

Specific Claims Branch Review
of Band's Claim Concerning the
1907 Surrender

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CR#SK362-C02 (Enclosure 1j)

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of
Band's Claim
Concerning the 1907 Surrender

This report was prepared at the request of the Specific Claims Branch (West) and does not necessarily represent the views of the Government of Canada

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I. SUMMARY OF CLAIM

On 28 January, 1907, the Kahkewistahaw Band surrendered 33, 281 acres of the Kahkewistahaw Indian Reserve #72. This was confirmed by Order in Council No. 410/1907 on 4 March, 1907.

The Kahkewistahaw Band bases its claim that the surrender of 28 January, 1907 was null and void on the following grounds:

1. The surrender and sale was unconscionable.
2. The Crown breached both a trust and a fiduciary obligation: a) by securing the surrender, and b) by selling the surrendered land at less than fair market value.
3. The Crown did not comply with the provisions of section 49 of the Indian Act in effect at the time. Noncompliance with s. 49 consisted of the following:
 - a) the Department official who obtained the surrender was not validly authorized to do so, nor to certify the Affidavit required by s. 49(3); b) a majority of the adult male band members did not assent to the surrender; c) the Affidavit certifying assent to the surrender was not sworn by "some of the Chiefs or principal men" as required by s. 49(3). Further, it is claimed that a surrender cannot be validly obtained from a Band having no Chief or council.

4. The Kahkewistahaw Band did not validly surrender the road allowances between the projected sections in the relevant area.

I. CHRONOLOGY OF EVENTS

14 Sept. 1874: Chief Ka-kh-Nis-Ta-Haw, on behalf of his Band, affixed his mark to Treaty #4 at Fort Qu'Appelle.

1876: Surveyor William Wagner laid out a reserve for Kahkewistahaw's Band, consisting of 41,414 acres, along the Qu'Appelle River, south of Round Lake (present site of Ochapowace Reserve #71).

1880: A.P. Patrick's survey party started defining limits of Crooked Lakes Reserves.

1881: Surveyor J.C. Nelson adjusted location of 5 Crooked Lakes Agency Reserves so that all were laid out on the south side of valley and frontage on Qu'Appelle River was reduced.

New Kahkewistahaw Reserve #72 consisted of 46,720 acres and fronted on Qu'Appelle River. Indian Reserve #72A, consisting of 96 acres on north side of Crooked Lake, was set out as a fishing station. Both reserves were confirmed by OCPC 1151/1889, (19 May 1889) and removed from operation of Dominion Lands Act by OCPC #1694/1893 (12 June 1893).

Subsequently, federal and territorial government officials agreed that the trail from Fort Ellice to Fort Qu'Appelle did not form part of Reserve #72, as the trail was transferred to the Territories (May, 1888; September, 1889) prior to the reserve survey being confirmed.

26 May 1885: Thos. Evans, J.P., Broadview petitioned Sir John A. MacDonald and Sir David MacPherson, Minister of Interior to have the reserves immediately north of Broadview opened up for settlement. Indian Commissioner E. Dewdney was to make an inquiry.

1886: Moosomin area residents petitioned Minister of Interior, during western trip, to move reserves 6 miles back from C.P.R. in exchange for other lands.

22 March 1886: Indian Agent McDonald objected to proposal because act would be looked upon with suspicion and land in question contained best hay land.

13 Aug. 1889: Memorandum of Acceptance of Conditional Surrender of Lands for roads was signed by various Broadview area residents. Certain obligations were undertaken to induce Crooked Lakes Indians to surrender 4 roads.

1890: Kahkewistahaw Band surrendered land for two trails contemplated in 1889 Agreement. Lands were held by S.G.I.A. New surrender was taken in 1902 so that roads could be transferred to Territories (Confirmed by OCPC, 12 Dec. 1902).

26 Feb.1891: G. Thorburn presented resolution from Committee of Broadview residents to Minister of Interior to open up south range Tp. 17 in reserves in return for compensation.

10 Mar.1891: Agent McDonald opposed proposed surrender. Was no longer possible to exchange for other hay lands. "No reasonable money value" could compensate for loss of those hay lands.

1898/99: Mr. R.S. Lake, M.L.A., N.W.T. lobbied Clifford Sifton to get portion of reserve adjacent to railway open for settlement. Mr. Sifton directed J.A. McKenna to investigate.

Feb. 1899: Surveyor A.W. Ponton supported proposal to obtain surrender. "Excess land" held by Indians was not benefitting them but was hindering development of towns. Sifton was "disposed to concur" and requested views of Indian Commissioner and Agent.

April 1899: Indian Commissioner Laird opposed seeking surrender at that time, as land was needed for

hay--situation might change if could successfully grow brome grass for hay elsewhere on reserve.

- Jan. 1902: Indian Agent Begg sought permission to submit to Band proposal to surrender of strip of Reserve land 3 miles wide along C.P.R. to enable Indians to pay debts, purchase equipment and supplies.
- Jan. 1902: Indian Commissioner Laird rejected proposal- thought lands in question were needed for hay purposes.
- Feb. 1902: Petition by Broadview & Whitewood area residents urged Minister of Interior, Clifford Sifton, to obtain surrender of Crooked Lakes Reserves for sale to settlers.
- May 1902: Commissioner Laird reported that Indians of Kahkewistahaw and Cowesses Bands "strongly opposed surrendering any portion of their reserves." Laird maintained view that the best land and wood was in the southern portions of the reserve.
- Mar. 1904: Clifford Sifton directed surrender question be investigated by Mr. McKenna as Broadview area residents were anxious that southern half of reserve be opened for settlement.
- Mar. 1904: Assistant Indian Commissioner McKenna advised against his meeting with Indians to discuss surrender; thought it might create impression Department was acting for settlers; suggested Agent discuss matter quietly. -
- Sept. 1904: Mr. Laird reported that the Indians might be agreeable to a surrender. At annuity payments, Department officer had pointed out benefit Indians could derive from surrender i.e. use portion of proceeds for fencing to prevent settlers' animals grazing on reserve lands.
- June 1906: Chief Kahkewistahaw (#1) died. Headmen, Wah-sa-Case (#2) and Louison (#28) died sometime prior to the payment of annuities July, 1906. Band was without Chief or Headman until June, 19 11

- June 1906: Inspector W.M. Graham met with Crooked Lake Indians for 3 days with regards to surrender of estimated 95, 0000 acres. Optimistic about chance of obtaining surrender in light of Indians' knowledge of Pasquah surrender and "good cash payment" that Pasquah Indians received.
- 3 Oct. 1906: Acting D.S.G.I.A., J.D. McLean authorized Inspector Graham to submit surrenders to Kahkewistahaw, Cowesses and Kakeesheway Bands. Forwarded cheque for one-half of 10% of estimated sale proceeds. Terms of surrender not fully settled.
- 16 Oct. 1906: Secretary, J.D. McLean authorized Inspector Graham to insert same conditions as in Pasquah surrender with "any necessary changes."
- 23 Jan. 1907: Meeting of Kahkewistahaw Band held to consider land surrender agreement proposed by Department. Inspector Graham presided, 5 of 19 eligible voters present, voted for surrender.
- 28 Jan. 1907: Second Band meeting held to discuss proposed surrender. Inspector Graham explained advantages for over 2 hours. Of the 17 voting band members present, apparently 11 voted in favour of the surrender. Inspector Graham recommended sale in June.
- 4 March 1907: By OCPC 410/1907, Kahkewistahaw Surrender was approved by Governor General in Council.
- 19 March 1907: Secretary McLean applied to provincial Public Works Department to have irregular roads through surrendered portion of reserves exchanged for section roads.
- June 1907: J. Lestock Reid completed subdivision survey of surrendered lands in Reserves #72, #73.
- Dec. 1907: Agreement reached between provincial Department of Public Works and D.I.A. regarding irregular roads crossing reserves.
- April 1908: Frank Oliver recommended salary increase for W.M. Graham based on general performance and

his "furthering the desires" of Department in obtaining land surrenders from Kahkewistahaw and other Bands.

