

CHAPTER 7

OBSERVATIONS AND CONCLUSIONS

We can discern several patterns in the data on land surrenders between 1888 and 1911. The interpretations are the author's own, and are not exhaustive or conclusive.

THE DEMAND FOR SURRENDERS: PATTERNS IN THE DATA

Frank Oliver responded to a question in the House of Commons on April 22, 1910:

Mr. Magrath:

My opinion is that it would be better in the interest of the Indian if we were to take a perpetual lease from him instead of giving a fee simple title, that is that the Indians lands should be sold carrying a perpetual mortgage. For instance, the Canadian Pacific Railway irrigated lands carry a perpetual mortgage of 50 cents an acre. If you go to the Indians and say: We do not want to take the title from you, and offer him a rental based on 6 per cent interest, on say, for the purposes of this argument, a sale price of \$16.66 an acre, it would be equivalent to \$1 an acre a year. I think if a proposal of that kind were put before the Indian wherein the land was retained as security for the interest or rent, and that as long as the purchaser or his assignee paid the \$1 per acre per year, the occupant would have the use of the land, such a proposal it appears to me would appeal to the Indian. It is possible to sell lands in that way because the Canadian Pacific Railway have been very successful in selling their irrigated lands on those terms. As I understand you can sell the land and the Indian can claim 50 per cent of the purchase money. The other 50 per cent the government holds and pays the Indian three per cent on it, whether the rate at which the government can borrow money abroad goes up or down. That rental method is successful to-day in the disposal of western lands and it could be applied to these Indian lands.

Mr. Oliver:

That is a very broad question, and I would not like to bring on a lengthy discussion, but the 50 cents an acre on the Canadian Pacific railway irrigated lands is an insurance guaranteeing a water supply for the crops when water is needed. There is no such insurance in the case of the Indian lands, and while many men would be willing to pay a rental of 50 cents an acre to secure a water supply in a country that may be subject to lack of rainfall they would hesitate to pay a dollar or fifty cents an acre interest when there was no such insurance connected with it. The idea of a tenant proprietorship in the Northwest does not appeal to me. The policy of the government is to have a population on the land who shall be the owners in fee simple of that land, and any proposal, no matter how attractive, that would involve tenancy rather than

propriatorship, viewed from the standpoint of the best interest of Canada and the west, would not appeal to my mind.

Oliver, who was once jailed as a young man for physically protecting an Edmonton area squatter's rights, declared himself a supporter of the tax-paying settler and an enemy of speculators and of those who do not pay taxes. When in office, later in his career, Oliver upheld the policies of the Department of the Interior over his other portfolio, the Indian Department.

At the turn of the century, the demand for the surrender of reserve land came from land speculators and from some politicians who, indirectly or directly, endorsed this speculation. The government officials who speculated in lands – Frank Pedley, James Smart, and William J. White, for example – applied direct pressure for surrenders. Most of the surrendered reserve land in the Edmonton area, which Oliver pushed to open for settlement, was obtained by speculators between 1900 and 1904.

As settlements increased in this five-year period there were several petitions for the opening of nearby reserves: the Crooked Lakes reserves, Roseau River, Swan Lake, St Peter's, and Michel. These petitions sometimes went through politicians. In part, these requests came from minor speculation, but there was also an element of discomfort with having Indians in public view. There were frequent comments about the desirability of having Indians removed to more remote areas or integrated into the general population; both methods were endorsed as alternatives to having large reserves in settled areas. In this period there was little "real" demand for land in terms of immediate market value, unless the land was very near rail lines or townsites.

In the early years, departmental officials developed an internal rationale for the consideration of surrenders which seemed to originate with the surrender and taking of uninhabited reserves at Sharphead, Passpasschase, Young Chipeewayan, and Chacastapaysin. The conclusion that no people were currently using these reserves, and that band members were acquiring land entitlement rights at other reserves, led to an evaluation of those situations where reserves were inhabited but the populations were decreasing. Surveyor A.W. Ponton was an ardent advocate of measuring the reserve size against current population and determining the amount of land deemed "surplus" to present treaty needs. He argued in favour of surrenders at Crooked Lakes in 1899 on this basis, and also made an effective case to alienate reserve lands at the Pelly Agency. J.D. McLean and W.A. Orr also

began to use this argument, and it was pressed into service in rationalizing the Moose Mountain surrenders in 1901. The Department adopted it in at least 10 surrenders, but in nearly every case these reserves were the ones where the bands were doing well in agriculture, and where outsiders perceived the reserve land to be of economic value for farming or railway development: for example, Cote, Moosomin/Thunderchild, Mistawasis, Samson and Bobtail, Roseau River, Crooked Lakes, Michel, Moose Mountain, and Stony Plain/Enoch.

By 1905, the demand became more complex. Oliver became Minister of the Interior and the Superintendent General of Indian Affairs, and his tirades against speculators would not prevent him from allowing the bulk of surrendered reserve land in the first few years of his administration from being bought by speculators.

But there were factors other than the personal philosophy of the Minister at play. The costs of administering the Department had risen since the Liberals had entered office. Part of this expense was the pressing need for relief for the destitute, and part was predicated on the purchase of farm equipment to move reserve farming ahead in the wake of Hayter Reed's restrictive policies. Indian populations on the southern prairies had undergone a decline in population through poor health and living conditions, and so, as the opposition pointed out, the costs could not be attributed to an increase in the population. The opposition also frequently noted that the Liberal system of hiring Liberal friends, and allowing Liberal merchants to profit from the provision of livestock, seed, beef, medicines, and implements, had been a direct factor in rising costs. It was also thought that the move of the Commissioner's Office to Winnipeg in 1897 and the reorganization of reporting and accounting structures had added to, rather than reduced, expenditures. Accountant Duncan Campbell Scott was struggling to defend the system; he and Minister Clifford Sifton both pointed to the success of John Markle and William Graham in taking Indians off rations and pushing self-sufficiency.

In this context, the Department noted that the sale of land would provide an income from which it could pay for some of the items that it would otherwise have to provide, beyond the narrowest interpretation of treaty obligations. In taking surrenders, Department officials were careful that the wording of the agreements gave them a final discretion, and a trust obligation, to control the spending and investment of land sales revenue.

After 1905, outside interest in reserves continued, for all the reasons mentioned above. Speculation in land sales also continued, so this was a factor in demand as well. In addition, some people were concerned about reserves being placed too close to settlements: they said it was not in the best interests of the Indians, but there is no doubt also that non-Indians preferred the Indians to be moved “out of the neighbourhood.” These factors were compounded by the growth of the branch-line system across the prairies, followed by settlements and townsites. The more lines were put into place, the more likely they were to cross a reserve or run near one. The pattern of rail construction followed the fertile river belt, just as reserve surveys had.

There were, in the main, three ways in which railway development affected the demand for surrenders:

- a right of way might split the reserve, leading departmental officials to conclude that one portion might well be surrendered (e.g., Peigan);
- the railway company wanted a surrender for station grounds (e.g., Cote, The Pas, Fishing Lake, and Moosomin), and this desire led to an initiative to surrender a larger area for townsite development; and
- the proximity of the line to the reserve simply increased the market value of reserve land (e.g., Crooked Lakes, Michel, Pasqua, Muscowpetung, Moose Mountain, Bobtail, and Mistawasis).

There was also an apparent demand from the bands themselves. In at least nine instances, a proposal came from the band to the Department for a surrender. It is often difficult to ascertain the origin of these proposals, and they sometimes came after a period of opposition. The proposal might derive from any one of a number of initiatives:

- a faction of the band dissatisfied with current leadership;
- agents or farming instructors, and the Reverend John McDougall, who used this method as part of his negotiating technique;
- outsiders who were discussing the issue with band members; or
- immediate economic need for farming supplies and implements.

This last was the most common professed reason for the request. In evaluating these demands, it would be necessary to know more about the internal dynamics and communications within the band, the agent's relationship with band members, fiscal management on the reserve, and the band members' understanding of economic alternatives open to them. Were they told, for instance, as Inspector S.R. Marlatt spoke at Roseau River, that the only way to get fencing or outfits was to surrender land? Was there any discussion about other alternatives for raising cash? What about cases such as Enoch/Stony Plain in 1902, where band members already had cash from the Passpasschase surrender which would have met their fiscal needs, yet they were still told that a further surrender was necessary to pay for fencing and outfitting? In some instances these questions can be partially answered from existing research, but for the most part the oral history and economic/accounting research has not been done.

Many of the bands from whom surrenders were taken were reported in the agents' and inspectors' reports, and in the local press, as being very successful in creating a self-supporting mixed economy: see Michel, Carry the Kettle, Pheasant's Rump, Ocean Man, Cowessess, Mosquito (competitive with local farmers), Roseau River, Pasqua, Moosomin, and Thunderchild.

THE QUESTION OF INFORMED CONSENT

Negotiation

As noted in chapter 4 in the discussion of demand, surrenders were often negotiated after an initial period of dissent from the band. Agents or inspectors reported previous meetings or votes where the band was opposed to surrender. The reasons for opposition can be roughly categorized:

- the band did not want white settlers to move too close (e.g., Carry the Kettle, Samson);
- older leaders believed that the treaties would and should protect the land against sale and loss;
- the band stated that prior experience with the Department had generated distrust of its motives and policies (e.g., Enoch, Michel, Roseau River, the Key); or
- the band felt that it needed the land and would need it more in future (e.g., Roseau River).

In all these concerns, there was fear that if land was once surrendered, the Department would return and ask for more.

What caused band members to change their minds? Was it economic need? Was it pressure from the outside, or from factions within the band? The reality is that we know very little in most cases about either the preliminary decision making concerning the surrender or the nature and influence of “informed consent” in the taking of the vote itself, as will be discussed below.

In the cases surveyed for this study, several individuals were especially prominent in negotiating and taking surrenders: David Laird, John Markle, William Graham, S.R. Marlatt, and the Reverend John McDougall.

David Laird, Indian Commissioner, took surrenders at Pheasant’s Rump and Ocean Man in 1901, at Cote in 1905, and at Thunderchild in 1908. In all these cases, but particularly at Thunderchild and at Moose Mountain, he was known for his forceful pressure tactics. He used repeated and prolonged meetings, and immediate cash distribution, to press the agreements. In these cases he took a completed proposal to the band, and he did not really negotiate at the time he was taking the surrender. At the same time, Laird advised against many surrenders because he thought the bands had use for the land, or because the land would be sold at a time when there was no real demand for it, and therefore prices would be low. Consequently, he was often left out of communications in some surrenders. The agents in the Edmonton Agency who negotiated surrenders at Stony Plain in 1902 and at Michel in 1903 bypassed him, as did Marlatt in Manitoba and Graham in Saskatchewan.

