

Chapter 17

Surrenders

This chapter provides information on researching the surrender of Indian reserves. It provides some basic context information for research, outlines the general research process, and lists resources to consult.

Key Terms

Surrender is the legal process by which a community extinguishes its interest in reserve lands and disposes of the lands to governments or non-Indigenous peoples. This process is in place because a community cannot sell, lease, give away, or otherwise part with reserve lands directly. All lands must be formally surrendered to the Crown and the Crown acts on the community's behalf to negotiate the transfer. Both parties must consent to the surrender. The Crown has an obligation to deal with the land or resources in accordance with the band's instructions and interests, before, during, and after surrender. In some cases, the Crown's surrender responsibilities may include compensation.

Surrenders are regulated under the *Indian Act*. Certain procedures must be followed or the surrender may be invalid. Under the present Act, a community may either make an **absolute surrender** (sell the land outright) or a **conditional surrender** (designate the land for a particular purpose, such as a lease, or surrender it with certain terms imposed). Lands that are surrendered absolutely are no longer part of a reserve.

Researching Surrenders

Important Considerations for Research

Researching the actual procedures of a surrender is only part of the job. The circumstances leading up to and surrounding a surrender, the consequences of it, and compensation are all equally important. It is therefore essential that you track the process as accurately as possible from start to finish. Thoroughly investigate any references to consultations with the community, any opposition that was expressed, any disagreements over compensation, the validity of the signatures and any information about land valuations that may have been carried out.

Prior to the surrender

The circumstances leading up to and surrounding a surrender should be documented as completely as possible. For example:

- Who proposed the surrender? For what purpose?
- To what extent did the Crown inform and advise the band about the surrender?
- Was the surrender voluntary? Was the band under any pressure to surrender the lands?
- What was to be surrendered and what was not to be included in the surrender?
- Was the surrender necessary? Did it go beyond what was necessary?
- Were there alternatives to surrender?

During the surrender

- Pay close attention to the surrender procedures followed and note whether they appear to be in accordance with the *Indian Act* in effect at the time. Clearly note any apparent errors or omissions in the procedures followed.
- When and where did the surrender take place and under what conditions or circumstances? Was there any community objection to the surrender process?
- What notice did members receive of the surrender vote?
- Did anyone provide an explanation of the surrender?
- How many band members could have voted? How many did vote?
- Were all the people that agreed to the surrender members of the band and were they eligible to vote?
- Did anyone propose conditions on the surrender? Were any conditions imposed?

After the surrender

- Your findings should indicate what happened to the land that was surrendered and if it was used for the purpose for which it was surrendered.
- Note whether compensation was involved, track how compensation was received and distributed and clearly note any apparent errors or omissions in the procedures followed.

The Research Process***Talk with community members***

Elders or other community members may have information about the surrender you are researching. It is always a good idea to start your project in your community and talk to as many people as possible about the issues you are researching. Chapter 6: Oral History offers detailed information about interviewing community members.

Conduct basic reserve research

Doing some basic reserve research (if the community has not already done so) will help give you an historical overview of the reserve involved and establish the nature of the

surrender and its exact date. See Chapter 5: Basic Reserve Research for help identifying the documents you need to review.

Gather documents connected to the surrender

You should check any documents connected to the surrender at your tribal council or band office or elsewhere in the community. Cross-reference them with the Indian Affairs copies to see if there are any discrepancies. See Chapter 4: Documents for information on the documents listed here.

The Surrender Documents/Instruments

- Acquire all the official Indian Affairs **instruments**, legal documents about the surrender itself. These are available through INAC's Indian Land Registry System database.
- Track down any maps, surveys or field notes relating to the surrender. Information about these documents is available in Chapter 10: Maps and Surveys.

Documents about the Process Surrounding the Surrender

- Check to see if there are any relevant archived Indian Affairs records (**RG 10** at Library and Archives Canada LAC).
- Check to see if there are any relevant active Indian Affairs records.
- You may also wish to review active or archived provincial ministry files, especially if a provincial ministry was involved in acquiring the land.
- You may also want to search for land title records to see how the status of the land is currently recorded.

Documents about the Payment of Monies Connected to the Surrender

- You may need to track the history of any interest distribution payments that were connected with the transaction you are investigating. This information may be in either the archived or active Indian Affairs records.
- You may want to investigate the payment of royalties connected to the surrender. To verify that money owed the band was actually paid, you will need to arrange for access to Indian Moneys Directorate files at the INAC headquarters office. Review the section on archival research in Chapter 3: Resource Institutions. The Indian Moneys Directorate will be able to provide you with annual statements of your band's accounts. It is a good idea to request accounting for several years surrounding the date you believe payments were made. Reconstructing the payment path from royalty statements to band accounts can be very challenging. You may need the advice of an accountant if your initial research appears to indicate significant discrepancies.



Research the required surrender procedures

Surrenders must be carried out in accordance with the provisions of the *Indian Act* as it stands at the time of the surrender. You will want to check the version of the Act for the time period you are researching to see if the procedures that were followed to obtain the surrender met the legal requirements of that time. If not, you may have a basis to challenge the surrender. If there is any question about the validity of a surrender you may wish to have a lawyer review it.

You need to review the *Indian Act* in effect on the date that the surrender took place. For example, if the surrender occurred in 1930, then the *Indian Act* in effect at that time is the text you must refer to in order to check whether the surrender procedure was done as required. There are a number of publications that provide a history of the *Indian Act* (see the “Resources” section below). Include a copy of the relevant *Indian Act* surrender provisions in your report documents.

For some types of surrender research, such as surrenders connected to road or railroad rights-of-way, you may also need to look at other legislation besides the *Indian Act*. Some legislation delegated authority or power to expropriate lands. For more information on this topic, see Chapter 21: Rights-of-Way.

Resources

Kydd, Donna L. and Shira Lee Kredentser. 1993. *Land Use on Reserves, Surrenders and Designated Lands*. Vancouver: Legal Services Society of BC. (This publication is no longer in print, check UBCIC Resource Centre or local libraries.)

Imai, Shin (Ed.). 2004. *Annotated Indian Act and Aboriginal Constitutional Provisions*. Toronto: Carswell.

Venne, Sharon Helen. 1981. *Indian Acts and Amendments 1868-1975: an indexed collection*. Saskatoon: University of Saskatchewan Native Law Centre.