Sept. 1908: Department decided lands claimed by Hudson Bay Company would be advertised for sale but exempted by claim.

25 Nov. 1908: Sale of surrendered lands held at Broadview. Of 322 parcels offered for sale, 199 sold at a total price of \$229,117.20.

15 June 1910: Second auction sale was held--all lands offered for sale were sold.

1912-1959: Grants with respect to lands surrendered by Kahkewistahaw Band were issued during this time period.

III. HISTORICAL REPORT

1. On 15 September, 1874 the Queen, by Her Commissioners, the Honourable Alexander Morris, the Honourable David Laird and William Joseph Christie entered Treaty #4 with the Cree, Saulteaux and other Indians at Fort Qu'Appelle. Chief Ka-Kh-Nis-Ta-Haw, chosen by his people for this purpose, affixed his mark to Treaty #4 at this time. (Doc. 1).

2. By Treaty #4 the Cree and Saulteaux tribes and other Indians inhabiting the territory in question did "cede, release, surrender and yield up" to the Government of Canada "all their rights, titles and privileges whatsoever to the lands" saving a qualified right" to pursue their avocations of hunting, trapping and fishing" in return for the promise, among other things, that the Queen should assign reserves of sufficient area to allow one square mile for each family of five or in that proportion-

. and provided further that the aforesaid reserves of land, or any part thereof, or any interest or right therein, or appurtenant thereto, may be sold, leased, or otherwise disposed of by the said Government for the use and benefit of the said Indians, with the consent of the Indians entitled thereto first had and obtained, .

It is further agreed between Her Majesty and her said Indian subjects that such sections of the reserves above indicated as may at any time be required for public works or buildings, of whatever nature, may be appropriated for that purpose by Her Majesty's Government of the Dominion of Canada, due compensation being made to the Indians for the value of any improvements thereon, and an equivalent in land or money for the area of the reserve so appropriated. (Doc. 1)

3. At the time of paying treaty annuities in 1875, Commissioners Christie and Dickieson indicated that Kahkewistahaw's Band, consisting of 58 families, "have no desire to commence farming at present, and gave no intimation with regards to the localities where they desired their reserves to be set apart." They were described as plains hunters dependent entirely on the buffalo for subsistence. (Doc. 2, p. xxvi)

4. During the 1876 season, surveyor William Wagner laid out a reserve for Kahkewistahaw's Band along the Qu'Appelle River. (Doc. 3,4). It consisted of 41,414 acres south of Round Lake, opposite to Ka-Ki-Shee-Way Reserve. (Doc. 5)

5. Surveyor Allan Poyntz Patrick reported that during 1880, he surveyed Kewistahaw's reserves. He states that:

. Col. McDonald informed me that the Indian Bands upon the "File Hills" and "Crooked Lake" reservations were making great complaints that their reserves had not been laid out, he requested me to lose no time in proceeding to define the limits of these reservations. In consequence of his urgent request, I divided my party, sending one in charge of my assistant, Mr. Johnson, to "Crooked Lake," while I proceeded myself to the "File Hills." (Doc. 6, p. 115)

At the time of reporting, namely 16 December, 1880, Mr. Johnson had not yet reported but advised "that he left the Indians on this reservation well satisfied" and "that the soil is good and timber plentiful." (Doc. 6, p. 115)

6. In his annual report dated 12 September, 1880, Agent McDonald reported that four bands at Crooked Lake went onto their reserves (which were being surveyed) for the first time in August, 1880. (Doc. 7)

7. The next year, 1881, Surveyor J.C. Nelson was instructed to survey:

suitable reserves on the south side of the valley for the bands of Mosquito, O'Soup, Ka-kee-wis-ta-haw, Ka-kee-she-way and Cha-ca-chas, and to reduce the length of the frontage of the reserves already surveyed for them on the River Qu'Appelle. (On the north side, frontage of 30 miles, and 21 miles on the south side) (Doc. 8, P. 131)

He did not have the plans of the previous work done by Mr. Patrick to guide him. After a thorough examination of the area and communication with Agent McDonald in the presence of some Chiefs, he decided to adjust Kahkewistahaw's as follows:

. to cut five miles off the lower part of O'Soup's reserve, so as to give Ka-kee-wis-ta-haw a frontage on the river, and some bottom lands where they had already commenced farming. Ka-kee-wis-ta-haw's band have now a good reserve and a fair share of timber in the gulches leading to the river. (Doc. 8, p. 131)

Since Kahkewistahaw's Band then had no fishing ground fronting their reserve like the others, Mr. Nelson "thought it desirable to reserve for them a small bit of ground on the north side of Crooked Lake for a fishing station." (Doc. 8, p. 131)

8. In February, 1884, Nelson's survey party marked the boundaries of the fishing station. (Doc. 9, p.3)

9. Kahkewistahaw Reserve #72, consisting of 46,720 acres, (Doc. 10) and Kahkewistahaw Fishing Reserve #72A, consisting of 96 acres, (Doc. 11) were confirmed by OIC on 17 May, 1889 (Doc. 12) and removed from the operation of the Dominion Lands Act by OIC in 12 June, 1893. (Doc. 13)

10. In October, 1897, correspondence was initiated by J.Dennis, Territorial Deputy commissioner, Public Works, with Indian Commissioner, A.E. Forget regarding permission to remove timber to clear and upgrade the surveyed trail from Fort Ellice to Fort Qu'Appelle that crossed Kahkewistahaw, Cowesses and Sakimay Indian Reserves. (Doc. 14) The position of the Territorial Government, put forward by M. Dennis, was that the trail did not form part of the Indian Reserves that it crossed as it had been surveyed and transferred prior to the confirmation of the reserves in question. It had been surveyed in 1886 "under authority of Orders in Council dated the 11th of September 1885 and the 17th September 1889." Further the survey had been approved on 4 February 1888 and the trail transferred to the Territories by Orders in Council dated 10 May, 1888 and 17 September 1889. (Doc. 15, 16)

Assistant Secretary (Department Indian Affairs) McNeill agreed with Mr. Dennis' opinion. (Doc. 17)

11. Agent McDonald, in his 1881 Annual Report to the Superintendent General of Indian Affairs indicated that prior to Nelson's adjustment there appeared "a little dissatisfaction and jealousy among the Chiefs on the choice of the reserves at the Crooked and Round Lakes" and "owing to the want of timber for building and fencing purposes, it was considered advisable to move them to the south side." (Doc. 19, p. 224)

12. In May, 1886, Department of the Interior Secretary Mr. Hall, advised L. Vankoughnet, D.S.G.I.A. that:

This Department is not aware of the existence of any reserves on the North Shore of this [Crooked] Lake and [Qu'Appelle] River, as they were surrendered by the Indian Department some years ago, at the time the Reserves on the south shore were laid out at the request of the Indians, which reserves on the south side were granted to the Indians in lieu of those surrendered on the North side. (Doc. 20)

13. On 26 May, 1885 Thos. Evans, J.P. of Broadview, wrote to Sir John A. MacDonald requesting that the reserve lying immediately north of Broadview be opened for settlement as it "is a most serious obstacle to all improvement in this part of the North West Territories." He expected that "the few Indians who have pitched their scattered Tee Pees will in no way suffer from the removal,

whilst the town and district will receive that new life of which they now so much stand in need." Mr. Evans went on to state that an earlier petition to the Dominion government had resulted in a promise being given "that the matter should receive official attention." (Doc. 21)

On the same date, Mr. Evans wrote a letter in similar terms to Sir David MacPherson, Minister of the Interior, (Doc. 22) which was in turn forwarded to D.S.G.I.A., L. Vankoughnet. (Doc. 25)

On 5 June, 1885, D.S.G.I.A. Vankoughnet forwarded Mr. Evans' petition to Indian Commissioner E. Dewdney (Doc. 23) and wrote to Mr. Evans "that no previous petition appears to have been received by the Department in this matter--but inquiry will be made into the subject of your letter." (Doc. 24)

14. Following a trip by the Minister of the Interior to the North West Territories in early 1886, A.M. Burgess, Deputy Minister of Interior wrote to L. Vankoughnet, D.S.G.I.A. on 4 March, 1886 to obtain his opinion on "open(ing) negotiations with the Indians for the purpose of ascertaining their views" on the proposal to move the reserve back six miles from the C.P.R. (Doc. 27)

During the Minister's trip west, settlers in the Moosomin area had submitted "that it would be desirable in the public interest and in the interest of the Indians themselves" that a 6 mile wide strip of the Indian Reserves lying immediately alongside the Canadian Pacific Railway be given in exchange for other lands (eg.