Inspector Samuel Read Marlatt took surrenders at Roseau River in 1903 and at The Pas in 1906, and he started negotiations at Swan Lake before he left office in 1907. He was forthright about the need to add inducements for surrender. At The Pas, he included a deed of land to the Chief, and purchase promises to local merchants. At Roseau River he offered cash inducements. In his negotiations, he offered personal promises to ensure that the government’s word would be kept.

John Markle became Inspector in Alberta in 1904, having already participated in the taking of two surrenders at Gambler’s while he was Agent at Birtle. Although he would take many surrenders in Alberta in his career, only a few are covered here. Markle’s surrenders had several distinctive aspects (see Alexander in 1905, Michel in 1906, Peigan in 1909, Blackfoot in 1910; Enoch

in 1908 [not included here], and negotiations with Samson). He did not include cash distributions, but he earmarked surrender equity and interest payments for farm equipment, livestock, and rations. As he said on August 24, 1908:

I have heard that Indians in Saskatchewan who surrendered land were paid in cash one tenth of the aggregate sum received for the land and without being told I have made up my mind that they expended the great portion of this money and that there is very little now [to] be seen for this money. The question to my mind is what it would not be more to the interest of the Indians to expend up to 20% of the sum received in something like to be visible for years to come than to give them 10% in [cash]. (NA, RG 10, vol. 3702, file 17,537-3)

Markle engaged in protracted discussions over terms, itemizing the expenditures, rejecting some requests, and accepting others. One of his techniques was to meet informally with band leadership before calling a formal meeting. In at least three instances – Enoch, Peigan, and Blackfoot – he conducted votes by means of a poll, which, at least in the case of the Peigan and Blackfoot surrenders, was not necessarily accompanied by an explanatory meeting on the same day. He was known to be “creative” in his practices, devising terms or methods that he felt would be effective in taking surrenders in particular instances or in overcoming opposition. Although he would get pre-approval from the Department for most terms, he would allow some margin for negotiation, as at Alexander and Michel. He worked alone and did not allow interference from others. His attention to formal requirements was minimal and his reports were cursory, except, as in the case at Peigan, where he was pressed to defend himself. He did, however, keep voters’ lists, as the names had to be recorded when a poll format was used. Overall, Markle was creative in his approach to negotiation and implementation, often offering his views about how a particular end might be achieved outside the realm of official policy.

William Graham would rival Markle in the number of surrenders taken in his career. Like Markle, he was considered, at the time they became inspectors in 1904, to be efficient in reducing expenditures, particularly in cutting back rations. His early surrenders included Pasqua in 1906 (not covered here in detail), Cote in 1907, Fishing Lake in 1907, Little Bone in 1907 (not covered here in detail), Cowessess in 1908, Kahkewistahaw in 1908 (not covered here in detail), Muscowpetung in 1909, Key in 1909, and Keeseekoosie in 1909 (not covered here in detail). He also assisted in early

negotiations at Carry the Kettle. Graham seems to have developed a package of terms at Pasqua which he would then take elsewhere, with variations:

- funding of interest and cash moneys for children aged 12–18, to be paid to them when they became adults;
- payment for improvements and buildings on surrendered land, usually at a flat rate such as \$5 per acre for cultivation;
- provision for sale by public auction (some surrenders only); and
- cash distribution at the time of surrender.

Interestingly, the basic elements of this package appear in the 1905 Cote surrender, which McDougall negotiated. The use of cash distribution appeared in the Cote surrender, and may have been discussed by Graham at the March 1905 Carry the Kettle negotiations, probably Graham's first direct experience with such negotiations. Although there was no cash distribution in the Carry the Kettle surrender, band members later recalled that it had been promised.

Graham is probably best known for this particular provision, the cash distribution, which he came to use as an inducement. He would generally seek pre-approval from the Department and a cash advance, calculated as a percentage of what he expected the sales would generate, although he was reluctant to place a minimum sale price on reserve land unless pressured to do so. The percentages varied according to what he thought the land would bring and what he thought would be necessary to take the surrender. If he thought land would sell high, Graham might calculate a smaller advance percentage; but if he thought the land would not sell for high prices, his percentage would be correspondingly higher. The net effect would be to achieve a per capita distribution satisfactory to the band. Before 1906 it was necessary to split this distribution, paying part at the time of surrender, and part after the sale was completed.

Although Graham did not describe the surrender meetings, except for his later recollection of the Fishing Lake surrender in his memoirs (Graham 1991), oral testimony supports his use of cash as an inducement, much as Laird did at Moose Mountain and Thunderchild. The money was displayed by the paying agent, and cash distribution would take place immediately after the surrender document was signed. Oral testimony also asserts that Graham was not above using another technique Laird had

used at Moose Mountain: to threaten to take the land by other means. A third allegation concerns use of local people to influence and swing votes – for example, Alexander Gaddie at Cowessess. This pressure would allegedly be done between meetings, when the first meeting was unsuccessful. In his correspondence, Graham spoke about the importance of timing. He believed that once a band heard about the terms of surrender at a neighbouring reserve, particularly cash distributions, it would be more amenable to discussion.

It is also relatively clear that Graham did a minimum of actual negotiating. He perceived his job as figuring out the inducement needed, and then presenting a package to the band for approval or dissent.

Graham tended to communicate directly with Headquarters in setting his terms and approvals, bypassing the Commissioner's Office. He used local agents primarily as scribes and witnesses, although in some instances, such as at Key in 1909, the agent began negotiations. In the Fishing Lake surrender, however, there was some apparent continuity between him and Oliver's special agent, McDougall; Graham would not, however, credit others with his own successes.

McDougall had worked as a type of "special agent" for the Department before, particularly in personnel investigations. Oliver had known McDougall from his Alberta experience and hired him to negotiate surrenders at several reserves; in most cases, surrenders were eventually taken. At Cote, Fishing Lake, and Swan Lake, McDougall did the initial negotiating, turning it over to others to conclude the matter. He was not authorized actually to take the surrender. At the Hobbema agency, McDougall actually took the surrenders from Bobtail and Samson after Markle's earlier failure to do so.

Later, when Graham became Commissioner, he would continue to be an ardent advocate of surrenders as a better alternative than leasing. Under Graham's direction, the next big group of surrenders, the Soldier Settlement surrenders, were taken after the First World War.

McDougall tended to meet quietly with the band at the outset, and then to get the band to make a proposal with specific terms to the Department. At Swan Lake, he worked through the farming instructor to this end. At Fishing Lake, Graham complained about McDougall's involvement, saying he could have taken a surrender there, as he had at Pasqua, had he himself been allowed the

opportunity to do so. In the end, Graham used his terms and techniques, after McDougall had laid the groundwork, by having the Band make a proposal for terms like those at Pasqua.

This collaboration was possible because McDougall endorsed terms similar to those used by Graham, particularly the cash distribution and the compensation for improvements. The terms McDougall negotiated at Cote in 1905 were very similar to those later endorsed by Graham. He was apparently able to “succeed” where Markle had failed at Hobbema by offering an immediate distribution. Unlike Graham, he set a minimum sales price, usually \$10 per acre.

The terms of the band proposals set up by McDougall were usually quite liberal. They might well meet with departmental disapproval, requiring more meetings to alter the terms towards the conditions the Department found acceptable. McDougall would counter some departmental comments by relying on his personal understandings with the bands. He would not always admit what he had truly promised. It was not always clear until the implementation period exactly what McDougall had promised: that he would personally guarantee terms (Samson), or that some prohibited dances would be reinstated (Swan Lake).

Band members were active in negotiations in many instances, as at Cote in 1904. This involvement emerged out of the proposals they tabled, either real or engineered. Although each case varies, the bands tended to ask for high minimum sales prices, based on their understanding of local land values. In most instances they favoured per capita distributions. They also asked for assistance in equipping young farmers and in supporting non-farmers, the sick or disabled, and the elderly. These types of requests show up repeatedly in early negotiations. It is crucial to note, however, that even where there were proposals, or apparent negotiations, it was usually the terms recommended by Department officials which prevailed in the final documents or oral understandings.

The Process of Soliciting and Acquiring Consent

Decision of Whether to Attend the Meeting: Was It Advertised? Was There Sufficient Notice?

In some cases, absenteeism was an informed decision, and it is not clear whether people were aware that their absence could be construed, ultimately, as an expression of tacit consent. Did people know of the meeting? If they did, did they realize the consequences of not attending? The opinions of the Department of Justice supporting the validity of a decision taken by the majority of those at a meeting

appear to be predicated on the assumption that non-attendance was an informed decision. For instance, C.J. Doherty, in his summation of these earlier opinions in 1912, stated that there was an express analogy between a band and any other corporate body.

Discussion of Terms of Surrender

In only one case reviewed here, St Peter's, is there a good record of what was discussed in terms of costs and benefits, and options. We do not know in most cases whether the document was read, whether the interpretation was adequate, and whether there were other opportunities for people to become informed.

In most cases, the record is vague or non-existent. In some cases, such as Peigan and Enoch in 1908, Moosomin in 1909, Michel in 1903 and 1906, The Pas in 1906, Cote in 1904, Mosquito/Grizzly Bear's Head/Lean Man in 1905, and Bobtail in 1909, there is no conclusive evidence that a meeting was held; the vote might have been procured by polling. Markle's reports were particularly vague; he used a poll on at least two occasions, with no indication of whether a meeting was held in conjunction with the vote.

Casting of Vote

The voting method varied, by show of hands, standing on one side of the room, or by ballot or poll. This procedure would appear to be the critical moment of assent, the point at which the people present signified their agreement or disagreement.

Signing of the Surrender Document

Given the inconsistencies between those who apparently voted and those who signed, we must be cautious in reading the signatures as consent. There are other possibilities: if the decision had already been made, for instance, those voting No may have gone along with the majority decision; alternatively, the signing of the document may have been interpreted as necessary for the payment of the advance, if there was one.

