. the dates lands were patented, and any unusual circumstances surrounding the completion of the sale (e.g., land not totally paid for, price reductions, changed to crop-share agreement). Reservations (e.g., sub-surface rights) and acreage excluded or reserved for roads should also be noted.

### **E. FAIR MARKET VALUE**

1. Land sales claims can be based on the contention that fair market value was not received for the sold lands. This type of claim should include the following documentation:
  - a. a record of any conditions specified by the First Nation(s) in the discussion of the surrender or text of the surrender document regarding minimum prices or expected prices to be realized by the sale;
  - b. any valuations or appraisals performed prior to the sale. Note especially any changes in valuations or appraisals and associated circumstances and correspondence;
  - c. any other material regarding the prices expected to be obtained in the sale. Items such as departmental correspondence, reports, newspaper reports, or comments

by third parties regarding the expected sale price of surrender lands and/or information on sale price of surrounding lands would be useful;

- d. any information that suggests that prices were unfairly reduced, competition for lands suppressed, or tenders handled in a fraudulent or suspicious manner;
- e. any evidence that departmental employees purchased lands for themselves, their families or close associates;
- f. it may be necessary to provide sales information on other lands to establish fair market value. For comparison purposes the lands should be in close proximity to the surrendered lands, similar with regard to improvements and land quality, and sold in the same general period.

## **VII. USE OF PROCEEDS OF SALE/LEASE**

### **Basic Questions to Answer**

#### **Background:**

1. How were the proceeds of sale/lease to be used according to the surrender/lease? according to the band's understanding?
2. Who was to benefit from the proceeds of sale according to the surrender/lease? according to the band's understanding?

#### **Use of Proceeds:**

1. How was the money spent?
2. Who benefitted from the expenditure of the money?

*If the allegations involve how the money was collected or failure to collect it, see the section on "Collection of Land Sales Proceeds".*

*If the allegations involve the division of proceeds of sale between interested First Nations, see the section on "Division of Shared Reserves and Assets".*

*If the allegations involve the failure to purchase appropriate reserve land under the terms of a surrender, refer to the section on "Establishment of Reserves" or the "Establishment of Special Purpose Reserves" for guidance.*

## **VII. USE OF PROCEEDS OF SALE/LEASE**

### **Checklist of Important Documents**

- ☐ the surrender document and any other reports or documents that discuss how the money collected from the sale of surrendered land or lease or rental of resources was to be used and who would benefit from the expenditures
- ☒ ledgers, trust accounts, correspondence and/or reports that provide an accounting of how the money was used
- ☐ complaints from the First Nation(s) regarding how the money was used or not used
- ☐ any response from the Crown (Department of Indian Affairs) to the First Nation(s)'s complaints
- ☐ pertinent statutes and regulations



## **VII. USE OF PROCEEDS OF SALE/LEASE**

Claims regarding the way in which the proceeds of a land sale, lease, or rental were spent are usually closely associated with the terms of the surrender, lease or rental agreements and/or the terms of the Indian Act and departmental regulations.

### **A. CASH DISTRIBUTIONS**

1. Provide details of the amount of money distributed at the time of surrender. Determine the amount of the cash distribution as a percentage of the total purchase price or expected returns on the sale. Document any dissatisfaction with the cash distribution.
2. State who the money was distributed to. Include any documents that indicate the beneficiaries of the cash distribution were not entitled to receive the benefits of the land sale or that people entitled to take part in the distribution were excluded.

### **B. EXPENDITURE OF PROCEEDS**

1. Describe any deductions made from the proceeds of sale. Deductions could include items such as percentages paid to the auctioneer or other officials, management fees, repayment of loans, etc. The amounts and nature of funds taken from proceeds should be identified.
2. Determine the amount of money that was deposited in the First Nation(s)'s trust account. Show the name and number of the account into which monies were deposited. Indicate if there was any dispute or discussion regarding the beneficiaries of the proceeds of the sales.
3. Provide details of money spent for items required by the surrender, lease or rental. Include information that indicates items specified for purchase were not purchased. Documents that suggest there was dissatisfaction and/or protest about the expenditure of monies should also be included.
4. If the claim involves a grievance regarding alternate reserve lands to be purchased with land sales money, compare the characteristics of the replacement land with the land expected by the surrendering First Nation(s). Provide documents that offer information about the nature of the replacement lands and management of the relocation. Factors that may need to be documented include:
  - a. quantity and quality of land;
  - b. access to resources such as water and wildlife;
  - c. replacement of improvements;
  - d. expenses associated with removing to a new reserve;
  - e. First Nation(s) members eligible for residence on the new reserve.

## **VIII. COLLECTION OF LAND SALES PROCEEDS**

### **Basic Questions to Answer**

#### **Background:**

1. How much money was to be collected according to sales contracts?
2. When was the money to be collected?

#### **Collection:**

1. How much money (principal and interest) was collected?
2. When was the money collected?
3. What efforts were made to collect outstanding principal and interest?
4. Were alternate terms offered to purchasers whose payments were in arrears?
5. Did the First Nation(s) consent to any changes in the terms of payment?
6. Did the First Nation(s) complain about failure to collect money owing in a timely manner?
7. Did the Crown (Department of Indian Affairs) respond to First Nation(s) complaints?