"greater frontage along the river"; other "available land in the vicinity") "so as to give each member of the band an area not less than 160 acres." The settlers "represented to the Minister [that] the Indians would be perfectly willing to agree." (Doc. 27)

15. On 15 March, 1886, L. Vankoughnet requested from E. Dewdney, Indian Commissioner for Manitoba and N.W.T., a report on the proposal to move the Indian Reserve 6 miles back from the C.P.R. (Doc. 28)

16. In his report, dated 22 March, 1886, A. McDonald, Indian Agent for the Crooked Lakes Agency cautioned against the proposed exchange of lands "unless absolutely necessary." Agent McDonald's first objection was that "although they may be greatly benefited by the exchange proposal, still the act would be looked upon with suspicion by [the Indians]." Secondly, all three bands affected by the proposal, including Kahkewistahaw, would be giving up "the best of their hay." Agent McDonald expected these bands to have larger numbers of cattle in a few years "requiring several thousand tons of hay each, and we should in every way possible protect it for them." (Doc. 29)

However, Agent McDonald suggested an exchange of lands that might be satisfactory to both parties:

If the land immediately north of the Reserves extending from Sakemays (North of Long Lake) to Loud Voices eastern boundary extending six miles north was given in exchange

I think the area of hay lands could be got, the Indians would be justly dealt with, and the parties who are looking with envious eyes at the lands the Indians at present hold will be made contented. (Doc. 29)

The drawbacks of this proposed exchange, according to Agent McDonald, were that there were some homesteaders in the area proposed to be acquired and "the Indians will be giving up far more valuable land than they will be receiving." (Doc. 29)

17. Upon receiving Agent McDonald's report from Commissioner Dewdney, (Doc. 30) L. Vankoughnet, D.S.G.I.A. advised A.M. Burgess, Deputy Minister of Interior by letter dated 7 April, 1886, that "from information obtained in the matter it would not be prudent nor expedient to disturb the Ind[ians] in the possession of these lands." (Doc. 31)

18. On 15 April, 1886, A.M. Burgess, Deputy Minister of Interior replied to D.S.G.I.A. Vankoughnet to clarify a perceived misunderstanding. Mr. Burgess stated "there was no intention to disturb the Indians in the possession of their property without their consent." (Doc. 32)

However, in the view of the Minister of the Interior it was "exceedingly undesirable" for an Indian Reserve to run along a railway line for nearly twenty miles "if it is possible to avoid it" and it had been represented, in the terms that follow, by Broadview residents to the Minister that the Indians would consent:

... these Indians are quite willing, of course on condition of compensation of some kind, to have their reserve narrowed so that it would go along the river Qu'Appelle; but six miles back from the railway. (Doc. 32)

19. In turn, on 6 May, 1886, L. Vankoughnet, D.S.G.I.A. responded to Deputy Minister Burgess by reiterating the contents of Agent McDonald's report and concluding "it would not appear advisable:

1st - For the Gov't to excite the minds of the Indians by making a proposition to them to surrender part of their lands.
2nd - for the Dept. to accede to the proposition to make such an exchange as the Agent reports that the Indians would--even if they (procure) the same area of hay lands in such exchange--be giving up far more valuable land than they would receive.
(Doc. 33)

20. In addition to desiring the surrender of the southern portion of the Crooked Lakes Reserves for settlement, Broadview area residents wanted to secure public roads across these reserves to provide access to the "rapidly increasing" settlements to the north.

On 13 August, 1889 several residents of Broadview and Whitewood signed a "Memorandum of acceptance of a conditional surrender of lands for road purposes by the Crooked Lakes Indians. . ." The agreement set out four "express terms and conditions" undertaken by the signatories and upon which was predicated the consent of the Indians to the surrender of the road allowances.

The lands surrendered were to be held in trust by the Superintendent General of Indian Affairs.
(Doc. 34)

21. In 1890, the Kahkewistahaw and other Bands involved, gave surrenders of the road allowances described in the agreement to be held in trust by the Superintendent General of Indian Affairs. The surrenders were accepted by Order in Council dated 7 March, 1893. (Doc. 35)

22. In 1902, Commissioner Laird expressed the opinion to Secretary McLean that the 1889 Agreement was unenforceable and that it was unlikely that the Northwest Government would assume the obligations unless the roads were transferred to it. Accordingly, Commissioner Laird recommended the taking of a new surrender that would permit the transfer of the roads to the Territories. (Doc. 35) The Kahkewistahaw Band consented to a new surrender of the road allowances on 29 October, 1902. (Doc. 36) The surrender was accepted by Order in Council on 12 December, 1902. (Doc. 37)

23. On 26 February, 1891, Mr. G. Thorburn presented a resolution to the Minister (of the Interior) when he visited Broadview. The resolution stated:

That the opening up of the South Range of townships (17) in Crooked Lakes Indian Reserve [sic] for settlers, due compensation therefor being given to the Indians, is desirable, in the interests of the Town, of the Canadian Pacific Railway, the settlement of

this country and its

general interests and would prove to be to the advantage of the Indians also. (Doc. 39)

The petition indicated that the Minister's predecessor, Mr. White, promised to give "his immediate and most pressing attention" to this "most important of all the local matters brought to his notice" but no action was then taken by Mr. White "because of the decided opposition of officials of the Indian Department".

"Now, when by the friendly, generous, wise and consistent treatment of the Indians by the Government, the Indians, very specially those of Crooked Lakes Reserve, are fully convinced that every action of the Government regarding them is dictated by a sincere desire for their welfare, it would be a most opportune time to carry out this desirable project. (Doc. 39)

24. In his 10 March, 1891 report, Indian Agent McDonald again opposed the proposal to relinquish the southern portion of Township 17. (Doc. 40)

Firstly, Agent McDonald noted that the exchange of land he had proposed in his March, 1886 report was no longer possible, as the land North of the Qu'Appelle Valley had become occupied.

Secondly, Agent McDonald indicated that the main objection to the proposal is that:

the chief and best part of the hay lands belonging to Bands no. 71, 72 & 73 are in the land referred to, and although I am most anxious that the views of the people of Broadview should be met, still from my position as Indian Agent, I am bound in the interests of the Indians to point out the difficulties in the way, which are tersely these.

If these lands are surrendered by the Indians, no reasonable money value can recompense them, as their hay

lands would be completely gone, and this would necessitate no further increase of stock, which would of course be fatal to their further quick advancement, and would be deplorable, and the only alternative that I can see is to give them hay lands of equal quantity and value immediately adjacent to the Reserve interested, which I do not think is possible now.

That part of township 17 immediately North of Broadview is of very little use for Agricultural purposes a great portion being under water in wet seasons, and the rest is gravelly and in dry seasons it is all more or less impregnated with alkali, and were it open to settlers tomorrow I do not think there would be six settlers on it, in as many years. Its only value is for the purpose it is being used by the Indians, viz, putting up hay. (Doc. 40)

Agent McDonald also pointed out "that very little of the whole Reserve remains" if the whole of Township 17 in Ranges 3, 4, 5 and part of 6 is intended to be taken.

Agent McDonald was hesitant to place a proposal before the Indians without "a more definite idea . . . as to what is actually desired, and what recompense it is proposed to give for that which is surrendered". He feared it would cause

an indefinite unsettling of their minds, which would make further transactions much more difficult, they being, as you are aware, of a suspicious nature, or, as is very likely, a prompt refusal to entertain the idea now or in the future, which all things being considered is perhaps the best solution of this matter. (emphasis added) (Doc. 40).