Payment of Moneys

Where there was a cash advance, the payment usually took place within hours or days of the vote. Like the surrender document, acceptance of payment may have been an acceptance of terms, but not necessarily evidence of the “consent” required by the vote. Where payment took place before the affidavit was signed, we must question the consequences of accepting payment.

Affidavit or Statutory Declaration that the Surrender Was Taken in Compliance with the Indian Act

This document was the primary means of verification for the Department that the *Act* had been complied with. In many cases, it is the only evidence of consent, but it does not signify the consent itself. These documents were returned to the official taking the surrender only if they were taken before an improper authority. There was no questioning of the fact that those signing the document on behalf of the band and government were properly representing their constituents, or that they were truly representing the situation. So, while the affidavit was interpreted by Deputy Minister of Justice Newcombe in 1908 as directory only, it was also, in many instances, the primary evidence of compliance and consent, and, therefore, of great importance. Where there are irregularities in documents, the question is whether these irregularities would cast doubt on the validity of the documents themselves.

The Presence of the Chief and Headmen

In Alexander in 1905, Moosomin in 1909, Ocean Man and Pheasant’s Rump in 1901, Kahkewistahaw in 1908, Grizzly Bear’s Head/Lean Man in 1905, and Fishing Lake in 1907, there was no elected leadership at the time of the surrender. This does not necessarily mean that there was no leadership at the time, as more than likely there were people recognized as leaders by the community. The issue is whether the absence of representatives as designated by the *Indian Act* would prejudice a decision also taken under the rules of that same legislation. The first legislative requirement in Canada for a vote for surrender was only for a decision to be made by the leadership of the band. The designation of the need for signatures of “principal men” on the affidavit did allow the Department to broaden its base of certification in these instances.

EVIDENCE AND TESTIMONY

Written Evidence

Clifford Sifton spoke frequently about his views of the Indian character. He believed, essentially, that Indians were easily manipulated by those who knew how to deal with them. Experience in this domain was highly prized, as can be seen by Frank Oliver's later hiring of the Reverend John McDougall to assist him in surrender negotiations; McDougall had worked previously as a diplomat for Canada, including the preparations for Treaty 7, which was signed in 1877.

Sifton wrote on August 29, 1900, to a Dr Chown about the problems of establishing fact in dealing with the Indians. "That difficulty is such that it is almost impossible for a person who has not had experience with the Indians to understand! It is possible for persons to get the Indians to sign almost any kind of statements, if a little excitement and agitation be got up beforehand, and we are unable therefore to rely to any extent upon written statements that come in signed by Indians" (NA, Sifton Papers, MG 27, vol. 238).

The Department tried throughout this period to keep "outsiders" away from negotiations, if those people were working with the bands. They believed that others, too, could manipulate the band leaders and the members. From time to time there were specific directives or circulars to the effect that outsiders were to be disallowed at band meetings, although the *Indian Act* did not expressly forbid outsiders attending surrender meetings. Letters from bands were regarded with suspicion unless the Department had reason to think that a known and acceptable outsider, like McDougall, or a departmental employee, was a party to them. This attitude had the effect of stifling the Indian voice concerning assent. If the Agent had the powers of a magistrate, who could depose the customary leadership of a band, control the income of individual band members, and even control the means of acquiring that income, there was no reason why he could not control credibility as well.

At the time of the negotiations, the situation was variable, but for the most part the bands, with the exception of St Peter's, had little experience with real estate and land development. They were concerned with encroachment, with the railway lines, with past wrongs by the Department, and with lack of cash. More than likely, given the way that policy enforced isolation, as well as departmental directives to keep outsiders off reserve, the bands would not have known about factors affecting land value and speculation, although they were aware of some local prices of real estate.

They tended to ask for high prices per acre to make the transaction worthwhile. Some were clearly aware of the need for competitive investment.

At the same time, the circle of contact of most Indian agents, and others conducting negotiations, was much more extensive. Some, like Graham, and probably Marlatt and Markle, were connected to large networks of people in the business and political community. Graham, through his father's network, his wife's family, and various in-laws, was well connected to the Department of the Interior and the Indian Department, to the real estate and banking world, to land companies (e.g., D.H. McDonald, from whom he bought land and who had a lumber business in Balcarres), to the political realm, and to the social elite (the Assiniboia Club). His father-in-law, J.H. Wood, for example, had been an investor in an early colonization company and had real estate investments. His brother-in-law, Henry Sherwood, knew both Sifton and J.H. Ross fairly well, and was used as a Vancouver contact by both of them. Sifton, J.D. McLean, and J.A.J. McKenna were among Graham's social and professional visitors. Lieutenant Governor George Brown, the man who was named in the Ferguson Commission for an illicit land deal at Craven Dam, was among his household visitors. Walter Scott, the first Saskatchewan Premier, lived just down the street. Graham could hardly have been unaware of land values and had done some land buying himself, as had his secretary and her brother (in the latter case, these purchases included Indian lands). Undoubtedly he had access to information that most ordinary citizens of the era would not have had.

Even those agents who were not as well connected would very likely have had access to information through political channels, as they tended to be political patronage appointees. Matthew Millar at Crooked Lakes had real estate and political ambitions, and had been a regular correspondent with Sifton about Liberal Party matters in East Assiniboia. Charles de Cazes of the Edmonton Agency had been an investor in a colonization company and was thought to have been too closely tied to the Conservatives. Battleford Agent J.P.G. Day was active in local Liberal matters, and would eventually lose his job over this connection. Henry Carruthers's career was clouded with allegations of misconduct and political patronage, although the nature of the controversy was not entirely clear in the correspondence. His father, George Carruthers, wrote to Prime Minister Laurier to intervene to save Carruthers's job in 1897; Carruthers himself asserted that he had both Conservative and Liberal affiliations. William Dilworth, who acquired land at the Peigan sale in 1909, became an Agent for the

Blood in 1913 and was on the list to receive more information about the Blackfoot sale. Agent A.E. Lake was probably the relative of Conservative Member of Parliament R.S. Lake, from Grenfell, Saskatchewan; both were born in England within a year of each other and ended up in the Regina/Qu'Appelle area. Hugh Kerr was hired into the Indian service on the recommendation of Sifton's Portage la Prairie contact, Dr John G. Rutherford; his father was J.A. Kerr, a hardware merchant and strong Liberal supporter (NA, Sifton Papers, D II 15, C493:5083). John Bean Lash was the cousin of Z.A. Lash, of CNOR and the Qu'Appelle, Long Lake, and Saskatchewan Railway. As can be seen in Chapter 6 on Terms and Implementation, numerous departmental personnel bought land at Indian land auctions and attempted to do some speculation.

Any written evidence must pass the same tests as oral testimony: Is the information learned first hand? If not, what is the source? How much time has elapsed between the experience and the record? Is the record limited by format or by circumstance? Are there any obvious biases that affect the writer's point of view: Is the agent trying to keep his job, for example, or defend his performance?

Oral Testimony Evidence

There is a tremendous gap in our knowledge about band processes of understanding and about consent at the band level. For the most part, the departmental and government postulations concerning the question of majority consent were predicated on the assumption that consent, as obtained, was informed. For instance, those who did not attend the meeting to vote were making an informed decision not to attend, in awareness of the consequences of non-attendance. Similarly, it is assumed that they were aware of voting procedures and of the consequences of signing the surrender document. If these assumptions are questioned, one would need to know more about the knowledge, traditions, and procedures extant at the time.

There is more to informed consent than simply communicating the terms of surrender. There are other mitigating factors. Was the translation adequate? Did the voter know about other alternatives to the surrender? Were there pressures from band factions, or from immediate economic concerns? Did the voter place trust in the official that the information was correct or adequate?

Little oral testimony is available to help fill in these gaps. The writer had access to elders' statements obtained from several First Nations over a 20-year span: Muscowpetung, Cowessess,

Kahkewistahaw, Moosomin, Carry the Kettle, and Fishing Lake. Because of the inconsistencies of data collection, the danger of taking information out of context, and the importance of confidentiality, none of these statements are quoted here. There is a need, nonetheless, for an authorized compilation of existing testimony and a concerted, consistent approach to filling in the gaps in our current understandings.

Some themes can be identified in testimony:

1 The economic and political dependence on the agents and other Indian Department officials is emphasized in descriptions of the permit and pass systems, and of band meetings where the agent was present. The agent was “the boss” and his word could override any decision of the people. In general, people were afraid to challenge the word of the officials. One elder described a “gun” allegedly brought by Inspector Graham to meetings, and the intimidating effect it had on the people.

2 Similarly, although the elders realized the difference in the various official positions, such as agent, instructor, or commissioner, and realized a hierarchy in these positions, little was said about the nature of the government structure and how it worked. The boss, whoever he was, was the boss, and had certain types of powers.

3 Descriptions of band decision making varied. Some described meetings in the pre-government era, and others described meetings with the agent present. In the former case, the elders noted the importance of having band members, including women, provide guidance to the leadership. The role of the chief and headmen was more one of implementation than of decision making. Band councils were an important means of discussion and review. In the latter case, during the era of the Indian agent, descriptions given by elders would place emphasis on the vote of men in council, by a show of hands. Once the decision was made, the agent could override it. The people, however, would not, and could not, do so. Once the vote was cast, people would not go against it. The same would be true in the pre-reserve period.

4 People did not understand what was being asked of them. In particular, they may have thought:

- The land was being sold for money; if one wanted money, one voted to sell the land to the government.
- The government was buying the land; the government needed it.
- The official taking the vote was giving his word.
- The people would be taken care of, and perhaps receive money in perpetuity for their lands. They would not be in want.
- In some cases, people thought the land was actually being leased, not sold.
- People simply did not understand what was happening.

5 Those opposed to selling the land wanted it for future generations. In some cases, the band was split between those who wanted to sell and those who did not.

6 Money was the deciding factor, particularly if it was “on the table.” In one case, it was said that one man came into the meeting and broke the tie because he was promised money.

7 The man who took many surrenders in Saskatchewan, William Graham, was not trustworthy. Most people did not like him. They felt he would give false information, threaten them, and use money as a bribe. There were also statements that he would send his allies out in the evenings to visit people and try to persuade them. One elder reported the use of alcohol to this end. With Graham, as with other officials, people were afraid to go against him. He would also hold the vote after dissenters had left for lunch or supper.