## **VIII. COLLECTION OF LAND SALES PROCEEDS**

### **Checklist of Important Documents**

- ☐ documents such as the auction notice, call for tenders, sales contract or other documents that establish the terms of sale (e.g., sale price, interest rates, payment schedule)
- ☒ sales accounts or ledgers that indicate the amount of principal and interest paid and the date of all payments, as well as the interest rates charged (current and arrears)
- ☐ any documents or instructions regarding changes in interest rates and how they were to be applied
- ☐ any documents or instructions regarding reductions in sale prices, cancellation of sales, forgiveness of interest, or other changes in the original terms of sale
- ☐ any documents or instructions regarding renegotiation of terms of sale, such as Farmers' Creditors Arrangement Act or crop-share agreements
- ☐ sections of the Indian Act which provide for collections of proceeds and set interest rates, and any other pertinent statutes and regulations
- ☐ correspondence and notices regarding departmental efforts to collect outstanding payments
- ☐ description of any unsold surrendered land
- ☐ letters patent for completed sales
- ☐ complaints from the First Nation(s) regarding the collection or non-collection of the money owing and/or the alteration of terms
- ☐ response by the Crown (Department of Indian Affairs) to any complaints
- ☐ trust fund account ledgers or annual summaries in order to trace the deposit of the proceeds of sale into the First Nation(s) trust account(s), if the receipt of the proceeds is at issue

## **VIII. COLLECTION OF LAND SALE PROCEEDS**

These claims involve the question of the manner in which the proceeds of land sales were collected by the Department of Indian Affairs on behalf of First Nations who had surrendered land for sale. This same model can be used for the collection of lease or rental monies.

The key points are whether all the land was fully and completely paid for, if it was paid for in a timely manner, if the correct amounts of interest were applied, etc. Again it is important to be aware of the statutes and regulations that applied at the time. The key documents are the terms of each land sale (e.g., sale price, rate of interest) and the rates of interest for current payments and arrears applicable at the time.

### **A. TERMS of SALE**

1. This should be specified by the applicable document which could be one of the following or a combination depending on the method of sale of land: sales agreement or sales contract, notice of terms of sale from auction advertisement, tender submission, notice of sale by lottery, and/or the land sales ledger. Departmental correspondence may also outline the terms of sale.
2. Terms should include a combination of the following: price per acre, total sale price, amount of down payment or payment at time of sale, number of installments and due dates, interest on current installments, interest on arrears, additional payments for existing improvements. Also note requirements for settlement duties or other conditions.

### **B. FULFILLMENT of CONDITIONS of SALE**

1. This information is contained in sales ledgers. A separate ledger was maintained for the sale of each parcel, listing the following information:
  - a. the amount of money collected, both principal and interest and the dates at which it was paid;
  - b. the interest rates being charged on current payments and arrears;
  - c. patenting of land as per original agreement.
2. For sales for which the original terms of sale were not honoured, provide documentation showing the following:
  - a. the amount of money collected, both principal and interest, and the dates at which it was paid;
  - b. the interest rates being charged on current payments and arrears;
  - c. departmental efforts to secure outstanding payments;
  - d. any renegotiation of the terms of sale. This could include forgiveness of debt under Farmers' Creditors Arrangement Act, reduction of original sale price, forgiveness of interest, crop-share arrangements, cancellation of sales and application of monies submitted to alternate sales, etc.;
  - e. final patent showing total paid and total acreage or description of parcel;
  - f. any cancellation of sale and possible return of unsold surrendered land to reserve status;
  - g. it is useful to plot the lands under investigation on plans.

### **C. DEPOSIT of FUNDS to the FIRST NATION(S)'S TRUST FUND**

1. This type of claim may include grievances related to the deposit of the proceeds of sale to the First Nation(s) Trust Accounts. This information is available in the trust account records and may be supplemented by departmental correspondence. Include the following:
  - a. establishment of the amount of money deposited to the capital account in each fiscal year;
  - b. establishment of the amount of money deposited to the interest or revenue account in each fiscal year;
  - c. amount of money for the proceeds of sale disbursed to First Nation(s) members or expended for the benefit of the First Nation(s) under the terms of the surrender. Any other disposition of funds from this source.

## **IX. SURRENDER OF SUB-SURFACE RIGHTS FOR SALE /LEASE**

### **Basic Questions to Answer**

#### **Background:**

1. Where is the reserve and what are its boundaries?
2. What First Nation(s) has an interest in the reserve?
3. Who wanted the sub-surface rights surrendered for sale or lease?

#### **Negotiation of surrender:**

1. Who had authority to negotiate for the Crown? for the First Nation(s)?
2. How were interested band members informed of the meeting?
3. Who participated in the meeting(s)?
4. What was said at the meeting(s) regarding the value of the sub-surface rights? Were any minimum prices discussed or promised?
5. What was said at the meeting(s) regarding the way in which the sub-surface rights would be exploited and any impact that would have on the First Nation(s) use of other reserve land or resources?
6. What was agreed to at the meeting(s)?

#### **Assent:**

1. Was there a vote? how was it conducted? who voted and what were the results?
2. If there was no vote, who assented on behalf of the band?

#### **Terms of the Surrender:**

1. What was written in the surrender document?
2. Are there any other accounts of the terms of the surrender?

#### **Fulfilment of the Surrender:**

1. Were the terms carried out as written in the surrender document?
2. Were the terms carried out as understood by the First Nation(s)?

*If the allegations focus on the improper sale or lease of the surrendered land see the sections on "Land Sales" or "Use of Proceeds of Sale" or "Collection of Land Sales Proceeds" as a guide to preparing your submission.*

*If the allegations focus on the sale/lease and/or transfer of surrendered rights see the section on "Sale/Lease and Transfer of Sub-Surface Rights."*