These objections were communicated to Mr. Thorburn, at the direction of S.G.I.A.

25. On 19 January, 1899, Clifford Sifton, Minister of the Interior wrote Mr. McKenna, Assistant Indian Commissioner enquiring

"what chance" there was in opening up for settlement "a certain portion of the Indian Reserve north of the railway track at Broadview and Grenfell. (Doc. 42) Mr. R.S. Lake, Member of the Legislative Assembly of the North West Territories had presented the question, along with a memorandum and sketch to Mr. Sifton. (Doc. 43)

26. At Mr. McKenna's request (Doc. 44), Mr. Ponton, a surveyor, prepared a report on the matter, dated 17 February 1899, which verified Mr. Lake's figures. He referred to a "excess of land" resulting from "the decrease in the numbers of the Indians on these reserves, since the allotment was first made based on the 1879 paysheets.

Mr. Ponton supported Mr. Lake's suggestion that a surrender of the south half of Township 17 in Ranges 3, 4, 5 and 6 be taken from Reserves 71, 72 and 73:

for the reason that the Indians are not benefited by the land, and while it remains tied up, settlement of the large agricultural district lying south of the Railway is prevented owing to the lack of market towns between Whitewood, and Grenfell, which could not exist if depending on the trade south of the Railway alone. The proximity of such towns, which would doubtless be established, would be of equal advantage to the Indians-(Doc. 45)

(In fact, the town of Broadview was, and is, situated between Whitewood and Grenfell.)

It was Mr. Ponton's opinion that the land was unoccupied and that an even larger area could be surrendered. He stated:

. . . These lands, I am personally aware, are altogether unoccupied, and, indeed, I doubt if the Indians would incur any loss if the whole of Township 17 in the Ranges above-mentioned were opened for settlement. (Doc. 45)

27. Having received Mr. Ponton's report, Mr. Sifton was "rather disposed to concur in his opinion of the desirability of opening up a portion of the Crooked Lakes reserves. On 23 February, 1899, Mr. Sifton forwarded Mr. Ponton's report to Indian Commissioner Laird and requested the opinions of Mr. Laird and the Agent on the proposal along with "the Agent's opinion as to the probability of the Indians consenting to the surrender. (Doc. 46)

28. In his response on 22 April, 1899, Indian Commissioner Laird indicated he had discussed the matter with the Indian Agent, J.P. Wright and Lieutenant Governor Forget.

The main objection to the proposal concerned the value of lands as hay lands:

. . . The Agent says that the Indians of three of the bands cut most of their hay off the southern portions of these reserves, and it would be unwise to ask them to make a surrender of the land in question at present. The former Agent, Lt. Col. Macdonald, now of this office, is strongly of the same opinion. (Doc. 47)

However, Mr. Laird went on to say that the Agent was going to experiment raising Brome grass on the cultivated land. If this venture was successful, and the Indians no longer had to haul hay from the southern portion of the Reserve, "it would be easy to get them to agree to a surrender of the portion required for settlement

as shown in Mr. Ponton's plan". In light of this, Mr. Laird "hoped the citizens of Whitewood and Grenfell will delay their pressure upon the Department . . . for a year or two longer." (Doc. 47)

29. Clifford Sifton conveyed the gist of Commissioner Laird's report to Mr. Lake by letter dated 29 April, 1899 and concluded that:

it is best to do nothing at present; but the representations which you have made will be kept in view as I am desirous of meeting as far as possible the wishes of the settlers, while at the same time protecting the rights of the Indians. (Doc. 48)

30. In January, 1902, Indian Agent, Magnus Begg suggested a surrender for sale of "a strip 3 miles deep along the line of the C.P.R. on the southern boundary of the Reserves, also the Leech Lake Reserve, (all hay lands)" so that the interest on proceeds could be used to pay debts, and purchase more young cattle, lumber, etc.

Agent Begg thought this plan would be of "great benefit to the Indians of this Agency" since:

At present they have difficulty in paying up debts contracted for waggons [sic], harness, machinery etc. and in replacing those worn out.

In settling these accounts and making new ones, it is a continual drain on the cattle they raise and if they do not have mowers, harness, wagons etc. they cannot put up the necessary feed for the cattle they have, all of which prevents them from increasing their herds or having surplus beef cattle to buy provisions, clothing, lumber etc. (Doc.

49)

31. In his response dated 22 January, 1902, David Laird disagreed with Mr. Begg's assessment about the need for these lands.

... "I beg to say the information I have regarding the lands in question is that they are required for hay purposes. Where there are so many cattle (and the number ought to be increased) it would never do to have the Indians short of hay. It may be that owing to the wet season last year sufficient hay was secured outside of these lands, but the conditions in the future may not be so favourable and lands would in that case be again required for hay purposes. (Doc. 50)

Mr. Laird clearly did not favour taking action on Mr. Begg's proposal.

32. In early 1902, the residents of Broadview, Whitewood and surrounding districts submitted a petition to the Minister of the interior urging the Minister to "use his best offices to procure the assent of the Indians to the sale of this land to actual settlers". The petitioners represented that the proximity of the Crooked Lake Reserves to the towns of Broadview and Whitewood "seriously retards" their development. The petition stated that the land (285 square miles) was "much in excess of the requirements of the present Indian population" (600); that no Indians lived within three miles of the southern boundary of the Reserve and that "the Indians make no use of this strip either for hunting or for agricultural purposes". Finally, the petitioners stated that the "sale of this land . . . would greatly benefit the Indians".

The petition was signed by over 180 people representing a broad cross section of the population: ministers, doctors, tradespeople, merchants, C.P.R. employees, M.L.A.'s, teachers, postmaster and a number of farmers. (Doc. 51)

33. The Minister, through A.P. Collier, instructed J.D. McLean, Secretary of Indian Affairs to acknowledge the petition with a statement of the Minister's appreciation of the desirability of their object and a promise that "the Department will do its best to procure the consent of the Indians." Mr. McLean was instructed to have Commissioner Laird send some appropriate official to discuss the question of surrender with the Indians. (Doc. 52)

34. Acting upon the instructions from Secretary McLean (Doc. 54), Commissioner Laird himself "by previous appointment met the Indians in Council" to discuss the possible surrender of a strip two or three miles wide on the southern part of reserves #71 and #72 nearest the C.P.R.

The Indians were "strongly opposed to surrendering any portion of their reserves"; no band member present at the meeting favoured a surrender. Laird quoted the reasoning of some of the principal men including:

Kahkewistahaw--Chief of Band 72. I will tell you what I think. I was glad when I heard that you were coming to see us. When we made the treaty at Qu'Appelle you told me to choose out land for myself and now you come to speak to me here. We were told to take this land and

we are going to keep it. Did I not tell you a long time ago that you would come some time, that you would come and ask me to sell you this land back again, but I told you at that time, No."