In fact, it was alleged in several cases that people from outside the reserve, or newcomers to the reserve, were influential in persuading band members to sell. In some cases it was the interpreter who was suspected of not having given reliable information, and in other cases it was someone who was believed to be in the government’s quiet employ.

8 Band members did sometimes choose not to attend a meeting if they were opposed to the surrender. It is not clear whether they realized that the government would take the decision of the majority who did attend.

9 The surrender, once taken, was viewed at the time as being “like a treaty” (writer’s words):

- the terms were meant to last in perpetuity;
- the officials from the government were giving their word to honour the promises;
- the government was promising to buy the land in trust; the fulfilment of terms was not dependent on the sale of the land, but upon the government’s honouring of the agreement;
- people were giving up land rights; and
- the decision was taken in a meeting (in those cases where there was a meeting) where the two parties met.

There are some outstanding questions about the interpretation of surrenders and surrender meetings which might be assisted by taking oral testimony. The time may be gone, however, when some of this information can be obtained. There are also persistent legal problems in the use of testimony when the accounts are second-hand or hearsay, or when the interviewees are affected by what they have read or researched.

- Where did the idea for a surrender come from?
- Were people informed of the meeting before it happened?
- Did they realize what their absence would mean in the case of a decision?
- Did they trust the interpretation/translation?
- Did they discuss, in meetings, or among themselves, what the alternatives to surrender might be? Did they discuss what would happen if they said no?
- How did people feel about women not being allowed to vote? Did women discuss the surrender with their friends and relatives?

- How was the band's idea of decision making superimposed on that of the Department? For instance, would most of the voters have signed the surrender document, once the vote had been taken, in honour of the decision that had just been made? Would they do this only if the decision had been consensual? Would people have stayed away from the meeting if they had opposed it, so as not to go against the decision taken? Would the vote in fact have been taken as the "moment" of consent or dissent? What was the nature of the signing? The acceptance of cash, if any? What was the role of fear in the reaction to government officials and other outsiders present?
- What was expected in the aftermath of signing? What was the government's responsibility? How long were the terms to last?
- Who was most influential in affecting the band's decision, either from inside the band or outside? Were some bands split over the issue?
- Did people ask for further surrenders? Did they reject the idea of future surrenders? Did people believe that the government did or did not honour the surrender?
- Do people want the surrenders overturned, or do they want the terms upheld?

UNDERSTANDINGS OF THE PROCESS: AFTERMATH OF SURRENDER

We need to know more about the understandings the band members had at the time of surrender about the nature of the agreement and its long-term and short-term effects. Some of this information can be gleaned from the correspondence between band members and the Department after the surrender. It should, however, be viewed with caution in some instances:

- where band opinion is being reported by a third party or by a Department official;
- where there are band factions at work that might influence assessments of the surrender; and
- where the letter is not actually written by a band member, but a band member signs it.

Several themes arise in the aftermath of surrenders – the period when land sales are proceeding and the Department is making collections from purchasers:

1 All the surrenders contained a clause stating that the Department would sell the land "upon such terms as the Government of the Dominion of Canada may deem most conducive to our welfare and that of our people." This clause placed the responsibility and trust for sales in the hands of the Dominion.

2 The bands frequently approached the Department, either through the agent or directly, to inquire about specific terms that had not been met. For instance:

- The band members at Michel pointed out in 1904 that they would have made more money from the sale of timber from the surrendered land than they did by selling the land itself at low prices.
- The people of Cote were subject to the abrogation of the 1905 surrender when the 1907 surrender was taken, and they protested the failure of the Department to pay the second expected payment from the 1905 surrender. They would protest the failure of the Department to pay interest on the capital funds, and threaten legal action over the Department's intention first to repay advances out of the capital fund, a deduction they had not understood at the time of the taking of the surrender.
- The people at Carry the Kettle believed, from Inspector Graham, that they would receive interest moneys; instead, the Department invested the interest in debt payment and acquisitions, including rations, for the Band.
- The people at The Pas repeatedly drew the Department's attention to the fact they were not getting the revenue they expected from the sale of town lots. The difference between their interpretation of the surrender and the Department's led to a revision of the terms.
- Cowessess participated in the 1911 delegation to Ottawa and made a protest over the implementation of the surrender. It also hired lawyers to ask about the Land Management deductions and the use of land sales proceeds to fund medical expenses, which they understood to be a treaty obligation.
- Fishing Lake had to press to get payment for improvements, as promised. It also complained that livestock bought with surrender funds were band, not private, property.
- Swan Lake applied for the payment of equity moneys when its debts began to accumulate, even though land sales collections did not permit a distribution.
- There were protests at Muscowpetung about delays in getting both equity and interest, and it would appear that the agent was using his discretion in not paying out the interest moneys given to him for that purpose.
- Keeseekoosie wrote six years after the surrender to say that band members were very disappointed in the outcome of the surrender, as they had surrendered only to get money, and they were not getting any.

- The people at Samson wrote in protest about the lack of money received, as they too had surrendered on the expectation of getting money for themselves and future generations. They asked that the government take over the unsold lands and give them a fair price.
- The people of Mistawasis asked for distributions of capital and interest to pay their debts; when this request was not allowed, they asked for a second surrender; it, too, was denied.
- The Blackfoot protested the cutting back of rations as promised in their surrender agreement, and the slow pace of acquisition of the other terms.

Obviously, there were discrepancies between what some voters understood about the terms of surrender and what the Department understood.

3 Through these communications, it also appears that the bands expected the government to fulfil the terms whether or not collections were made. In their view, the government, represented by the official who took the surrender, made personal promises to fulfil the terms.

Both McDougall and Marlatt made personal promises to fulfil terms. Since McDougall was a minister, the people at Swan Lake felt that his word should be taken seriously. The people at Samson asked him to convey their dissatisfaction, since he had made the promises. Marlatt said that he could not have taken surrenders at The Pas and Roseau River without personal promises to the bands to look after their interests.

The two missionaries to the Blackfoot both said that they had assured the people that rations would be issued in perpetuity, and felt that they were breaking their word when the government reduced rations. Markle had also made this kind of promise.

4 There were both written and oral components to the promises made at the time of the taking of the surrenders. For example:

- Inspector Graham discussed issues with Carry the Kettle which he then dismissed in correspondence with the Department, or denied in the aftermath of the surrender.
- Thomas Borthwick at Mistawasis changed the terms as soon as the document was signed, and it is not known whether he discussed the terms with the Band.

- There was debate at St Peter's about whether changes were made in the surrender document after the vote was taken.
- Payments to chiefs for signing and to band members for improvements were made at Bobtail, even though they were not in the surrender document.
- There was no mention of rations in the Peigan surrender document, although band members clearly understood that they were to be issued.
- Marlatt had made promises of a cash distribution at The Pas surrender in 1906 which were brought to the Department's attention several years later, resulting in a formal amendment.
- There were also understandings at Moosomin, from comments made by Agent Day, which did not enter the agreement.
- Agent Gibbons made some deals at Enoch in 1902 which he enclosed by letter; they did not appear in the document.
- The agent, inspector, and missionaries at the Blackfoot surrender gave an oral interpretation to the clauses; this version was disputed later by Deputy Superintendent General D.C. Scott.

5 In some instances, it appears that band members believed that income from the land sales would be provided regularly and indefinitely, as a kind of perpetual income generated from the land. This belief appears in statements from the Peigan, made through Markle, and in correspondence from band members at Samson and Keeseekoose. The Blackfoot expected perpetual rations.

6 There is some evidence from departmental correspondence that officials took the obligation to spend the moneys in the best interest of the band quite seriously. This attitude is evident in their refusal to give per capita distributions, even when the surrender document or understanding permitted it.

Obviously, in their view, the Department had no obligation to pay for promised items if there was no money from land sales. This interpretation shows up repeatedly, most particularly in the case of Roseau River, where an Order in Council was later passed in 1906 requiring the Department to pay for some of its promises, in spite of lack of collections, on the strength of the understanding at the time of the surrender. The Order also stated that it was frequently not in the bands' favour to have interest moneys distributed rather than invested in improvements. When Pedley wrote to Markle in

1910 about a proposed surrender, he suggested adding a clause that would make it clear that fulfilment of terms was dependent upon sales. Further, in the Peigan, Blackfoot, and Mistawasis surrenders, there was an expectation that individual farmers would repay the band for purchase or loan of implements, equipment, and livestock.

As has been repeatedly noted in surrender research, the Department was often lax in the enforcement of collections. It was also prone to allow political interference in the matter of deferrals, application of interest payments to capital, and the like. Whether or not these lapses resulted in net losses to the bands depends on the circumstances, and in most cases the research has not been done. In any event, this laxness would stand in apparent contradiction to the Department's insistence on managing band moneys in the interests of the bands. Legal counsel for the Blackfoot in 1917 said that he believed that the failure to make collections there was a breach of trust.

At the same time, it was the Department's preference to use both interest and capital to fund items such as farming outfits and rations which would otherwise have come from parliamentary appropriations. Markle's surrender format was more suitable for this purpose, by his own claims, than was Graham's or McDougall's, both of which allowed cash expenditures by individual band members. The preference for directing moneys to farming shows up clearly in the 1910 Order in Council, which directed interest from deferred payments to go into the bands' interest accounts to pay for farming expenditures.

When the 1906 amendment to the *Indian Act* allowed up to 50 per cent of the band's capital to be distributed, the Department was permitted to place the need for the taking of a surrender above the need to protect band funds. According to the Department's own avowed policies, this kind of distribution would undermine the development of an adequate capital fund to generate interest and to buy improvements. Still, this method was often preferred by the bands, and it was expedient in the taking of surrenders.

In more recent years, commentators have disagreed over the role of the Department in the surrender process. Some argue that the Department was remiss in fulfilling its fiduciary duties by not revealing its apparent conflict of interest at the time the surrenders were taken. Others say that the Department should not have withheld funds from the bands simply because it was taking seriously its perceived obligation to serve as trustee for the funds. Part of the conflict comes with the definition

of “best interests.” Undoubtedly the bands believed at the time that per capita distributions would be in their interest, whereas the Department did not.

7 In two instances, the bands publicly called for the overturning of the surrender after it was taken: St Peter’s and Peigan. In the former case, not all the band members wanted it overturned because they realized that they would no longer receive interest distributions if it were.