## **IX. SURRENDER OF SUB-SURFACE RIGHTS FOR SALE /LEASE**

### **Checklist of Important Documents**

- ☐ Order-in-Council setting aside reserve and/or official map of reserve to establish the pre-surrender boundaries and identity of the First Nation(s) interested in the reserve.
- ☐ correspondence or reports requesting or suggesting surrender of subsurface rights for sale or lease
- ☐ instructions to departmental officials to seek sub-surface surrender from First Nation(s)
- ☐ notice or report showing how First Nation(s) members were informed of surrender meeting
- ☐ report or correspondence describing meeting, persons present, and terms of surrender discussed at meeting
- ☐ any other correspondence in which the proposed terms of the surrender and/or any aspect of the surrender process was discussed, including discussion of who was eligible to vote if this is an issue
- ☐ voters list or record of poll
- ☐ if the eligibility of voters is at issue, provide paylists or band lists that provide information on who should have been eligible to vote
- ☐ final signed surrender and any other drafts or version of surrender
- ☐ signed affidavit (form 66) attesting to validity of surrender
- ☐ map, plan or description of the area of land under which sub-surface rights were being surrendered
- ☐ Order-in-Council accepting and approving surrender, with any attachments
- ☐ correspondence or reports reflecting dissatisfaction with surrender or challenges to the surrender process, eligibility of voters, interested parties, lands involved, minimum prices, restrictions or other terms of the surrender
- ☐ any correspondence, reports or records related to the way in which the terms of the surrender were carried out. See subsequent sections on sale and transfer of sub-surface rights for more detail
- ☐ pertinent statutes and regulations

## **IX. SURRENDER OF SUB-SURFACE RIGHTS FOR SALE /LEASE**

### **A. GENERAL HISTORICAL BACKGROUND**

1. Document the location of the reserve or Indian land and the identity of First Nation(s) for whom the lands were set aside.
2. Provide information on local circumstances leading to the request for a surrender of sub-surface rights by the government or a request by the First Nation(s) to have the sub-surface rights exploited. This may include factors such as discovery of coal, oil, gas on the reserve or in the local area, pressures from business interests to have the sub-surface rights made available, desire by the First Nation(s) to raise capital funds, etc.
3. Outline the history of any prior attempts to exploit the sub-surface rights or to have them surrendered.

### **B. NEGOTIATIONS and SURRENDER MEETING**

1. Provide documents explaining events preceding a formal surrender meeting, including:
  - a. preliminary discussions between department officials or other interested parties and chief and council or other First Nation(s) members, including any discussion of proposed terms of a surrender;
  - b. correspondence within the government regarding the proposed surrender, including proposed terms for sale or lease, different parties involved;
  - c. authority given to department officials to obtain a surrender along with any guidelines or instructions outlined by departmental headquarters;
  - d. notice of the time, place and purpose of the meeting, including information on how the notice was posted or delivered to band members;
  - e. any other significant communications about the pending surrender.
2. Provide documents explaining the specifics of the surrender meeting, including:
  - a. who attended on behalf of the government;
  - b. identity of any outside parties present at the meeting (e.g., business interests, missionaries);
  - c. official representatives of the First Nation(s) present at the meeting and/or number and identity of First Nation(s) members at the meeting;
  - d. minutes or notes on the discussion that took place at the meeting;
  - e. any evidence of undue influence being exerted at the meeting or immediately prior to the meeting. This could include factors such as distribution of cash, lobbying by outside parties, threats to remove chiefs or cut off rations, etc.;
  - f. any other factors which may have affected the outcome of the vote (for example if the meeting was called when a large proportion of the membership would be absent).

### **C. THE SURRENDER VOTE**

1. Provide details of the vote including:
  - a. how many people voted for and against the surrender;
  - b. the names of voters, their First Nation(s) affiliation, place of residence, age and sex (only males 21 years of age and older were allowed to voted until 1951);
  - c. any evidence that First Nation(s) members or department officials questioned the results of the vote or the eligibility of voters;
  - d. any evidence that any First Nation(s) other than those voting on the surrender had an interest in the lands being surrendered.



#### **D. TERMS of the SURRENDER and the SURRENDER DOCUMENTS**

1. Provide documents that show the following details (most of this information will appear in the written surrender document).
  - a. description of the area of land under which sub-surface rights were being surrendered, including any maps or plans;
  - b. written terms of the surrender, i.e., the purpose of the surrender (sale, lease), the exact rights that were surrendered (e.g., coal but not gas or oil), method and terms specified for sale or lease of sub-surface rights, minimum amounts specified for prices, royalties, bonuses, time limitations on leases, restrictions on parties to whom rights could be leased or sold, how proceeds were to be disbursed and/or banked, etc.;
  - c. signatories to the surrender—who signed for the government, who signed for the First Nation(s), identity of any witnesses or other outside parties signing the surrender;
  - d. affidavit (form 66) attached to the surrender, who swore to the authenticity of the signatories, surrender process, etc.; note place and date of affidavit;
  - e. provide any evidence that there were outside promises which were not written into the surrender document;
  - f. provide documents that indicate the satisfaction or dissatisfaction of the signing First Nation(s), or any other First Nation(s), with the terms of the surrender.

#### **E. OFFICIAL ACCEPTANCE of SURRENDER**

1. Provide documents related to the formal approval of the surrender by the Crown:
  - a. record of departmental official forwarding the signed surrender and affidavit to headquarters;
  - b. submission of surrender to Privy Council or Governor General in Council for acceptance by Order-in-Council;
  - c. Order-in-Council with any attachments, e.g., maps/plans, correspondence.

## **X. SALE/LEASE AND TRANSFER OF SUB-SURFACE RIGHTS**

### **Basic Questions to Answer**

#### **Background:**

1. What land was open for sale or lease of sub-surface rights according to the surrender?
2. What were the sub-surface rights that were open for sale or lease according to the surrender?
3. What were the terms of the sale or lease according to the surrender?
4. Who was to benefit from the sale or lease according to the surrender?
5. If the First Nation(s) understanding of any of the above differs from the written text of the surrender document, explain the differences.

#### **The Sale/Lease:**

1. What sub-surface rights were sold or leased?
2. What area was covered by the sale or lease?
3. What were the terms, conditions and restrictions of the sale or lease?