Wahsacase--(Councillor Band 72) I am very much pleased to hear the Commissioner talk to us in the manner he has done. I am not going to say much but I am going to tell him what I think. I find that my reserve is small enough. You saw some of the buildings on the road here-out by the bluffs--they are going to try and make a living there, I will mention one--my son--also one of Louison's sons, has built there already, so we will have the benefit of the hay land on that part of the reserve. I say, I am unable to say that I can let you have what you ask about the land." (Doc. 55)

Mr. Laird expressed the view (as in previous years) that:

the best of their land is the part asked to be surrendered. Most of their land south of the bottom of the Qu'Appelle river is gravelly and not well adapted for farming. Their best wood also is on the south of the reserves. (Doc. 55)

35. In 1904, Clifford Sifton renewed his request that the Commissioner's office (specifically Mr. McKenna) look into whether "the Indians would be likely to agree" to the surrender and sale of the south half of the Reserve at Broadview and "whether it would be desirable from an Indian standpoint." Mr. Sifton indicated that "the people of Broadview and neighbourhood are very anxious" that should occur. (Doc. 56, 57)

36. In his response, dated 19 March, 1904 Assistant Indian Commissioner McKenna expressed reluctance to discuss the question of a surrender, in light of the "strong objection to surrendering

any portion of the reserves" voiced by the Indians in 1902 when Commissioner Laird met with them:

It seems to me that it would be bad policy to have me convene the Indians for the purpose of discussing anew a proposal to surrender, for it might create the impression that the Department is acting for the settlers in the matter. It would, I submit, if later information be required be more advisable to have the Agent who is on the spot inquire quietly as to the mind of the Indians and report. (Doc. 58)

Mr. McKenna referred to Mr. Laird's 1902 report in concluding that "it would not be advisable from an Indian standpoint, to dispose of the land" as the best of the land in Reserves 71 and 72 and the best wood were in the south portion of the Reserves. Mr. McKenna questioned whose interests would be served:

I observe that the object of the suggested surrender is stated in the Deputy Superintendent's letter to be to "open the land for settlement." Reading this in connection with the petition transmitted by you on the 2nd of April 1902, I take it to mean the sale of the land to actual settlers. I do not see how we can ask the Indians to throw open any reserve for such purpose. That would be making use of the land in the interest of adjoining towns and settlements, whereas the interest of those for whom reserves are set apart requires that any land which they surrender for sale should be sold at the best price obtainable, which our experience shows is secured by the disposition of the land in quarter sections at auction without any restriction as to settlement duties or the quantity which any one person may buy. (Doc. 58)

Secretary McLean authorized Commissioner Laird to have the Agent to take up the matter of a surrender with the Indians. (Doc. 59). Agent Begg died before reporting. (Doc. 61)

37. The circumstances at the July, 1904 annuity payments lead Mr. Laird to think the time might be opportune to take a surrender. The Indians complained that settlers' animals were straying onto the reserves and left for grazing. The officer in charge of the annuity payment, Mr. Lash, suggested that by surrendering a strip of the reserve land "a portion of the proceeds could be used to fence the reserve." (Doc. 61)

By letter dated 30 September, 1904, Mr. Laird reported to Secretary McLean, that "the Indians appeared to appreciate the suggestion, but wanted time to think it over." Mr. Lash, the officer paying the annuities, told the Indians "that on other reserves this plan [surrender for sale of lands to generate funds] had been adopted and was very satisfactory to the Indians (Doc. 61).

In light of this fairly positive response, Commissioner Laird recommended proceeding carefully in attempting to obtain a surrender:

I would suggest that shortly after the new Agent has been appointed and the affairs of the Agency fully reported upon by the Inspector, that the question of surrender be taken up with the Indians either by myself or the Asst. Commissioner, with full power to make a definite proposal to the Indians of say 10% of the proceeds of sale to be expended for their benefit in farming outfits and in a per capita payment in cash or for liquidation of debts.

Fencing, which is required, being a permanent improvement, could be afterwards paid out of the capital with the consent of the bands. (Doc. 61)

38. Chief Kahkewistahaw #1, died in June, 1906 (Doc. 63). The two Headmen, Wah-sa-case #2, and Louison #28 died sometime prior to the payment of annuities in July, 1906. (Doc. 64)

The Kahkewistahaw Band did not have a Chief or Council for some years after these deaths. On 3 August, 1910, Agent Millar wrote to Secretary McLean, asking the Department to grant the Band's request for permission to elect a chief and councillors (Doc. 65). It is clear from the reply of Assistant Secretary Stewart, that the Department thought that Louison and Wahsacase were still serving as Headmen and accordingly no new councillors could be appointed. (Doc. 66)

After the 1911 delegation of "Indians from the West" to Ottawa in 1911, Department Headquarters officials acknowledged that the Kahkewistahaw Band had neither Chief nor Headmen. (Doc. 67) Secretary McLean advised Agent Millar that, based on the Band's population of less than 100, it was entitled to 1 Chief and 1 Headman and Agent Millar was instructed to find out, at a meeting of the Band, the nominees favoured by a majority. (Doc. 67) By letter dated 10 February, 1911, Secretary McLean reminded Agent Millar to promptly report any vacancy in the office of Chief or Councillor. (Doc. 68) On 29 June, 1911, Agent Millar reported to Secretary McLean the results of the meeting held to choose a council: Joe Louison for Chief and Fred Ahetapew for Headman. (Doc. 69)

39. In his second annual report for the South Saskatchewan Inspectorate, dated 14 July, 1906, Inspector Graham stated that he had "made no special inspection of this agency in the past year" but that he had "visited it several times on special business". (Doc. 71, p. 158) This special business presumably referred to Inspector Graham's visit to the Crooked Lakes reserves to discuss the possibility of a land surrender. (Doc. 72) In his "personal" letter dated 19 June, 1906 to Frank Oliver, Inspector Graham reported:

I have just returned from Crooked Lakes Agency, Broadview, where I spent three days feeling the Indians with regard to the surrender of their land, (about 95,000 acres) . . . and I found that the word had already reached the Indians that Pasquah's Band had surrendered and received a good cash payment. . . .

In fact, I feel sure that if I had had the papers and money with me when I was there I could have obtained the surrender." (Doc. 72)

Mr. Graham proposed a strategy to follow to obtain surrenders from the Crooked Lakes Bands "along the same lines as Pasquahs." In the case of Kahkewistahaw, he thought the 1/20 cash payment should be based on \$5.00/acre. Firstly, he thought "the matter should be handled by our own people, without the knowledge of the outside public." He stated:

The people in adjacent towns are keen for the surrender, and as a result, the Town Council, the Board of Trade and Individuals have been talking to the leading Indians, and they now have all kinds of ideas of [sic] their head." (Doc. 72)

Secondly, Inspector Graham thought it was "necessary to have the matter thoroughly understood and the terms of surrender thoroughly

decided upon before the proposition is put to the Indians" because it would have a "bad effect" for the Department to go back with a second proposal and outsiders might "interfere in the interval." Thirdly, Inspector Graham thought the officer taking the surrender should have some discretion to meet small requests that might come up during the surrender meeting. (Doc. 72)

40. Mr. Graham's letter to the Minister was forwarded to D.S.G.I.A. Frank Pedley, on 28 June, 1906, who was instructed to report on the proper basis for the surrender of lands in the Crooked lake Agency. (Doc. 73)

41. W.A. Orr, In charge of Lands h Timber Branch, prepared a report on the proposed surrender on 3 July, 1906, of lands from Ochapowace, Kahkewistahaw and Cowesses Bands. Mr. Orr reported to Secretary McLean, that the Kahkewistahaw Reserve #72 contained as area 46,720 acres and a population of 84 (according to last census figures). He related that "under the terms of Treaty #4, the Indians of each band became entitled to a sufficient area to allow one square mile for each family of five, or in that proportion for larger or smaller family". At this time Mr. Orr did not know the acreage that it was proposed to obtain. (Doc. 74)

42. On 6 July, 1906, Secretary J.D. McLean wired Inspector Graham asking for "number of acres proposed surrendering at each Reserve, Crooked Lakes." (Doc. 75)

43. In his 24 September, 1906 letter to Secretary McLean, Inspector W.M. Graham set out his opinion as to how much land from each reserve should be asked for and his opinion as to the best plan to follow to obtain the surrender.

My opinion is that the Indians should be asked to surrender all of the land lying in Township 17 Ranges 3, 4, 5, and 6,--in all about 90,240 acres. The land in each reserve would be as follows,--Cowesses, 26,480, Ochapowace, 21,130, Ka ka wista haw, 32,640. The Department are aware that several futile attempts have been made to get this surrender. I am of the opinion however, that it can be obtained if handled judiciously. The money for the first payment should be on hand the day the meeting asking for the surrender is held, and the whole matter should be handled with dispatch. I am almost certain that Ka ka wista haw and Ochapowace Indians will surrender and I am hoping that Cowesses Indians will fall in line when they see the other Indians surrendering. (Doc. 76)

In the case of the Kahkewistahaw Reserve, which he said was 'very much cut up with small sloughs and scrub," Graham estimated the value was \$6 - \$9.00/acre and proposed paying the first payment on the basis of \$5.00 per acre.