The people of Ocean Man and Pheasant’s Rump also threatened to return to the surrendered reserve when they did not receive the moneys for moving expenses. The people of Carry the Kettle did not ask for the surrender to be overturned, but they declared, 11 years later, that the surrender had not been in the best interests of the Band. Cote threatened legal action in 1909 when members realized that they had to repay advances before they could receive interest from capital. Cowessess hired lawyers to make inquiries about terms. A group at The Pas wrote a letter of protest just days after the surrender was taken, protesting its validity, but the Chief later denied that he had signed it or even agreed with it.

The case of Roseau River prompted an Order in Council in 1906 to resolve a contentious situation. The Band threatened to repossess the lands for two reasons: first, they were not getting interest payments; and, second, the interest payments made by purchasers were going into the capital, not the interest, account, as promised by Marlatt:

The Minister states that, during the negotiations for this surrender it was necessary for the officer representing the Department of Indian Affairs on this occasion to go very fully into the financial position which would be set up by the sale of these lands and the funding of the money for the Rosseau River band. The Minister further states that, it was explained that, as the land was to be paid for in instalments by purchasers, and that, as further instalments would bear interest at the rate of 5%, there would be a considerable amount of interest available for distribution when the second payment (with interest) had been made. His assertion of these facts was in the nature of a promise that such interest would be forthcoming and would be distributed annually in the future. The Minister further states that, this statement was made without knowledge of the fact that the Department of Indian Affairs has for many years capitalized the interest on these deferred payments as well as the principal sum. This practice was doubtless adopted in what was considered the best interests of the Indians as it would tend to build up their capital funds and render unnecessary the distribution of relatively large sums of interest which had been found to be of no particular benefit, and, in some respects, to be a positive detriment to the welfare of

the Indians. On the other hand the building up of capital which might, from time to time, be used in permanent improvement on the reserve would better conserve the interests of those interested in the fund.

The Minister observes that, it is in the aboriginal nature never to forget a statement made by a Government officer and to continue in a state of dissatisfaction until claims founded on such statements or alleged promises are met. The Minister further states that, the Department of Indians Affairs now finds itself in the position of being unable to make good the statement made at the time of the surrender, and the Indians of Rosseau River Band are, therefore, in a state of dissatisfaction and threaten to re-possess themselves of the lands, which have been sold, unless the estimated payments of interest are forthcoming. The Minister under these circumstances, and as it appears good policy to keep faith with these Indians, recommends that, an advance of \$2000.00 each year for the next three years during the first week in April should be distributed, per capita, to these Indians in satisfaction of the statement made in good faith by the officer who took the surrender, and that, as the normal interest on the capital invested by the ordinary usage of the Department of Indian Affairs would not produce sufficient amount to repay this advance, that in this instance alone a division should be made between the amounts received as principal and interest on land payments and that the interest should be added to the ordinary interest or current account. (NA, RG 2, vol. 950, file 1358 D (3), Order in Council 458/1906)

The text reveals the nature of the Band's dissatisfaction, the promise made by Marlatt outside the text of the surrender, and the Department's view of its obligation to protect capital and interest moneys from "wasteful" distribution to the Band.

LAND SALES

Procedures

See the Chronology, Chapter 3, for developments in land sales practices and in Land Regulations.

Many of the procedures for selling land developed on an ad hoc basis, including the release of upset prices, the choice between tendering and auction, the setting of dates and terms for sales, and the use of cash down payments at auction. In some of the early sales, such as Passpasschase, Sharphead, and Gambler's, the Department used its own personnel, as well as some officials from the Department of the Interior, to sell lands. The use of auctions does not appear to have been recommended, and was certainly not standard practice on the prairies, until 1905 – after Oliver became Minister. Some advocates of auctions, such as Frank Oliver and George Walton, protested

against the tendering policy, but they were matched against a group of officials who had already benefited from the latitude gained by tendering.

As noted below in recommendations for further research, many questions can be asked about the competitiveness of sales, and they were asked at the time. Protests were made both inside and outside the Department about the limited advertising that was being done, in Liberal papers only; about sales held in November and December, when snow cover prevented inspection of lands; about sales held when people could not travel to the site; about lack of local advertising; about sales held when farmers had no money; about sales held before the construction of a railway or some other change that would have raised the market value of lands. There is no consistent pattern to the Department's decisions in these instances. In some cases there were pressures for immediate sales which overturned better judgment on timing. In others, actions were justified solely on past precedents, such as "the last sale we had in December was effective." Sometimes there was no justification at all.

One of the most important questions that can be asked about land sales is whether or not the sale was to have been in accordance with the Department's own Land Regulations, passed in 1888. The first exemptions appeared in the Sharphead and Gambler's sales, where the Department sought to reduce the residency requirements in the Regulations. The Order in Council for Sharphead explicitly reduced the residency period. When the sale of the Moose Mountain reserve lands was being contemplated in 1901, Orr reminded the Department that the Land Regulations must be followed, unless specifically exempted by Order in Council. When the Order in Council was passed, it did not refer to the Land Regulations, but specified that the land was to be sold "in the best interests" of the Indians. The Roseau River surrender appears to have been the first in which the Order in Council accepting the surrender explicitly exempted the sale from the Regulations. After 1905, particularly in Oliver's era, it seems to have become more or less standard practice to exempt the sale in the Order. There were, however, some exceptions. In the documentation for Michel (1906), Carry the Kettle, Samson, Muscowpetung, and Mistawasis, there was no mention of the Land Regulations, meaning there was no overriding Order in Council that would have exempted those sales from the Regulations. In the Cowessess Order in Council, the Land Regulations were upheld, with the exception of the residency requirements.

Several sales customs developed “unofficially” through practice. One was the use of the surveyor’s upset prices as reserve prices at auction: if no one bid on or above the upset price, the land would not be sold. Alternatively, if there was a minimum or an estimated price per acre in the surrender document, it could be used as an upset price. Research on individual band files may reveal cases where land sold below the upset price. The value of improvements made by the Indians was added to the upset price so this expenditure could be recouped.

Until 1910 the reserve or upset prices were kept confidential until the time of sale, although it is not clear whether they were announced before the bidding. Analysis of buying at the upset price may reveal cases where the prices were known in advance. Although a limited number of people would have advance access to prices (the surveyor, J.D. McLean, the Deputy Superintendent General, W.A. Orr, D.C. Scott, clerical staff, and the agent in charge of sales), it is known that the prices did circulate, by paper, from McLean’s office, or by rumour. McLean maintained the list of individuals who were interested in sale notices and land descriptions, and it appears that in at least some cases the upset prices were marked by hand on the papers. This knowledge became problematic only if the prospective buyers prearranged sales with the person in charge of the auction, or the auctioneer, as at the Moosomin/Thunderchild sales. After early 1910 it became a general practice to release these prices in advance; the reason for the change is not known. When the sale of Blackfoot lands was held in 1911, the buyers had a catalogue of prices in advance, and there is some evidence that there were indeed prearranged purchases. Auctioneers received one-half of 1 per cent of the total proceeds of the sale, to a maximum of \$200.

By late November 1908, the Department had begun the practice of requiring a \$100 security deposit per purchase at the time of the bid, unless the down payment was less than that, in which case the down payment was used to secure the bid. The origin of this change in policy is not known; it was not in effect at the June 1908 sale of Cote lands. The practice was mentioned in the September 1908 advertising for the Crooked Lakes sales, and was employed in the November 25, 1908, Crooked Lakes sales, but it was not used in the November 4 sale of Grizzly Bear’s Head/Lean Man lands. It is interesting to note that Inspector Graham had some difficulty at the Cote land sale that year when a buyer was unable to produce the down payment, and the land was put up for sale again. The

potential buyer made a complaint to the Department, and it defended Graham's actions. It is possible that this experience was the source of the change in policy.

Once a sale had been made and recorded, the buyer could then assign the land to an assignee, for a \$1 per sale transfer fee, provided the payments were up to date. The assignee would then be responsible for making payments. There was no requirement, as there was for the Department of the Interior, that the assignor verify that he had no outstanding debts or liens that would affect the land. As a result, fraud could and did occur in assignments.

Yearly notices would be sent out from the Lands and Timber Branch (Orr) to remind the buyers of instalments due, with interest. In the earlier years, this function was assisted by the agent in the field, but later on it became primarily an administrative matter out of Ottawa. If a buyer had more than one purchase, the total would be calculated in the invoice; the buyer was expected to make a payment on the total purchase. If the buyer did not send in a payment, the Department would use its discretion in issuing warnings that the sale might be cancelled. Theoretically an official would visit the land to inspect it for improvements before the sale was cancelled. If a sale was cancelled, the land was repossessed by the Department, and all payments made to date were kept by the Department in the band's account.

The calculation of interest was not always standard. Until 1908, the interest was to be calculated on the instalments from the date of sale until the date of payment, so that the amount of interest would grow with each instalment, even though the instalment amount was the same each year. There was some leeway in how this amount could be calculated, especially when payments went into arrears. Once the change was made in 1908 to interest charged on unpaid balance, there was a question of whether unpaid interest should be added to unpaid principal, if the account was in arrears. There were also variations in how the Department dealt with requests by buyers for special services. A buyer might ask that he be required to pay interest only, or that payment in a given year go to pay for one particular quarter, rather than applied broadly to the total amount outstanding for multiple purchases.

When payments were collected, 10 per cent was taken off for the Land Management Fund, a fund rationalized as necessary to pay the expenses of administering land sales, including the auctions, but in fact used for agency salaries and expenses in Ontario and Quebec. The practice was

discontinued in 1912, and after 1913 this money was reimbursed into the band accounts (see Chapter 3, Chronology, 1896 and 1911). The remaining moneys went into the capital account of the band, but they did not begin to draw interest until April 1 of the next fiscal year. Thus, a land payment received by the Department on April 30 would not draw interest until April 1 of the following year. Capital expenditures required band approval, unless otherwise specified in the surrender document. After 1897, the fund paid 3 per cent into band interest accounts, down from 5 per cent before 1883. In most cases, this interest fund was distributed to the band via the agent, but the agent, or the Department, could and did redirect the money before it was distributed, as it could not be controlled after it was distributed. In 1910, the Department began to deposit the interest paid by purchasers directly into the bands' interests accounts, to augment the funds available for farming expenditures (and thus reduce parliamentary expropriations).

Patterns in Land Purchasing

The pattern of buying has been described very roughly in three ways: Did departmental officials buy land? Were the lands bought by speculators or settlers? Who were the buyers? These descriptions are approximate, at best, since the available research is very limited, and the writer of this report did not have time to do a complete analysis.