*If the allegations involve the use of the proceeds of sale of lease, see the section on "Use of Proceeds of Sale".*

*If the allegations involve how the funds from the sale or lease were collected, see the section on "Collection of Land Sales Proceeds" for guidance in preparing your submission.*

## **X. SALE/LEASE AND TRANSFER OF SUB-SURFACE RIGHTS**

### **Checklist of Important Documents**

- ☐ description and/or plan of lands for which sub-surface rights were surrendered for sale or lease so as to establish what lands could be legally sold or leased
- ☐ surrender document or other documentation that establishes the identity of the First Nation(s) who should receive the benefit of the sale or lease
- ☐ surrender document or other documentation that describes any terms attached to the surrender, such as minimum amounts for royalties, bonuses or other payments, restrictions of time periods for leases, restrictions on parties eligible to lease or purchase, associated use of surface rights, etc.
- ☐ call for tenders, leases, sales agreements or other documents describing terms and conditions of sale or lease
- ☐ plan depicting the lands under which sub-surface rights were sold or leased
- ☐ correspondence or reports which describe any dissatisfaction with any aspect of the lease or sale
- ☐ (ledgers) showing details of payments made under the terms of the lease or sale
- ☐ legal documents associated with transfer of rights
- ☐ statutes and regulations pertinent to the sale or lease

## **X. SALE/LEASE AND TRANSFER OF SUB-SURFACE RIGHTS**

It is important to know the regulations concerning minerals and mining rights in effect at the time of the transaction, including statutes, Orders-in-Council and the corresponding regulations. Note especially any changes in the regulations that took effect over the period involved in your claim.

### **A. DESCRIPTION of LAND**

1. Provide the location, acreage, and description of land under which the sub-surface rights were sold or leased.
2. If the acreage or location of the sub-surface rights is important to the claim, supply information that shows any discrepancies in acreage and/or location of the area offered for sale or lease and that which was surrendered.

### **B. The SALE or LEASE**

1. Describe how the sub-surface rights were offered for sale/lease and how the actual sale or lease was carried out.
2. If the method of sale or lease is at issue, show how the method used differed from the method intended as specified in the surrender document or as understood by the First Nation(s).
3. Provide correspondence or reports that indicate there was any dissatisfaction with the method of sale or the manner in which the sale was carried out.
4. If the way in which the sub-surface rights were sold is at issue, provide information that indicates that the First Nation(s) would have received greater benefit if the rights were sold/leased by some other method and/or that any deviation from the method of sale/lease stipulated in the surrender had an adverse effect on the First Nation(s)'s interest.

### **C. TERMS of SALE or LEASE**

1. Describe the terms of the sale or lease, including:
  - a. rates for all payments (bonuses, royalties, surface rights, improvements, etc.)
  - b. schedules for payments
  - c. any applicable interest rates
  - d. time periods and renewal clauses

# **XI. EXPROPRIATIONS**

## **Basic Questions to Answer**

### **Background:**

1. Who wanted the reserve land expropriated?
2. What was the purpose of the expropriation?
3. How was the band informed? what was their reaction?
4. Who represented the interests of the First Nation(s)?

### **The Taking:**

1. Under what authorities and by what procedure was the land expropriated?
2. Exactly what land and what associated rights were expropriated?
3. Who were the officials involved in the expropriation?
4. What was the First Nation(s)'s understanding of the purpose, potential impact, and extent of the expropriation?

### **Compensation:**

1. How was the compensation amount arrived at?
2. Who acted for the First Nation(s)?
3. What was the First Nation(s) understanding of the value of the compensation? To what purpose was the compensation money intended to be put?
4. How was the compensation to be paid? schedule? in cash, goods or services?
5. Who was to receive compensation? the band? individuals? both?

### **Subsequent Activity:**

1. How was the expropriated land actually used?
2. Were there any unusual or unexpected consequences or impact related to the expropriation?
3. Did the First Nation(s) complain or protest terms or impact of the expropriation?
4. Did the Crown (Department of Indian Affairs) respond to the complaints?

## **XI. EXPROPRIATIONS**

### **Checklist of Important Documents**

- ☐ Order-in-Council setting aside reserve and/or official map of reserve to establish the area of the reserve and identity of the First Nation(s) interested in the reserve
- ☐ if more than one First Nation is allegedly interested in the reserve, additional documentation may be needed to establish joint or shared interest
- ☐ correspondence or other documents that indicate who requested the expropriation and the proposed use of the expropriated land
- ☐ all authorities used by the expropriating party, e.g., notice of intent to expropriate, Orders-in-Council, Ministerial orders, etc.
- ☐ correspondence or reports explaining how the First Nation(s) was informed of the pending expropriation and what information was given to the First Nation(s) regarding the intent, impact, extent, and other details of the expropriation
- ☐ correspondence or reports illustrating the First Nation(s)'s understanding of the expropriation, its purpose, impact, extent, longevity or other relevant details
- ☐ documents regarding the appraisal or valuation of lands lost and/or affected by the expropriation
- ☐ documents explaining how the amount of compensation was finalized (e.g., who fixed the amount, upon what formula or basis was the amount of compensation arrived at)
- ☐ correspondence or reports that indicate which First Nation(s) and/or individual members were to receive compensation
- ☐ any records pertaining to arbitration of disagreement regarding the expropriation and/or compensation to be paid
- ☐ Orders-in-Council approving the amount of compensation to be paid to interested parties
- ☐ documents, such as trust fund ledgers, that show the amount of compensation received and when it was paid
- ☐ any documents indicating how the expropriated land was used and any evidence that the land was used for purposes other than those for which it was expropriated
- ☐ any correspondence indicating the First Nation(s) had a grievance related to the expropriation and the response they received from the department

- ☐ if the status of sub-surface rights is at issue, provide documents that include any discussion of the transfer or reservation of sub-surface rights, as well as documents indicating sub-surface resources were exploited or transferred
- ☐ provide a map or plan showing original reserve and lands taken or otherwise affected by expropriation
- ☐ pertinent statutes under which the expropriation was made (e.g., Indian Act, Irrigation Act, Railway Act, etc.)