Mr. Graham represented that the lands proposed to be surrendered were little used:

The Department will be surprised to know that if the Indians sell the ninety odd thousand acres of land it will not cut off more than four or five families, so that you will see how little the land is used by the Indians.

I am satisfied (it) would be useless to try to obtain a surrender of more land than I mention and on the other hand, I do not think the Indians should be asked to surrender less land than is stated above. (Doc. 76)

44. By memorandum dated 26 September, 1906, D. Schirr, Accountant informed Acting D.S.G.I.A. McLean that based, on Mr. Graham's data, \$46,000.00 would be required for a 10% payment, "half of which should, according to custom, be forthcoming when the surrender is signed, i.e. \$23,000.00." Mr. Schirr did not anticipate any delay in forwarding this money to Mr. Graham "whenever the papers are ready". (Doc. 77)

45. On 28 September, 1906, Mr. W.A. Orr submitted a report to the Acting Deputy Minister outlining the proposal for taking surrenders from 3 Crooked Lakes Agency Reserves. He asked "whether forms of surrender should be sent to Inspector Graham for submission to the Indians on terms as above proposed by him." (Doc. 78)

There appears on this memorandum a handwritten notation dated 28/9/06 from J.D.McLean, Acting Deputy Minister to the Minister: "Submitted whether Inspector Graham should be authorized to submit surrender to the Indians in the lines herein indicated." The answering notation of 20 September, 1906 was "approved go right ahead." (Doc. 78)

On October, 1906, J.P. McLean, Acting D.M. added a further notation: To Mr. Orr for necessary action. (Doc. 78)

46. By registered letter dated 3 October, 1906, Acting D.S.G.I.A., J.D. McLean forwarded to Inspector Graham, Surrenders for the Kahkewistahaw or Broadview Band, No. 72, 33,281 acres; and the Kakeesheway or Round Lake Band, No. 71, 37,573 acres; and the Cowesses Band, No. 73, 20,704 acres:

which surrenders you are hereby authorized to submit to the Indians under and in accordance with the provisions of the Indian Act. (Doc. 79)

A cheque for one-half of 10% of the estimated price of the land was included, and along with some other details, Mr. McLean suggested having "some provision in surrenders similar to that in the Pasquah surrender as to funding the shares of minors between certain ages." (Doc. 79)

47. By letter dated 9 October, 1906, Inspector Graham advised Secretary McLean that after dealing with other obligations he would proceed "as soon as I possibly can to submit the Department's proposal regarding the surrender to a vote." He did not think "the delay would have a prejudicial effect . . . in fact, I think it will have a contrary effect." (Doc. 80)

Mr. Graham agreed on the desirability of having a clause inserted providing for funding the shares of minors between certain ages "whether at school or not, to help purchase equipment for these young people when starting in life for themselves" but he

presumed "parents are to receive first payment of one-twentieth for all minors at school or at home, that interest on funded Capital will be at the rate of three per cent and will be distributed annually." He also sought authorization to "insert the same conditions as were in the Pasquah Surrender." (Doc. 80)

48. By letter dated 16 October, 1906, J.D. McLean, Secretary authorized Inspector Graham to insert the conditions in the Pasquah Surrender in the surrender of the Crooked Lake Reserves "making any necessary changes to suit the circumstances in each case." He further authorized Mr. Graham to make estimates of the value of improvements. (Doc. 81)

49. The first Band meeting to discuss the surrender proposal was held 23 January 1907 at McKay's Mission Church on the Reserve. The minutes, recorded by Indian Agent Millar, stated that five Agency employees, in addition to Agent Millar, and 19 voting Band members were present at the meeting over which Inspector Graham presided.

The minutes reported that Mr. Graham "very fully and at length explained the terms of the proposed surrender pointing out its meaning to the Indians."

The results of the vote taken at that time were 14 voted against making the surrender and the following voted in favour of the surrender: Andrew Alex

Stanley Ahatpew

[Seyat]

Taypootat

Robert Petewinin

(Doc. 82)

50. A second meeting of the Band was held 28 January, 1907 at the Crooked Lake Agency. Agent Millar again recorded the minutes and the same Department employees excepting Peter Hourie were present. Harry Cameron acted as interpreter at this meeting.

The minutes indicated this meeting was held,

in response to a letter signed by a number of the voting members of the Band and addressed to Mr. Inspector Graham asking him to hold another meeting for the consideration of the agreement for surrender of a part of their land, as some of them had not fully understood the conditions and now wished to reverse their vote.

The minutes stated that, "Mr. Inspector Graham again fully explained the terms of the proposed surrender" and set out the results of the vote:

Voting for the Surrender were:

Francis
Ernest Francis
Jimmie Kay Saywaysemat
Taypootat
Taypahsekay
Stanley Ahetpew
Andrew Alex
Arthur Wasacase
Harry Favel
[Sepit] Kaykanowenapew

Voting against the Surrender were:

Isaac
Joe Louison
Mesahcampeneis

Jimmie Saysaysew
Alex
Iahcoowayo

(Doc. 83)

34

38

51. The surrender document surrendered a described portion of Reserve #72 consisting of 33,281 acres to His Majesty the King in trust to sell "upon such terms as the Government of the Dominion of Canada may deem most conducive to our welfare and that of our people." (Doc. 85)

A further condition was

that all moneys received from the sale thereof, shall, after deducting the usual proportion for expenses of management, and sufficient for payment to the Indians of one-tenth of the purchase price, be placed to our credit and interest thereon paid us in the usual way. (Doc. 85)

Listed as Additional Conditions were the following:

1. That payment shall be made at time of taking surrender of one-twentieth of the purchase price, estimated at the rate of \$5.00 per acre, and the balance of one-tenth of purchase price at completion of sale.
2. Owners of improved land to be compensated thereof at the rate of Five Dollars per acre on estimated areas, payment to be made at time of taking surrender and balance, if any, paid after surveyor determines actual areas.
3. Owners of buildings to be compensated therefor at time of taking surrender, at values to be fixed by an officer of the Department at the time, provided that any Indian may, if he sees fit, remove his buildings.
4. Indian children between the ages of 12 and 18 years to have their shares funded after the first payment, which is to be made to parents for all their children.
5. That the land shall be properly advertised and sold in due time by Public auction, in parcels of one quarter section or under.

(Doc. 85)

52. The surrender document specifically refers to the "Chief and Principal men as the undersigned. For example, it recites:

Know all men by these presents

THAT WE, the undesigned Chief and Principal men of the Kahkewistahaw or Broadview Band of Indians resident on our Reserve Number Seventy-two in the province of Saskatchewan and Dominion of Canada, for and acting on behalf of the whole people of our said Band in Council assembled, Do hereby release, remise, surrender, quit claim and yield-up unto Our Sovereign Lord the King . . ." (emphasis added) (Doc. 85, p.1)

The following appears later in the surrender document:

And we, the said Chief and Principal men of the said Band of Indians do on behalf of our people and for ourselves hereby ratify and confirm, and promise to ratify and confirm, whatever the said Government may do, or cause to be lawfully done, in connection with the sale of the said lands and disposition of the money arising therefrom. (Doc. 85, p. 2)

53. The seventeen band members present at the 28 January, 1907 meeting signed or affixed their marks to the Surrender document. (Doc. 85) It does not appear that any one of these persons was a Chief or Headman of the Kahkewistahaw Band at that time. The document states the signatures were "Signed, Sealed and Delivered in the presence of M. Millar, Indian Agent; H. Nichol and E.D. Sworder." Inspector W.M. Graham did not sign the surrender document. (Doc. 85, p. 3)

54. The affidavit certifying that the surrender was "assented to by a majority of the male members of Kahkewistahaw Band of Indians of Kahkewistahaw Reserve Number 72 of the full age of

twenty-one years then present" was sworn before Mr Justice E.L. Whetmore of the Supreme Court of the North West Territories on 2 February, 1907 by William M. Graham and Kahkanowenapew. In referring to the Band signatory the standard form affidavit used the word "Chief". Mr. Justice Whetmore initialled the handwritten substitution of "Indian" for "Chief" in the two places where the word appeared. In other words, in the affidavit, Kahkanowenapew is referred to as an "Indian of the said Band of Indians." Above his signature, Mr. Justice Whetmore handwrote:

The same having been first interpreted to the said Kahkanowenapew by Alexander Gaddie who was first sworn as Interpreter and that Kahkanowenapew seemed to perfectly understand the same and made his mark thereto in my presence. (Doc. 86)

55. On 2 February, 1907, W.M. Graham sent a telegram to D.S.G.I.A. Pedley stating that: "Indian reserves 72 and 73 land surrendered fifty three thousand odd acres". (Doc. 87)

56. Inspector Graham provided a fuller account to Secretary McLean of the Kahkewistahaw and Cowesses surrender proceedings in his letter dated 12 February, 1907. Mr. Graham reported that he was "unable to obtain a Surrender from Ochapowace Band although the inducements offered the Indians of this reserve were nearly three times as great as those offered Cowesses Band, who surrendered" and although two votes were taken.

