

The Facts on Claims

Indian Claims
Commission

Fairness in
claims negotiation



THE FACTS: WHAT IS A SURRENDER CLAIM?

The *Indian Act* defines a surrender as an agreed-upon transfer of Indian land to the Government of Canada, usually for money. Under the *Indian Act*, reserve land can only be sold to the federal government, which may then sell or lease the land on behalf of the Indian band or First Nation.

These surrender rules date back to the *Royal Proclamation of 1763* when King George III of England directed that Indian land could not be sold directly to private individuals but only to the Crown through the agreement of the Indian band at a public meeting. This was to prevent "great frauds and abuses", and created within government an ongoing fiduciary, or trust-like, responsibility to protect Indians and Indian lands.

TWO TYPES OF SURRENDER CLAIMS

Land surrender claims are **specific claims**. According to the 1973 federal claims policy, they arise if the land surrender was taken incorrectly. Surrender claims may arise if there was a **technical breach** of the *Indian Act* or if the surrender was not in the best interests of the First Nation – that is, if there was a **fiduciary breach** of the government's obligation.

Technical Breach

According to the *Indian Act*, to be valid a land surrender must be approved by a majority of Indian band members eligible to vote at a public meeting called for that purpose. Until 1951, only men over 21 could vote.

Example: Blood Tribe/Kainaiwa of Alberta – 1889 surrender

In 1889, Canada accepted a surrender of 440 acres of land reserved under Treaty 7 without a public vote or payment. In April 1998, Canada agreed that it had taken the land in breach of the *Indian Act* and it agreed to negotiate compensation. The land could not be returned because it is now privately owned.

Fiduciary Breach

According to the law, surrender claims may arise if, for example, the First Nation asserts that the surrender was not in its best interest or if the land was obtained through "tainted" dealings in breach of the federal government's fiduciary obligation to First Nations.

Example: Moosomin First Nation of Saskatchewan – 1909 surrender

Canada took, against the First Nation's express wishes, a surrender of 15,360 acres of prime agricultural land reserved under Treaty 6, for sale to non-aboriginal farmers. As a result, the community was moved to land that was not suitable for farming and its livelihood was destroyed. In December 1997, the government agreed it had not acted in the First Nation's best interests and accepted this claim for negotiation of a settlement. In October 2003, Canada and the First Nation signed a settlement agreement for \$41 million in compensation.

PRAIRIE SURRENDERS: THE HISTORY OF MANY SURRENDER CLAIMS

Between 1871 and 1921, Canada and First Nations signed 11 treaties covering much of western and northern Canada. The government sought clear title to the land to open the west to settlement in exchange for reserves and other promises. For First Nations, reserves were crucial to protecting their way of life. For Canada, reserves provided a way of converting First Nations from hunting to farming.

Yet between 1886 and 1911, about 21 per cent of reserve land was surrendered back to Canada. By the 1930s, Canada had taken more than 100 surrenders of reserve land on the Prairies. Most surrender claims now filed with the Department of Indian and Northern Affairs Canada originate from these prairie land deals.

Kahkewistahaw: "tainted" dealings

The winter of 1907 was harsh for the Kahkewistahaw Band of Saskatchewan. Disease and starvation had reduced the community from 356 to 84 people. Chief Kahkewistahaw, who had opposed requests to surrender the Band's land in the fertile Qu'Appelle Valley for 22 years, had died. Government agents picked that January to seek a surrender to appease local farmers and others who had wanted the excellent farm land for some time.

Twice that winter, the Band voted against the surrender. Only at the third meeting, when the government agent arrived offering cash in hand, did the First Nation vote to surrender three-quarters – 33,281 acres – of its best lands. The Kahkewistahaw were left to survive on the steep escarpment and lower benches of the Qu'Appelle Valley with little arable land.

In December 1997, Canada agreed that it had breached its fiduciary obligation to the First Nation and accepted the claim for negotiation.

In a formal signing ceremony held in June 2003, Canada and the Kahkewistahaw First Nation ratified a \$94.6 million settlement for the First Nation's 1907 land surrender claim. The settlement is the second largest land claim settlement in the history of Canada and the largest in Saskatchewan.

At the turn of the century, many settlers had come to see Indians and Indian reserves as standing in the way of "progress". Farmland in Ontario, Quebec, and the Maritimes was hard to come by, and people there saw reserve land in the Prairies as a "waste". Land speculators bought cheap land in blocks, reselling it at a profit. Often these speculators pressured the government to seek the surrender of reserve land for sale on the open market; in many cases, speculators sought land that First Nations were already farming successfully. Speculators were bankers, lawyers, and businessmen; others were government employees with knowledge of the reserve land's agricultural value.

Many First Nations, suffering from disease, the end of the buffalo hunt, and federal policies that restricted their freedom of movement and access to legal advice, could not prevent the surrender of their reserve land. In some cases, it is questionable whether First Nations understood what government officials meant when they asked for the surrender of reserve land, because of difficulties in translating European land-ownership concepts into aboriginal languages.

Many land surrenders from this period have been proven unlawful under the federal government's 1973 Specific Claims Policy, and Canada and First Nations continue to deal with this legacy.

MORE INFORMATION

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