## **XI. EXPROPRIATIONS**

Claims may be based on grievances associated with reserve lands that were expropriated. Again it is useful in preparing your claim to be aware of and include the sections of the Indian Act and other statutes and regulations that pertain to the type of expropriation under investigation. It is important to know the legislation that was in force at the time of the taking and any changes that may have been enacted during the period.

### **A. REASONS for EXPROPRIATION**

1. Describe the purpose for which reserve land was required, i.e. railway, highway, utility right-of-way, hydro project, irrigation project, etc. This information is usually contained in correspondence between the expropriating authority (e.g., Provincial highways department, railway company, hydro company) and the Department of Indian Affairs.
2. Document the expropriating party's authority to do so (e.g., under the Railway Act, Public Works Act, War Measures Act, etc.).

### **B. NOTICE to FIRST NATION(S)**

1. Provide documents that explain how the First Nation(s) was informed/consulted about the expropriation. Was their consent requested, was a surrender sought and rejected?
2. Describe from whom the First Nation(s) learned of the pending expropriation? Did that individual have authorization to discuss land matters?
3. Provide documents that illustrate the First Nation(s)'s understanding of the purpose, extent and impact of the expropriation.
4. Document any protest or concerns expressed by the chief and council or First Nation(s) membership and include response supplied by department officials.

### **C. THE TAKING**

1. Document the procedure followed to expropriate the land in question, e.g., notices of intent to expropriate, Orders-in-Council, Ministerial orders, etc.
2. Describe the exact lands taken.
3. Provide documentation that gives an outline of how the expropriated lands were used after the expropriation. Depending on the focus of your claim this may be important to show that the lands were not used as stated in the expropriation documents or that the expropriation in some way had a negative impact on surrounding reserve lands.
4. Provide maps or plans showing the original reserve and the location of lands taken.

### **D. COMPENSATION**

There are often two distinct types of compensation offered: compensation for land, water, and resources in which the entire First Nation(s) has an interest, and compensation for property, usually called improvements (buildings, cultivated fields, trap lines) in which particular individuals or families hold an interest.

1. Provide details of how the amount of compensation was arrived at. Note in particular the officials that set the value of land and improvements, the facts which were considered when fixing compensation, formal appraisals or valuations, any indication that values were challenged or modified, protests from First Nation(s) members, etc.
2. Determine who received compensation. Distinguish between compensation paid to the entire First Nation(s) for jointly held interests and individual compensation for individual improvements.
3. Document how the compensation to the First Nation(s) was paid. Was the money funded in the First Nation(s)'s trust account? Was some of the money disbursed immediately?



4. Provide details of any arbitration or other activity that fixed the final compensation package.
5. State who paid the compensation. Was the total amount paid?

#### **E. SUB-SURFACE RIGHTS**

1. In some cases sub-surface rights (oil, gas, coal, precious minerals, etc.) were taken along with expropriated surface lands. It is important to consult the applicable legislation regarding the proper treatment of sub-surface rights upon expropriation. If sub-surface rights are an issue in your claim, you should provide the following:
  - a. any documents that discuss what will happen to the sub-surface rights when the surface rights are expropriated. This could include correspondence between the Department of Indian Affairs and the expropriating authority, internal records of either party, and/or records of discussions held with the First Nation(s);
  - b. any documents indicating that sub-surface rights were transferred (e.g., letters patent, licenses, permits, etc.);
  - c. any documents indicating that sub-surface rights were exploited (e.g., mining or extracting resources underlying expropriated land, etc.);
  - d. any documents indicating that sub-surface rights underlying expropriated land were transferred to another party;
  - e. any documents indicating sub-surface rights underlying expropriated land were transferred back to reserve status or back to the Crown in trust for the First Nation(s).

#### **F. SUBSEQUENT ACTIVITY**

1. Some expropriation claims are based on the discontinued use of the expropriated land for purposes for which it was originally taken. If your claim involves such a grievance you should document the following:
  - a. any change in the nature of use of the expropriated land, (i.e. it was no longer used for the railway purposes or right-of-way purposes for which it was taken);
  - b. any notification of change of use or legal measures taken to maintain the land under the authority of the expropriating body;
  - c. any records pertaining to departmental action in connection with these lands;
  - d. any record of return of land to reserve status or back to the Crown in trust for the First Nation(s).

## **XII. FLOODING AND COMPENSATION FOR FLOODING**

### **Basic Questions to Answer**

#### **Background:**

1. Who had a pre-flooding interest in the land?
2. Who wanted to flood the land and for what purpose?

#### **Prior to flooding:**

1. Was the First Nation(s) informed about the proposed flooding? How were they informed?
2. Who represented the First Nation(s) in any discussions about the flooding?
3. What was the condition of the land prior to flooding? What resources were present on the land?

#### **The Flooding:**

1. What procedures and authorities were used?
2. Exactly what land and resources were flooded?
3. Who were the officials involved in monitoring the flooding?
4. What was the First Nation(s)'s understanding of the purpose, potential impact, and extent of the flooding?

#### **Compensation:**

1. Was there any compensation? how was the compensation amount arrived at?
2. Who acted for the First Nation(s)?
3. What was the First Nation(s) understanding of the value of the compensation? What was the intended purpose of the compensation money?
4. How was the compensation to be paid? schedule? in cash, goods or services?
5. Who was to receive compensation? the band? individuals? both?

#### **Subsequent Activity:**

1. Any information on the long-term impact of the flooding or changes in the lands affected by the flooding?
2. Did the First Nation(s) complain or protest terms or impact of the flooding?
3. Did the Crown (Department of Indian Affairs) respond to the complaints?