He described the surrender meetings with the Kahkewistahaw Band in these terms:

On Wednesday the 23rd of January a full meeting of Kahkewistahaw Band was held in the Presbyterian Church on that reserve. I spent two hours explaining to these people the advantage it would be to them if they surrendered, and answering questions of the Indians. A vote was taken and it stood five for surrender and fourteen against. As soon as this meeting was over the Indians held meetings among themselves and a deputation came to see me asking for another regular meeting which was held one week later and after a great deal of talk they finally agreed to surrender the vote being eleven for and six against. Immediately the vote was taken the Indians signed the surrender the whole 17 affixing their signatures voluntarily. I at once began paying the approximate one-twentieth, which was \$94.00 each. This payment lasted well on to mid-night and the day following. (Doc. 88)

Inspector Graham reported that he promised "the Indians of the two reserves that surrendered," as they had requested, that the "land should be sold by public auction and that the sale should be well advertised". Inspector Graham, in turn, asked the Department to advertise the sale in "all local papers between Moosomin and Regina as well as in the Winnipeg papers". Inspector Graham recommended that the sale be held "about the end of June, when the country is at its best and a time when the land buyers are in the country."

He also noted:

that the people of Broadview, Grenfel [sic] and adjacent country are delighted with the prospect of having this country thrown on the market. As you are aware this land lying idle has been a great drawback to these towns and they have been trying for years to bring about a surrender.

(Doc. 88)

57. The adult male band members according to the 1906 (Doc. 64) and 1907 (Doc. 84)

Annuity paylists were:

#15	Kay-kay-cow-e-was-sis	or Alec	1 M paid July 11, 1906 & July 10, 1907
#22	Kay-say-way-se-mal		1M paid July 11, 1906; <u>died</u> before July 10, 1907
#31	Ka-pe-ya-se-weho		1 M paid 1906 & 1907
#33	Sa-you-ke-ka-pow		1 M paid 1906 & 1907
#42	Issac		1 M paid 1906 & 1907
#54	Say-way-coo-poo		last paid 1899 for 1 (M or F?)
#64	Francis		I M paid 1906 & 1907
#69	Ie ki powan		1 M paid 1906 fi 1907 (absent in 1906, both payments)
	record in 1907)		
#73	Jim Say-say-sew		1 M paid 1906 & 1907
#80	Me-sah-cam-a-pen-ess		1 M paid 1906 & 1907
#83	Willie Pet-wa-we-min		1 M paid 1906 & 1907
#86	Kah-ka-no-wen-a-pew		1 M paid 1906 & 1907
#91	Bulwerl M		(last paid 1900)In Stony Prison, serving sentence for manslaughter
#95	Tay-pah-se-kay		1 M paid 1906 & 1907
#96	I-ah-coo-way-o		1 M paid 1906 & 1907
#98	Sa-geb-ass-e-we-nin		1 M paid 1906 & 1907 (Arrears due 1900 & 1905)
#99	Tay-poo-tat		1 M paid 1906 & 1907
#104	Jas. Kay-say-way-se-matl		1 M paid 1906 & 1907
#109	Harry Kay-say-way-se-mat	or Favel	1 M paid 1906 & 1907
#114	Michael Little Pine		last paid in 1897
#115	Stanley Ahetapew		1 M paid 1906 & 1907
#116	Robert Petwanenin		1 M paid 1906 & 1907
#117	Tom		last paid in 1900
#118	Arthur Wah-sa-case		1 M paid 1906 & 1907
#119	Ernest Francis		1 M paid 1906 & 1907
#120	Augustus Me-quah-quay		1 M paid 1906 & 1907
#121	Joe Louison		1 M paid 1906 & 1907
#122	Andrew Alec		1 M paid 1906 & 1907

Twenty-three adult males were paid annuities in 1906 and 1907 (22 were the same people). Of these, at least one, Augustus Me-quah-quay was absent at the time of the surrender in U.S. for 8 months.

(Doc. 122)

Kay-say-way-se-mal (#22) was paid an annuity in July, 1906 but died sometime prior to the July 1907 annuity payment. It is not known whether or not he was alive in January, 1907. Bulwer (#91) was last paid in 1900. He was in Stony Prison serving a sentence for manslaughter. According to Agency reports submitted by Agent, Sa-geb-ass-e-we-nin (#98) spent some time away from the Kahkewistahaw Reserve eluding Criminal charges and serving a prison term. He was paid annuities in 1906 and 1907 and the 1906 paysheets noted he was owed arrears for the years 1900 and 1905. (Doc. 64) Three other members had not been paid annuities for some years: Say-way-coo-poo (#44, last paid in 1899, not clear whether male or female); Michael Little Pine (#114, last paid in 1897); and Tom (#117, last paid in 1900). Accordingly, at the time of the surrender meetings there may have been between 23 - 28 band members eligible to vote. The total number of Band members for which annuities were paid on 11 July, 1906 was 88 (Doc. 64) and on 10 July, 1907 was 96. (Doc. 84)

58. Population figures reported in the Annual Reports of the Department of Indian Affairs for the years 1900 to 1915 are as follows:

Year Ending	Population	Document #
30 June 1900	113	Doc. 89, p. 147)
30 June 1901	110	(Doc. 90, p. 141)
30 June 1902	107	(Doc. 91, p. 142)
30 June 1903	109	(Doc. 92, p. 158)
30 June 1904	98	(Doc. 93, p. 149)

30 June 1905	84	(Doc. 94, p. 122)
31 March 1906	88	(Doc. 95)
31 March 1907	90	(Doc. 96, p. 83)
31 March 1908	95	(Doc. 97, p. 83)
31 March 1909	97	(Doc. 98, p. 137)
31 March 1910	100	(Doc. 99)
31 March 1911	103	(Doc. 100, p. 136)
31 March 1912	103	(Doc. 101, p. 140)
31 March 1913	102	(Doc. 102, p. 141)
31 March 1914	108	(Doc. 103)
31 March 1915	105	(Doc. 104)

59. Two Broadview residents, A.R. Colquhoun and F. Johnston, on behalf of the Broadview Board of Trade wrote to the Minister appreciation,

for your assistance in opening up a portion of The Crooked Lake Reserve adjacent to this town. We feel satisfied that the surrender of this portion of the reserve has been accomplished by the unceasing efforts of the Indian Department under your able direction.
(Doc. 105)

They also expressed appreciation "of the service rendered by Mr. M. Millar, the Indian Agent" and the "invaluable services of Inspector Graham."

The Board of Trade representatives were confident the surrender "will meet with the unanimous approval of the people of Broadview and the surrounding Districts." (Doc. 105)

60. On 26 February, 1907, Frank Oliver, S.G.I.A. submitted the Kahkewistahaw Band surrender to the Governor General in Council. (Doc. 106) It was accepted by OCPC 410 on 4 March, 1907.