Did Departmental Officials Buy Land?

One question that is raised occasionally is whether or not departmental officials benefited from land purchases. Section 134 of the *Indian Act* 1906 (previously section 110) stated: "Every agent for the sale of Indian lands who, within his division, directly or indirectly, except under an order of the Governor in Council, purchases any land which he is appointed to sell, or becomes proprietor of or interested in any such land, during the time of his agency shall forfeit his office and incur a penalty of four hundred dollars for every such offence, recoverable in an action of debt by any person who sues for the same."

This restriction was in all the versions of the *Act*, but its meaning is ambiguous. Did it apply only to the agent in charge of selling the land, or to the agent in the agency where the sales were

taking place? If this provision was enforced on the prairies, there was no record of it in the cases examined.

There were several cases where there appears to have been contravention of this provision, in that the employee or his spouse bought land in the agency for which he was responsible:

- Matthew Millar and Henry Cameron at the Crooked Lakes surrenders;
- Ellen Carruthers, wife of Henry Carruthers, clerk at Stony Plain.
- J.O. Lewis at St Peter's.
- The wife of Agent George Day, at Grizzly Bear's Head/Lean Man.
- John C. Ginn at Roseau River.
- The case of Alice Tye, William Graham's secretary, who bought land at Crooked Lakes when Graham was in charge of the sale, is questionable, as were the purchases of her brother at Crooked Lakes and Muscowpetung.
- The same is true of William Blewett, who did not directly purchase land at the Cote sales, but was part of the land company that did acquire an interest. Blewett was Indian Agent at the time.
- W.H. Waddell, the man who subdivided the Blackfoot reserve while on contract to the Department in 1910-11, successfully bid on land at the June 1911 sale and was one of the largest buyers (being familiar with the land). This purchase was after the 1910 directive, but since he worked on contract, and the contract was completed before the sale, it may not have been considered a conflict.
- Other departmental officials acquired an interest in lands, including, Frank Pedley and James Smart. Herbert Awrey, a clerk, acquired land in at least three sales. Horatio Nichol acquired land at Pasqua, and later received a promotion to that agency. Several other school officials bought land at Pasqua.
- William Murison was agent at Touchwood when he bought land at the Muscowpetung sale. J.D. Lafferty was a medical attendant when he bought land at the Peigan sale. E.L. Cash was a medical attendant at Pelly when he engineered some sales for his friends. J.A. Markle asked permission to buy land already sold to other buyers at the Samson and Bobtail sales.
- Three former employees – law clerk Reginald Rimmer, Commissioner A.E. Forget, and S.S. Simpson – bought land at land sales. Thomas D'Arcy McGee, who made purchases at

Muscowpetung, may have been the same man who had worked for the Onion and Saddle Lake Agencies.

- Wilbur Bennett acquired land at Grizzly Bear's Head/Lean Man and at Stony Plain while he was an employee of the Department of the Interior.

In 1910, the directive was made that no officials or their spouses should buy land in Indian land sales.

What Types of Buyers Acquired Land?

The purpose of this analysis was to determine whether the land was being purchased by local settlers or farmers, the local business and professional community (merchants, lawyers, judges, realtors, clergy), or by non-local buyers. It is not always possible to tell the occupation of buyers from sales lists, so some guesswork is involved.

“Outsiders” are here defined as those from outside the immediate district; they may come from a nearby large city, from the United States, from Ontario or Quebec, or from Great Britain. They may have been buying on behalf of land companies. Although it cannot always be assumed that they were speculating, it is likely that in most cases they were.

Some local business and professional people were also farmers, so this definition is imprecise. Other local buyers were speculators. The recorded occupation, where available, is used as a guide, but a more detailed analysis of land sales files might reveal whether the buyer was farming, retaining the land in an unimproved state, or leasing it.

The count has been made on purchases of quarter sections or fractions of such. It is worth noting that in many cases, particularly in sales between 1906 and 1909, the local settlers/farmers bought the fractionals adjoining privately owned properties, whereas outsiders bought the large blocks and entire sections. The actual acreage bought by local people might be far less than that acquired by outsiders, so these percentages will be somewhat misleading in terms of total land acquisition.

Not all the surrenders covered in the study are included here.

The earliest sales, before 1906, accord roughly with demand. Rarely was the demand for surrenders generated by local farmers, for there was still adequate land to purchase and homestead.

The demand might come from speculators, both the local business/professional community and outsiders. For instance:

- In the first 1891 Passpasschase sale, the land went to people from Calgary (five individuals), Ontario (one individual), and Quebec (three individuals, two of whom were married to each other). None were from the Edmonton area.
- In the Stony Plain/Enoch surrender, 1902, sold by tender, 38 purchases, or almost 80 per cent, went to the merchants McDougall and Secord of Edmonton, friends of Frank Oliver. One purchase went to the spouse of a departmental employee, Henry Carruthers, five went to other merchants, and 12 quarters went to local men who appeared to have been interested in farming the land.
- Although no statistical analysis was done of the Sharphead sales by the Dominion Lands Agent, many of the buyers came from Nebraska, Minnesota, and Iowa, and this area was targeted by the agents as a potential source of settlers.
- Roseau River (1903) was somewhat of an exception for the time, since it was in a more heavily populated area, where land had a greater market value and there was some local demand for the fertile reserve lands. The Department accepted the recommendation of a local auctioneer, George Walton, and not only sold by auction here, instead of tender, but allowed buyers to pay on 10, rather than five, instalments. At the sale, 66 per cent went to local area buyers; 6 per cent went to Winnipeg buyers; and 28 per cent went to buyers from North Dakota, Calgary, and Ontario.
- The Carry the Kettle sales in 1906 were among the first held by auction, with the exception of Roseau River. There was clearly no local demand for land: 39 per cent went to Sam Clarke, a speculator and politician from Cobourg, Ontario; and 61 per cent went to the Mathesons and Mitchells of Brandon and Winnipeg .
- The Pasqua sales in 1906 were affected by the promise of a rail line through the reserve, putting the surrendered area within close proximity of a line. Although the land was not completely settled or homesteaded around the reserve, the presence of a line led speculators to buy in hopes of increased settlement and market values: 53 per cent went to outsiders, particularly J.R. Miller of Toronto; 15 per cent went to district business and professional people; 3 per cent went to departmental employees; and 29 per cent went to local farmers, much of the land in fractionals.
- It is known that at the 1906 Alexander auction in Edmonton, two-thirds of the purchases were made by four men, one of whom, J.R. Miller, was from Toronto, and the others – William A. Wood, Patrick Dwyer, and Charles Bacon – were ostensibly Albertans, from Edmonton, but they may also have been speculating. Wood was a CPR clerk, and Bacon and Dwyer were “gentlemen.” F.W. Grant of Midland, Ontario, purchased three quarters. Larue

and Picard, merchants, who acquired land at Stony Plain in 1902, made three purchases; they had also made additional purchases that they transferred to Miller. Other purchases were made by Edmonton merchants and barristers. Only about 11 per cent appears to have gone to farmers.

- The Grizzly Bear's Head/Lean Man sales in 1906 are not described here, but a large proportion of the sales went to realtors and businessmen, including Wilbur Bennett of Omaha, an employee (contractual) of the Department of the Interior. The Indian Agent's wife acquired land, as did a former employee, S.S. Simpson.
- The 1908 Crooked Lakes sales also brought mixed results; the demand from local farmers, which had extended back nearly 20 years, would have led one to expect most of the purchases to have come from the Broadview area, but this was not the case: 59 per cent went to outsiders, including the Western Canada Colonization Company; 25 per cent went to local business and professional people, including many from Broadview; 13 per cent went to local farmers; and 3 per cent went to departmental employees.

In 1909, there were many sales, more than in any other year. By this time there was a rebounding of the economy from a mini-recession in 1907-08, and the price of land was going up. The pace of railway construction had increased, and most homestead lands in the railway belt were occupied. Still, sales show a mixture of outside and local interest.

- At Fishing Lake the land was not sold until two years after the surrender, and two sales were required to sell the land. At the first, a buyer, Charles Peterson from Lillyfield, Manitoba, bought a few quarters; he was the only purchaser. At the second, in 1910, D.H. Hudson of the Hudson Lumber Company, Winnipeg, bought all the remaining land but one quarter.
- At Swan Lake, Manitoba, in contrast, there was much local interest, and had been for some time; this was in the populous southern Manitoba grain belt: 47 per cent went to local farmers; 29 per cent went to local business and professional people; and 24 per cent went to outsiders – they were listed as speculators, but had local addresses.
- The Thunderchild and Moosomin sales brought the speculators forth – not only the prolific buyer F.W. Grant, but local speculators like judges Brown and Lamont from Saskatchewan: 54 per cent went to outsiders (Ontario, Michigan, Maine, Winnipeg; the Michigan people probably were, however, settlers); 15 per cent went to local farmers, mostly fractional quarters; and 31 per cent went to Saskatchewan business and professional people.
- The pattern was similar for Muscowpetung sales: 54 per cent went to outsiders, including James Wallis and the Western Canada Colonization Company; 8 per cent went to local

business and professional people; 10 per cent went to government officials; and 20 per cent went to farmers, mostly fractional quarters.

- At the Hobbema sales for Samson and Bobtail, the pattern was again similar: 43 per cent went to outsiders; 22 per cent went to local business and professional people; and 35 per cent went to local farmers.
- At the Key land sales, the same pattern emerged again: 58 per cent went to outsiders; 18 per cent went to local business and professional people; and 24 per cent went to local farmers.
- Both the Peigan and Blackfoot sales brought substantial numbers of Alberta buyers, but they have not been analysed here. The Peigan sale included some sales to government officials and small syndicates, as well as small land companies, but included many Calgary area ranchers.
- The last sale in the case study, Mistawasis, went in 1911 to two Prince Albert buyers: a local businessman and a local physician.

The fact that speculation continued lends credence to the view that not all the demand was generated by a direct demand for the fertile lands of reserves, although that was certainly a dominant local factor. Other considerations, such as the desire to remove Indians from local settlements and markets, and the Department's own fiscal policies, must also be reckoned. In the evaluation of surrenders it is always of interest to reconcile purchase patterns with the original demand.

Who Were the Land Speculators?