## **XII. FLOODING AND COMPENSATION FOR FLOODING**

### **Checklist of Important Documents**

- ☐ Order-in-Council setting aside reserve and/or official map of reserve to establish the area of the reserve and identity of the First Nation(s) interested in the reserve
- ☐ if more than one First Nation is allegedly interested in the reserve, additional documentation may be needed to establish joint or shared interest
- ☐ if lands other than reserve lands are part of the grievance, provide documents that show continuous use and occupation of the lands by the First Nation(s)
- ☐ correspondence or other documents that indicate the purpose of the flooding and the party responsible for the flooding
- ☐ maps and plans, correspondence, reports and studies indicating the areas to be flooded, and the nature of the land and resources affected by the proposed flooding, etc.
- ☐ all authorities used by the flooding party, e.g., applications for authority to flood, permits, Ministerial orders, etc.
- ☐ any evidence that water levels were artificially raised prior to proper authority being issued
- ☐ correspondence or reports explaining how the First Nation(s) was informed of the pending flooding and what information was given to the First Nation(s) regarding the intent, impact, extent, and other details of the flooding
- ☐ correspondence or reports illustrating the First Nation(s)'s understanding of the purpose, impact, extent, longevity or other relevant details related to the flooding
- ☐ documents regarding the appraisal or valuation of lands lost and/or adversely affected by the flooding
- ☐ documents that illustrate the role the Department of Indian Affairs played in protecting the interests of the First Nation(s), including monitoring of flooding, verifying studies and reports of flooding, destruction of resources, etc.
- ☐ records of transfer of land to be flooded
- ☐ documents explaining how the amount of compensation was finalized (e.g., who fixed the amount, upon what formula or basis was the amount of compensation arrived at)
- ☐ correspondence or reports that indicate which First Nation(s) and/or individual members were to receive compensation
- ☐ Orders-in-Council approving the amount of compensation to be paid to interested parties

- ☐ documents, such as trust fund ledgers, that show the amount of compensation received and when it was paid
- ☐ any correspondence indicating that the First Nation(s) had a grievance related to the flooding and the response they received from the department
- ☐ provide map or plan showing original reserve and lands flooded or otherwise affected by the change in water level
- ☐ provide any records of pre- and post-flooding water levels
- ☐ provide any records of proposed and actual acreage flooded, including any survey records of reserve land prior to and after flooding
- ☐ pertinent statutes and regulations

## **XII. FLOODING AND COMPENSATION FOR FLOODING**

### **A. BACKGROUND**

1. Establish that lands flooded were reserve lands and identify the First Nation(s) who held an interest in those lands.
2. If the flooded land was not an Indian Reserve in the meaning of the Indian Act, provide documentation that shows there was an Indian interest in the land.

### **B. THE FLOODING**

1. Document the purpose of the flooding.
2. Provide all research and surveys concerning water levels and acreage conducted by or for the company responsible for the flooding.
3. Provide correspondence/discussions between the flooding company officials and the First Nation(s).
4. Provide any evidence that water levels were raised prior to the issuance of flooding authority.
5. Give details of the legislative authorities and all the legal instruments which permitted the flooding, including the initial applications for flooding authority.

### **C. ACTIONS of GOVERNMENT**

1. Document all the actions of the Department of Indian Affairs with respect to the flooding, in particular:
  - a. efforts to determine projected flooding and damages, including original research and verification with concerned third parties;
  - b. notification of the First Nation(s);
  - c. consultation with the First Nation(s) on their wishes with respect to the land proposed to be flooded, their estimation of projected damage and compensation they required;
  - d. consultation with surrounding non-native communities through various means (i.e., newspapers, public notices, meetings, etc.);
  - e. deliberations within the Department as to appropriate legal mechanisms for the transfer of land;
  - f. extent to which the Department attempted to protect the interests of the First Nation(s) before, during, and after the flooding, including monitoring of lands actually flooded;
  - g. whether the government was aware of any trespass and if so, what actions they took as a result;
  - h. whether other First Nation(s) in the area suffered flood damage to their reserves. (There should be some indication that other First Nation(s) were involved before beginning this type of research);
  - i. technical methodology for flood inspections and the people who carried them out.

### **D. WATER LEVELS**

1. Gather all evidence with respect to low and high water marks, in particular:
  - a. what was the normal high water mark prior to flooding;
  - b. to what level was the body of water actually raised;
  - c. how much reserve land was flooded;
  - d. when did the flooding begin?

#### **E. MEASUREMENTS of LAND**

1. Describe the total area of reserve land and the total area of all bodies of water on the reserve as surveyed at the establishment of the reserve and after the flood.
2. Determine whether or not the surveyor, in each survey, included the area covered by water in his calculations of the First Nation(s)'s treaty land entitlement.
3. Describe the area of the reserve flooded by water control structures affecting bodies of water beside or running through the reserve. Distinguish between natural and artificial flooding and between permanent and seasonal flooding.

#### **F. THIRD PARTY INVOLVEMENT**

1. Describe any consultation or lack thereof among the Department, the Province, the involved power companies and the First Nation(s) regarding negative effects of water control structures.
2. Provide documentation on who authorized the involved power companies to erect the control structures.
3. Determine whether there are/were any beneficial or adverse effects of these structures to the First Nation(s).

#### **G. TRADITIONAL LAND USE/COMPENSATION**

1. Determine if any consideration or compensation of any kind was made to the First Nation(s) for any flooding of the reserve caused by these water control structures.
2. Document the use which the First Nation(s) had traditionally made of the flooded area, and:
  - a. were any buildings flooded;
  - b. the use made of these buildings by the community (include how long it took to replace them).
3. Review the traditional use of the waterways by the First Nation(s) and document changes in their use as a result of flooding.

### **XIII. DIVISION OF SHARED RESERVES AND ASSETS**

#### **Basic Questions to Answer**

##### **Background:**

1. What First Nation(s) had an interest in the shared reserves or assets?
2. How and on what basis did they come to share the lands or assets?

##### **Division of Reserve or Assets:**

1. Who requested the division and why?
2. What role did the Crown (Department of Indian Affairs) play in encouraging or facilitating the division?
3. What procedure was used to decide on how to divide the reserve or assets?
4. What procedure was used to divide the reserve or assets?
5. Who got what?

##### **Complaints:**

1. Did any of the interested band members or First Nation(s) complain about the division of reserve land or assets?
2. Did the Crown (Department of Indian Affairs) respond to the complaints?

### **XIII. DIVISION OF SHARED RESERVES AND ASSETS**

#### **Checklist of Important Documents**

- ☐ Order-in-Council setting aside reserve and/or official map of reserve to establish the pre-division boundaries and identity of the First Nation(s) interested in the reserve
- ☐ reports or correspondence that indicate the basis upon which the First Nations shared common reserve land or other assets
- ☐ reports, correspondence or other material that explains the separateness of the First Nations, and what made them distinct and separate from each other
- ☐ correspondence or reports requesting or suggesting division of reserve or other assets and indicating the reason the division was suggested or requested
- ☐ reports or correspondence describing consultation with First Nations about the division, who was consulted, when, and where
- ☐ if there was a vote on the issue, provide documentation as for a surrender vote (see section on surrenders for guidance)
- ☐ any other correspondence in which the proposed terms of the division were discussed, including discussion of how the reserve and/or assets should be divided
- ☐ final surrender and/or agreement on division
- ☐ map, plan or description of the reserve land after division
- ☐ copies of trust accounts just prior to and just after division
- ☐ Order-in-Council accepting and approving division of land and/or other assets
- ☐ correspondence or reports reflecting dissatisfaction with division or challenges to the process of division, interested parties, etc.
- ☐ sections of the Indian Act which provide for divisions



## XII. DIVISION OF SHARED RESERVES AND ASSETS

Some claims are based on the division of ~~shared~~ <sup>shared</sup> ~~lands~~, resources, or other assets in which more than one First Nation held rights. Claims of this type could focus on the alleged unequal division of resources, or issues related to the validity of the surrender of interest, or the procedure used to separate the reserve lands or other assets between the First Nations.

### A. PARTIES HAVING INTEREST in the RESERVE or RESOURCE

1. Provide details of how the reserve was set aside and for whom (see section on the establishment of reserves for guidance).
2. Provide any information that indicates how the First Nations were distinct or separate from each other. This could include government administration records (e.g., separate First Nation(s) lists, separate trust accounts, descriptions of First Nation(s) at time of survey of reserve, etc.) It could also include oral history accounts, information on traditions of the First Nation(s), church records or missionary reports, background history or ethnology reports. There may also be correspondence within the department addressing the issue of the distinct and separate nature of the First Nations.

### B. DIVISION of the RESERVE or ASSETS

1. Describe the circumstances leading up to the division of the reserve. Show who requested the division and the reason the division was requested. List any protest to the proposed division, who opposed the division, and why.
2. Provide details of any meetings. Who was present? Were any interested parties absent or excluded from discussion? Who acted on behalf of the Department? Did the officer have proper authority?
3. Provide any documents indicating the procedure used to divide the reserve lands, resources, or other assets between the First Nations. Was there a surrender, an Order-in-Council or Ministerial Order?
4. Identify what reserve land or resources were allocated to each party after the division. This may include maps or plans depicting a division of reserve land as well as separate trust accounts showing the division of monies held in trust, etc.
5. Provide documents that show the identity of the divided parties (e.g., leaders, family names, etc.). Can the parties who received interest in divided lands or resources be linked to the original groups who held joint interest in the original reserve or resources?
6. Provide documents that illustrate any alleged inequality in the division of lands or resources. This would be particularly important if the allegations of the claim were that one party received significantly more valuable land or resource-rich land.

### C. IMPACT

1. Document any complaints against the division or protests. How did the departmental representative(s) respond?
2. Provide any documents that illustrate how unequal division or other alleged inequalities had a negative effect on any of the parties involved.

## **XIV. BAND AMALGAMATION**

### **Key Questions to Answer**

#### **Background:**

1. Which First Nations are involved in the amalgamation?
2. What reserve lands or other assets were held prior to the amalgamation?

#### **Amalgamation:**

1. Why were the First Nations amalgamated?
2. Who were their leaders at the time of amalgamation? How were they connected?
3. What reserve lands or other assets were held jointly after amalgamation?
4. Were any reserve lands, resources, or assets held separately after the amalgamation?

#### **Subsequent Activity:**

1. Did any of the interested band members or First Nation(s) complain about the amalgamation?
2. Did the Crown (Department of Indian Affairs) respond to the complaints?

## **XIV. BAND AMALGAMATION**

### **Checklist of Important Documents**

- ☐ maps showing the original reserve(s), changes made to the reserve(s) on amalgamation, changes made to the reserve(s) due to surrenders
- ☐ any trust accounts showing assets held separately prior to amalgamation and those held after amalgamation
- ☐ correspondence regarding the amalgamation, including band protests and Departmental responses thereto
- ☐ band lists, paylists, census and other genealogical material that shows the names and number of individuals/families that were members of the separate bands before amalgamation and those who became members of the new amalgamated band. Account for any families who did not join the amalgamated band or families who appear on the new amalgamated list but were not members of the bands which were joined together
- ☐ any pertinent regulations

## **XIV. BAND AMALGAMATION**

### **A. HISTORICAL BACKGROUND**

1. Using historical or ethnological records, provide information on when the ancestors of the amalgamated First Nation(s) took up use and occupation of lands in the area of present day reserve(s).
2. Describe the establishment of the reserve(s) (see the section on "Establishment of Reserves" for guidance).
3. Give details of the Treaty provisions setting aside land for different groups or First Nation(s).
4. Describe the emergence of distinct groups from among the Native people historically using these lands.
5. Provide background leading up to the official division of these groups. Which groups received First Nation(s) status?
6. Describe the leaders, their status, and the genealogical connections between the headmen of First Nation(s)/groups sharing a common area.
7. Provide reasons government officials decided to amalgamate separate First Nation(s).