See Key People; Chapter 2: Land and Colonization Companies; and Appendix D: Clifford Sifton: Investments.

One of the other objectives of this study was to examine land buyers themselves, with a view of determining who they were and whether they were in any way connected to the Department, creating a conflict of interest. Was the demand being generated by those with a direct monetary or political interest in the outcome of sales? The surrender of the Moose Mountain Assiniboine reserves is one of the clearest early examples where this appears to be the case. In other surrenders, the conflict is not present, or is more clouded or complicated by people and events.

The results of the study are somewhat conjectural, for the records of land purchasers themselves are very superficial. The Department, in making collections, was not concerned with who the purchaser was, but simply with the individual's ability to pay. At the time of sale there were

instances where officials deliberately favoured buyers (e.g., by sending out upset prices), but by the time collections were made the concern was monetary, not political. Files might reveal a letterhead, and thus a company behind the buyer; they might reveal that someone else was actually paying for the land, or they might argue for leniency in payment schedules; they might indicate that the assignee was the party with the speculative interest. Otherwise, the correspondence does not tell us much about the buyers.

Certainly, any departmental officials who may have been benefiting were careful in revealing their involvement: Herbert Awrey placed bids through the cleaning lady; Pedley and Bedford-Jones used friends and law partners. Sifton also ran his investments and land purchases through other names. This discretion was particularly true after Smart, Pedley, and White were essentially “caught” in their fraudulent scheme, and it makes it more difficult to trace the involvement of the interested parties.

Some of the necessary research to establish these connections has not been done: corporate histories, genealogies, and tracings of land sales records, issuance of patents, raising of titles, and transfer of titles. The examination of the first group of buyers, as outlined above, is not sufficient for understanding the interests in land. Who was assigned the land? Who was actually paying for it? Who received patent? Title? And second transfer of title? This work was done in the analysis of the Moose Mountain sales and it revealed many individuals who picked up the land for investment purposes.

This caution does not seem to have extended to lower-level employees who bought land directly. Although they may have realized that there were ethical problems, there was no penalty before 1910. The use of influence and patronage was so widespread in this era, in both government and business, that it was not perceived as a problem, except to the political opposition. Investment in Indian lands was no different from investment in any other type of land. If it appeared profitable, and a political associate could help obtain a land deal, it was done. The results of the Ferguson Commission, 1915, made this point clear (see Appendix E).

Clifford Sifton, while Superintendent General, approached the taking of surrenders with some caution; it has sometimes been said that he kept them at a minimum. Apart from his responses in the House to queries about surrenders, in which he always said they could only be taken with the consent of the Indians, he did nothing to discourage the taking of abandoned reserves or the surrender of land,

where there was strong external pressure. Nor did Sifton safeguard the procedures for taking surrenders; practice was sloppy and ad hoc, and few records were kept of procedures and votes.

It has been alleged, without proof, that Sifton had a financial interest in the purchase of land by tender to Moose Mountain, and possibly to Chacastapaysin and to Cumberland IR100A. If so, he passed the money through Bedford-Jones and associates. There is at this time no real evidence, but there are repeated hints in correspondence that Sifton did use his position to benefit from land deals in general:

- His private secretary, A.P. Collier, went on to become a realtor when he left Sifton's employ, and had some investments with Sifton when he was still employed.
- The lawyer who was alleged to have handled Sifton's involvement in the Moose Mountain lands, Frank Phippen, did in fact do legal work for Sifton over many years. Phippen was at one time a partner with one of Sifton's political opponents, Conservative Hugh John Macdonald, son of John A. Macdonald.
- James Smart did not always get along with either Sifton or Collier, but he did have joint business interests with Sifton in the West. If Sifton was not involved directly in some of Smart's purchases, he certainly allowed them to happen.
- Smart and Sifton, along with J. Turiff, A.J. Adamson, C.W. Speers, J.O. Smith, and D.H. McDonald, appear to have had a financial interest in the Saskatchewan Valley Land Company. Sifton maintained a long association with Colonel A.D. Davidson, of this company, and, consequently, with the Canadian Northern Railway land sales.
- Sifton's close network of political and business associates, including the above, but also A.E. Philp, his brother Arthur, J.H. Ross, C.A. Masten, Walter Scott, George Bulyea, John Bain, and A.W. Fraser, show up regularly in business enterprises in the West, particularly land investments. Fraser was on the list for notices of land sales.
- There were purchasers at Indian land sales who were regular correspondents with Sifton, particularly about Liberal patronage. These included J.H. Lamont of Regina and the Mathesons of Winnipeg/Brandon. J.A. McDonald, who bought land at Muscowpetung, was the brother of D.H. McDonald, a Sifton Liberal associate, and part of the Saskatchewan Valley Land Company syndicate. E.L. Cash engineered Cote land sales and probably acquired some interest in the townsites. A.J. Adamson bought land at Chacastapaysin. George Walton, who was influential in Roseau River sales, and in serving as auctioneer in later Indian land sales, was a close associate. Winnipeg and Brandon were centres of real estate activity, and many Winnipeg businessmen can be found in land sales throughout this era, but connections to the Smart/Sifton network out of Brandon need to be investigated. Herman Finger and

William McBrady purchased land at several Indian land sales; they were from Port Arthur, site of some of Sifton's most active real estate investments, and managed by A.E. Philp. The McDougalls of Fort William, near Port Arthur, bought land at Muscowpetung and Crooked Lakes.

When one looks at Sifton's total business career, it is obvious that he and his family benefited enormously from the natural resources, including land, of the prairie west which were ceded by treaty.

The pattern of speculation established at the turn of the century, with the first land sales by tender, did not end with the competitive auctions of Oliver's era. In spite of Oliver's often public objections to land speculators on principle, he did nothing to prevent speculation in sales while he was Superintendent General. Speculators F.W. Grant, W.E. Preston, the Kennings, Sam Clarke, and J.R. Miller were active during Oliver's years in office. As the Ferguson Commission revealed, Oliver acquired Indian lands through a relative; although he did not obtain title to the lands while he was Superintendent General, his son-in-law did.

Some of the networks of activity which can be postulated from the data are as follows:

- Pedley, Smart, and White formed their own type of syndicate with the purchase of the Moose Mountain and Chacastapaysin lands in 1901-02. Wilbur Bennett, the Canadian Immigration Agent in Omaha, was one of their original group; he worked with William J. White in the Immigration/Interior Departments, and he helped engineer the West/Armstrong proposal, although it is not known how much later involvement he had. Bennett purchased some unadvertised lands at Sharphead sales by agent, and later resold them. He was originally from Alberta. Although he did not purchase land directly at the 1906 Grizzly Bear's Head/Lean Man sales in Battleford, Saskatchewan, he procured much of the land on assignment. One of his partners there was E.H. White, a local realtor and son of William J. White. The other partner was S.S. Simpson, the auctioneer for the sale. Simpson, from the Brandon area, was certainly known to Sifton, for it was Sifton who first procured him a job as farming instructor for the Battleford Agency in 1902. It is possible that Simpson was related to the surveyor George A. Simpson, who also had ties to the Battleford area; the latter Simpson led a double life as a land agent for a colonization company while working for the Interior and Indian Departments as a surveyor. He was exonerated of conflict of interest, however.
- Both Simpson and Bennett appear to have been present at the November 1909 Moosomin/Thunderchild sales, and to have been part of the meeting before the sale when some of the buyers divided the land among themselves, but they did not purchase.
- Simpson was married to Margaret Speers and was involved with her father, Robert, in a Battleford district realty company. Both acquired an interest in the lands from the Grizzly

Bear's Head/Lean Man sales, as did other Speers relations. It is also possible that these Speers might have been related to the General Colonization Agent in Winnipeg, C.Wesley Speers, a Sifton associate who got his job through Sifton and was the agent who organized the Saskatchewan Valley Land Company.

- George Walton, the auctioneer at the third Grizzly Bear's Head/Lean Man sale, in June 1909, was yet another Sifton correspondent and Liberal. Agent Joseph Day, who was in charge of the sales, was a strong Liberal, and lost his job for his partisanship after the government changed.
- A.C. Bedford-Jones, Pedley's former law partner who engineered bids in at least four sales (Cumberland IR 100A, Chacastapaysin, Moose Mountain reserves, and Stony Plain), all in 1901-02, went into business with Beaumont and Marsh, the men who had their signatures attached to the Moose Mountain tenders, in the Canada National Land and Development Company, chartered in late 1903 in Ontario. This firm paid for the one quarter acquired by their associate George Angus in the Stony Plain tenders. The involvement of Pedley, Smart, and White in this company is still not known, although it has been postulated that they were involved.
- James Smart started his own Montreal-based land company in 1903, after he left office as Deputy Superintendent General, but was still Deputy Minister of the Interior. He also acquired CPR land and was involved in some colonization schemes. Smart acquired at least one homestead, near Saskatoon, in 1903, at the time when real estate values were escalating there, but this purchase has not been tracked. He was a regular recipient of the notices of Indian land sales from 1905 onwards, although his name does not appear on any purchases. A partner in the hardware business in Brandon, Peter Mitchell, bought land at Carry the Kettle.
- Another network of activity appears around F.W. Grant, a barrister in Midland, Ontario. Research into his private papers revealed the "conspiracy" for purchasing land at the 1909 Thunderchild/Moosomin sales. Grant was a purchaser there, as well as at Alexander, Michel, and Samson/Bobtail. He sometimes partnered with W.E. Preston, a merchant at Midland, and sometimes with D.A. White, or James Playfair, or W.J. Aikins of Dunnville. White, Preston, and Playfair seem to have had ties through the lumber business. Grant was brought to the attention of the House for buying Indian lands in 1905 in the Georgian Bay area through the influence of his brother, George, a Liberal MP. Grant received notices of sale from J.D. McLean, and his papers reveal that McLean and a clerk in the department, P.J. O'Connor, pencilled in upset prices. Grant also received information from Manley Chew, a Liberal lumber man at Midland, and from J.R. Miller, below; he was connected as well to William Mulock, a close Sifton political associate who acted for Sifton as Minister of the Interior when the latter was away from office. There is a William Preston at Stratford, Ontario, who was a merchant, and a correspondent of Sifton's, but it is not known whether they are the same person.