### **B. FIRST NATION(S) MEMBERSHIP**

1. Provide Treaty annuity paylists and note particularly the year changes occurred in the manner in which distinct First Nation(s) became part of a larger First Nation on these paylists.
2. Note any transfers of First Nation(s) members, and if unofficial, determine if they were later made official under a piece of legislation.
3. Provide information on the First Nation(s) which transferees joined and any information indicating whether or not the transferees were completely absorbed or whether they maintained a distinct status.

### **C. FIRST NATION(S)/GOVERNMENT RESPONSE**

1. Provide information on the dissatisfaction or satisfaction of the amalgamated First Nation(s) with amalgamation and the government's response.

## **XV. FORCED AMALGAMATION**

### **Checklist of Important Documents**

- ☐ maps showing the original reserve(s), changes made to the reserve(s) on amalgamation, changes made to the reserve(s) due to surrenders
- ☐ any trust accounts showing assets held separately prior to amalgamation and those held after amalgamation
- ☐ correspondence regarding the amalgamation, including band protests and Departmental responses thereto
- ☐ band lists, paylists, census and other genealogical material that shows the names and number of individuals/families that were members of the separate bands before amalgamation and those who became members of the new amalgamated band. Account for any families who did not join the amalgamated band or families who appear on the new amalgamated list but were not members of the bands which were joined together
- ☐ any pertinent regulations

## **XV. FORCED AMALGAMATION**

### **A. PERSONALITIES INVOLVED**

1. Provide information on the individual(s) responsible for the amalgamation and their reasons for doing so.
2. Describe the First Nation(s)'s response to the amalgamation.
3. Give details on all transfers to the amalgamated First Nation(s) and the circumstances surrounding their transfer. Collect all consent forms regarding these transfers and identify the signatures to the forms.

### **B. SUPPORTING DOCUMENTS/GOVERNMENT POLICIES**

1. Provide the regulations governing transfers between First Nation(s) during the years of the amalgamated First Nation(s)'s existence. Provide lists of which people transferred under which set of regulations.
2. Provide genealogical charts which highlight the extent to which transferees and their descendants changed the nature of the membership of the First Nation(s). Uncover information indicating whether members of the claimant First Nation(s) today are descendants of those who, it is alleged, were displaced by outsiders, or whether they are descendants of the outsiders or of both groups.
3. Describe any appeals made by the original First Nation(s) regarding the Department's recommendation to allow transferees to retain their membership.
4. Detail any legal or Court decisions concerning the amalgamation.

### **C. FINANCIAL STANDING OF FIRST NATION(S)**

1. Examine the First Nation(s)'s Trust Accounts and note if any charges were made to it for the benefit of the transferees rather than the original members.
2. Determine whether or not transferees to the First Nation(s) brought with them their per capita share of the capital held by the First Nation(s) they left.

### **D. FIRST NATION(S)/GOVERNMENT RESPONSE**

1. Describe the taking of the vote on the agreement to authorize the Superintendent General to admit new members and the conformity of this agreement to the regulations in effect governing the transfer of First Nation(s) members.
2. Give details of any coercion which may have been exercised by the individual(s) responsible for the amalgamation to achieve surrenders or other goals for the amalgamation.
3. Provide information on any subdivisions of the reserve, any objections by the First Nation(s) members to these subdivisions, and whether or not members were forced to move from plots they occupied to accommodate incoming transferees.
4. Describe the Department's recognition of the necessity to examine the membership changes in the First Nation(s).

### **E. COMMISSIONS**

1. Give details of the establishment of any Commissions to investigate changes within the First Nation(s).
2. Provide information on the work of the Commission.
3. Provide the findings of the Commission, the membership status of individuals transferred to the First Nation(s), and the losses suffered by the original members of the First Nation(s).
4. Determine the compensation and remedies (if any) recommended by the Commission.

## **XVI. EXPENDITURES FROM TRUST FUNDS**

### **Basic Questions to Answer**

#### **Background:**

1. How were funds held in trust funds supposed to be expended according to a surrender, lease, or agreement?
2. How were funds held in trust funds supposed to be expended according to statutes and regulations?

#### **Expenditures:**

1. How were funds held in trust funds actually spent?
2. How did the actual expenditure differ from the intended expenditure as specified in a surrender, lease, or other agreement or as outlined in statutes and regulations?
2. Was the consent of the First Nation(s) obtained for these expenditures?

*The section on the "Collection of Land Sales Proceeds" should be consulted if the non-fulfillment of surrender terms regarding the expenditure of funds are a result of the non-collection of land sales proceeds.*

## **EXPENDITURES FROM TRUST FUNDS**

### **Checklist of Important Documents**

- ~~\_\_\_\_\_~~ statutes and regulations
- ~~\_\_\_\_\_~~ or other agreement(s) that specify how proceeds were to be expended
- ~~\_\_\_\_\_~~ the provision of certain items or services was guaranteed under same  
~~\_\_\_\_\_~~ (payments, teachers' salaries)
- ~~\_\_\_\_\_~~ or reports that provide details on how the Crown and/or the First  
~~\_\_\_\_\_~~ understood that money was to be expended
- ~~\_\_\_\_\_~~ indicating dissatisfaction of First Nation(s) with respect to how  
~~\_\_\_\_\_~~ handled and any Departmental responses to these complaints
- ~~\_\_\_\_\_~~ and ledgers and/or year end summaries that indicate how monies in  
~~\_\_\_\_\_~~ revenue (interest) accounts were spent
- ~~\_\_\_\_\_~~ and/or Band Council Resolutions which authorize particular  
~~\_\_\_\_\_~~