- Joseph Robert Miller bought land at Alexander and Pasqua. Miller may have been connected to Grant; according to one researcher, Grant received some sales information from Miller. His wife was the sister of Horatio Nichol, the clerk at Crooked Lakes who later became the agent at Qu'Appelle and who bought land at Pasqua. Newspaper accounts of the Pasqua sales suggest that Miller was connected to the Grand Trunk Pacific, which was soon to build a line through that reserve. He was also a businessman with apparent connections in international trade.
- Sam Clarke of Cobourg, Ontario, was an Ontario MPP, and in 1906 he acquired lands at Pasqua and at Carry the Kettle. He was a friend, allegedly, of Frank Pedley, through Pedley's wife and her father. He was present in the Moose Mountain area when some of the first visits to scout land were made by Pedley's associate; he was apparently looking for land for some Ontario farmers. J.A. Staples, who bought land at Crooked Lakes, was also from Cobourg.
- One of the other buyers at Carry the Kettle in 1906 was a former employee of James Smart's hardware company, and another was the brother of a close Sifton family friend, R.M. Matheson.
- James R. Wallis acquired land by purchase and assignment at Muscowpetung in 1909. The assignment was from the Western Canada Colonization Company, which acquired land both here and at the Crooked Lakes sale in 1908. Wallis may have been related to Daniel Wallis, also of Iowa, who got land at the Sharphead sales circa 1900. Wallis leased and sold his land, and had considerable trouble paying for it, resulting in some temporary cancellations and some payment concessions. There may also have been some connection to Wilbur Bennett in Omaha, Nebraska/Council Bluffs, Iowa, who also got land at Sharphead and recruited buyers from the United States.
- The Western Canada Colonization Company is not known to have had direct ties to the Department in any way. In 1904, the eventual founders of this company, including F.B. Lynch and O.A. Robertson of St Paul, who then had the Northwest Colonization Company, joined with A.D. Davidson of the Saskatchewan Valley/Saskatchewan Valley and Manitoba Land Company fame to form the Western Canada Immigrant Association. Davidson was part of the land syndicate connected to Sifton, Smart, Speers, Adamson, and McDonald.
- W.A. Kenning, a realtor from Winnipeg, had a relation in Guelph and ties to George Henry Stewart of Winnipeg (Stobart Sons and Co.). He was one of the men who were meeting with Grant, Bennett, Simpson, Judge Brown, and Aikins about the Thunderchild/Moosomin sales. Kenning and Stewart also acquired land at the Crooked Lakes sales in 1908.

There are other queries. Was E.G. Paget of Indian Head, who bought land at Crooked Lakes 1908, related to Frederick Paget, chief clerk for the Department in 1904, who was formerly a clerk at the Commissioner's Office in Regina? Paget had access to files concerning sales and surveys. Was

Francis Atherton Bean, who acquired land through the Western Canada Colonization Company (Crooked Lakes sales) and became a farmer in Saskatchewan, related to John Bean Lash, Indian Agent and cousin of Z.A. Lash, who represented Bean as legal counsel? Was Michael Robson of Regina who bought land at the Muscowpetung sales in 1909 related to Elizabeth Robson, who also worked in the Regina Commissioner's Office? Was A.P. Collier, Sifton's secretary, related to the Peterborough, Ontario, E.H. Collier who acquired land through the Western Canada Colonization Company also (Crooked Lakes)? Was D.L. White, partner of F.W. Grant and W.E. Preston in some land sales, related to E.H. and W.J. White? Similarly, it is not known whether W.J. Aikins was related to J.A. Aikins, who had investments with Sifton.

RECOMMENDATIONS FOR FUTURE RESEARCH

Issues

Because of time limitations, there was no research on land surrenders outside the prairies or on surrenders taken after 1911. In particular, these surrenders should be linked with the pre-Confederation surrenders of eastern Canada and comparisons made. This study will help establish the development of departmental practice. Similarly, the precedents of this era contributed to the surrender practice through to 1930, but many other events were also important: for example, Commissioner Graham's Greater Production plan, the war, and the Soldier Settlement era. By 1930, the Department had ostensibly ceased the practice of surrender for sale, but surrenders continued to take place when they were perceived to be necessary.

The extensive investments of Clifford Sifton are at best mysterious and, should demand warrant it, a complete search should be made of his correspondence files, with follow up research on some of his correspondents and partners. No definite link to speculation in Indian lands has been found at this point, but additional research may be justified to determine whether Sifton benefited from the natural resources of the West by using his extensive connections and associates to invest and to keep his own involvement anonymous. One lawyer in Winnipeg asserted in the late 1970s that Sifton was behind the speculation on Moose Mountain lands, but this connection has not been proved.

Similarly, little research has been done on colonization companies, particularly the ones that flourished at the turn of the century. There is enormous potential for work in this area. Some of this research will not yield insights into Indian land sales, but it will help researchers to understand the business and political dynamics of land development in this era.

Genealogical research is necessary to trace potential connections between departmental employees and land companies, buyers, and speculators. For example, was John Bean Lash related to Francis Atherton Bean, the former a departmental employee, and the latter a speculator? Was Wilbur Van Horn Bennett related to William Van Horne of the CPR? Was William Morris Graham related to Alexander and Edmund Morris? Was Sifton's adviser John Bain of Scotland related to William Bain, an investor in several land companies through the firm of Blake, Lash, Anglin and Cassels?

We need a systematic comparison of surrenders on the basis of land quality. Was the land surrendered of higher quality than the remaining reserve? If so, did the surrender affect future agricultural success?

There is a tremendous gap in our knowledge of band processes of understanding and consent. For the most part, the departmental and government postulations on the question of majority consent were predicated on the assumption that consent, as obtained, was informed. For instance, according to these assumptions, those who did not attend the meeting to vote were making an informed decision, aware of the consequences of their not attending. Similarly, it is assumed that they were aware of voting procedures, and of the consequences of signing the surrender document. If these assumptions are questioned, one would need to know more about the knowledge, traditions, and procedures of the bands extant at the time.

Similarly, we need to know more about the band's understanding of the role and powers of the negotiators. Did they know what authority the individual had to negotiate? Did they assume or were they told that this person had the power to enforce implementation?

We also need to know more about those cases where there was an apparent reversal in either opposition or support. For instance, a band might reject the notion of a surrender at one or two meetings, and then the agent would report that the band wanted a surrender. Several questions come to mind: Was all or part of the band present and vocal at the preliminary meetings? Who initiated and

supported the proposal? Was the entire membership aware of the proposal? What was the role of the Indian Agent? What role did economic factors play?

Part of the answer lies in an understanding of band economics and of accounting and paying procedures. The more information we have on the way in which band income and disbursements were controlled by the agent, as opposed to individual band members, the more we can ascertain how much flexibility there was in the manner in which income could be generated and spent. For example, we know from 1909 departmental circulars that land sales distributions and annuities could not be expropriated by the agent to pay creditors, but money from wage labour or sale of produce could be. The only way that land sales moneys could be used to pay for debts, then, was with the band's approval for use of capital or interest.

Were surrenders for cash understood as the primary means of raising cash not available through appropriations? Was this cash a supplement to, or a replacement for, treaty appropriations? Did individuals have any leeway in how their own funds were spent?

What about the practice of taking surrenders: Were the payments made before the affidavit was taken? Did payments ever exceed the amount authorized for distribution? Were there discrepancies between the signatures or text of the original surrender document and the one that accompanied the request for approval by Order in Council? If a check was done on the absentees who were paid after the surrender was signed, would it reveal anything informative about who was present at the surrender meeting?

Comparisons should be made of the voters' list, if there is one, with the signatures on the surrender document. Paylists, interest distribution lists, and census records should be checked for confirmation of the ages of the recorded voters. Was there proper certification of the affidavit by the band? Did the proper authority witness the signatures? Was the official taking the surrender properly authorized to do so?

We also need to know about the aftermath of surrender. Which bands reported an improvement, or at least a status quo, on individual earning potential? Which bands became more self-supporting, and which bands became less so? In what situations was departmental spending subsequently cut, and land sales used to fund items previously paid for by the Department?

With respect to land sales, researchers should query the following: Was the sale competitive? Was there sufficient advertising, including lead time? Could buyers examine the land or obtain adequate descriptions? Was there any access to upset prices before 1910? Was there any evidence that potential buyers “rigged” the sale? Was the sale held at a time of year when buyers could attend and would have had money in pocket? Was the sale held in a year when prices were optimal, given market demand in the area, grain prices, and disposable income available to farmers? Was the method of sale appropriate? Was the auctioneer fair? Was there any indication that he might be unduly benefiting from the contract or that he was favouring buyers?

In regard to Land Management fees, research is required to determine whether the band was reimbursed after 1913 for moneys collected from sales. If there was an advance from the fund, did the bands pay interest on this advance? See, for example, Muscowpetung, Roseau River, Pheasant’s Rump, and Ocean Man.

Researching Land Sales

Records held by the Department, including the Auditor General’s reports and trust fund records, can be examined to determine whether the band received the benefits promised by the surrender agreement. The Department kept files on each buyer and kept copies of correspondence in these files, and they are an excellent source of information. They are now part of the Central Registry series.

Relevant questions to be asked include the following: Did the Department collect interest in the appropriate manner for the time? Did the Department enforce sales collections? If not, was there any loss to the band when payments were delinquent or were cancelled? Did land sales agents or collection agents receive a portion of what they collected? Were the auctioneers paid a reasonable fee, in the context of the time? Was political influence used to defer payments, or alter the terms of payment? Was the recorded buyer the one who was actually paying for the land? Were there any irregularities in assignments? Were the Land Regulations followed when the surrender sales were not exempted from them? Does the pattern of assignment, the issuance of patent, and the raising and/or transfer of title indicate who had the “real” interest in the land? Was debt reduction applied to the outstanding purchases? Were there crop share arrangements?

Sources

There are many other sources which were not fully investigated in this study. Newspaper accounts can yield many small items of information about land prices and sales, club meetings, public profiles of key people, and the social and economic milieu of the times. Social columns, for example, can reveal genealogical connections. This is very time-consuming work, but it can be rewarding.

Corporate papers, held in private and provincial archives, can shed light on relevant correspondence. Records of civil litigation can reveal many of the dynamics of company dealings and procedures which would otherwise be obscure.

More research into the Manitoba Archives would probably be warranted, given the prominence of Winnipeg as the home office for most land and real estate companies. This research, of course, can be supplemented by work in other provincial and private archives, especially in the search for corporate records.