(Doc. 107) On 13 March, 1907, Secretary McLean forwarded the Kahkewistahaw surrender for registration in the Department of the UnderSecretary of State. (Doc. 108))

61. The portion of the Kahkewistahaw Reserve #72 covered by the surrender is described as follows:

All that portion of the Kahkewistahaw or Broadview Indian Reserve, Number Seventy-two, in the Province of Saskatchewan, lying south of the road allowance, between projected Townships Seventeen and Eighteen, Ranges Four and Five, West of the Second Meridian, and including the said road allowance. (Doc. 85)

62. On 19 March, 1907, Secretary McLean wrote to F.J. Robinson, Deputy Commissioner of Public Works, Province of Saskatchewan, advising the latter of the surrender for sale of portions of Indian Reserves #72 and 73 in Township 17, Ranges, 4, 5, and 6, W2M and that these lands would "be subdivided according to the Dominion Lands system of survey". Mr. McLean requested the re-transfer from the province of certain roads, through these reserves which had been surrendered by the Indians- and previously transferred to the Department of Public Works and the acceptance of "the new roads laid out in the subdivision survey in lieu thereof." (Doc. 110)

63. By letter dated 22 March, 1907 Secretary McLean instructed J. Lestock Reid to survey and subdivide for sale the

surrendered portions of Indian Reserves No. 72 and 73 according to the Dominion Land survey system, "at as early a date as the season will allow". He advised Mr. Reid to consult with Inspector Graham in making the valuations of the surrendered lands, "as his local knowledge of the value of lands, should be very valuable". (Doc. 111)

64. On 8 June, 1907, J. Lestock Reid reported to Secretary McLean, that he had completed the subdivision survey of the surrendered portions of the Reserves No. 72 and 73. He recommended that the irregular trails be cancelled as soon as possible as they were not needed and would tend to depreciate the value of the quarter sections affected. (Doc. 112)

65. On 11 June, 1907 Inspector Graham wrote to Secretary McLean also noting "the desirability of cancelling these trails so that they will be not cutting through the quarters offered for sale". He stated: "Once opened up, and brought into the Municipality, adjoining roads will be opened up on the regular road allowances." (Doc. 113)

66. Secretary McLean repeated his request to Deputy Commissioner of Public Works for Saskatchewan, F.J. Robinson, on 22 June and 23 July, 1907, expressing concern "that the price of

the sections affected by the trails will be considerably lower than if the ordinary road allowances are used." (Doc. 114, 115)

67. On 27 July, 1907, Public Works Deputy Commissioner Robinson responded to Secretary McLean that no action could be taken until a Department officer had assessed whether the public interests would be affected by closing these trails. (Doc. 116)

68. By letter dated 10 December, 1907, Deputy Commissioner Robinson reported to Secretary McLean that their Department official had reported on the trails and advised:

[surveyed trail as shown on Departmental plan No. 1137] can be closed throughout its whole length through township 17, ranges 5 and 6, and road allowance can be improved so as to be used in lieu thereof, certain small diversions however being required to the proposed road allowance namely, diversions to the road allowance north of sections 19, 20 and 21, township 17, range 5, and north of sections 21 and 3, township 17, range 6 . . . if your Department will in making sales of the sections affected by these small diversions make reservations covering required diversions as shown, . . . this Department will make recommendation to the Executive Council to close trail as shown on Departmental plan No. 1137. (Doc. 112)

69. An additional letter dated 10 December, 1907, related to closure of the old surveyed trail through the surrendered portion of IR. #72, in Tp 17, Ranges 4 and 5, W2M:

. . . Mr. Garner reports that the whole of the surveyed trail through township 17, ranges 4 and 5, may be

abandoned and that road allowance south of section 1 and east of sections 1 to 36, in township 17, range 5, may be improved to accommodate traffic instead of the old trail. Mr. Garner states, however, that certain small diversions to this road allowance will be required, viz, east of the southeast quarter of section 13, township 17, range 5, west 2nd meridian

. . . if your Department in making sales of the quarter sections affected by the above diversions will make a reservation to provide for these diversions . . . this Department will make recommendation to the Executive Council to close that part of the old surveyed trail as shown on Departmental plan No. 194 through township 17, ranges 4 and 5, west 2nd meridian.

Mr. Garner made a recommendation regarding this trail north through IR #72 (unsurrendered portion of reserve) viz that old surveyed trail may be abandoned and the range road between ranges 4 and 5, in township 18, may be improved and used in lieu thereof, provided certain small diversions are made to the road allowance as indicated on the blue print. .

(Doc. 119)

70. On 17 December, 1907, Secretary McLean agreed to Robinson's proposal:

"Plans will be prepared showing the road allowances and deviations as indicated on the plans accompanying your said letters and the sales of all lots affected will be made subject to the said deviations."

(Doc. 120)

71. On 24 June, 1907, Inspector Graham submitted the paysheets, receipts and cash statements in connection with the surrender payments. In the accompanying letter to Secretary McLean, Inspector Graham thought that "there are only four or five Indians of these two Bands who did not participate in this

distribution, they were absent, but it is altogether likely that they will be on hand for the final payment". Also, it appeared "after survey that 2 or 3 additional fields have been cut-off" and he requested a cheque to pay compensation. (Doc. 121)

72. On 31 January, 1908, Inspector Graham reported that he had paid the 1/20 cash payment to Augustus Mequahquay, his spouse and 2 children (all members of Kahkewistahaw Band), who had been absent at the time of the surrender payment, being in the U.S. for 8 months. (Doc. 122)

73. By a separate letter to Secretary McLean of the same date, Inspector Graham proposed amounts for compensation for improvements on the surrendered portion of Kahkewistahaw Reserve:

Joe Louison	28 1/4 acre	\$141.25	
Arthur Wasacase	16 acres	\$ 80.--	
Harry Favel	20 acres	\$100.--	
Stanley Ahetapew	16 1/4 acres	\$83.75	
House	75.-	Stable 25.-	\$100.00
Jas. Kaysaywaysemat	3 acres	\$15.00	
Taypootat	8 acres	<u>\$40.00</u>	

\$560.00
(Doc. 123)

Five of the six band members entitled to compensation for improvements voted in favour of the surrender. (Doc. 83)

74. On 19 February, 1908, W.A. Orr forwarded Mr. Reid's valuations to the Minister and recommended that the public auction

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of the lands surrendered by Kahkewistahaw and Cowesses Bands be held in July, 1908, "as it is apparently necessary to realize on the property in question, so as to recoup advances which have been made." (Doc. 125) Mr. Reid's valuation of the quarter-section

parcels in the surrendered portion of the Kahkewistahaw Reserve No. 72 ranged from \$4.00 to \$9.00 per acre. (Doc. 126)

75. On 8 April, 1908, Minister Frank Oliver wrote to The Governor General in Council recommending that Mr. Graham's salary be increased from \$2,000 to \$2,300 a year effective 1 April, 1908. It was represented that Mr. Graham "has fairly earned an increase in salary" as

he has managed the affairs of the Inspectorate in general with so much success, and has so satisfactorily furthered the wishes of the Department in connection with land matters in the Inspectorate particularly in having successfully negotiated the Pasquah, Cote, Fishing Lake, Kahkewistahaw and other surrenders. (Doc. 127)

76. In a Memorandum for the Deputy Minister date 12 February, 1908, the Chief Surveyor noted:

that Section 8, Tp 17, R. 6, W. 2 M. Situated within the Cowesses Indian Reserve and which also forms a part of the land recently surrendered and sub-divided for sale was patented to the Hudson Bay Company some years ago. It will, of course, not be offered for sale. (Doc. 128)

Mr. Bray sought direction as to whether the Department should attempt to obtain compensation (either money or land) from the Department of the Interior. (Doc. 128)

Secretary McLean wrote to Department of the Interior Secretary Keyes, on 14 February, 1908, with this object in mind. (Doc. 129) Secretary Keyes' response of 7 July, 1908, confirmed

the Department of Interior's position that it did "not feel justified in undertaking to effect exchange where its interests are not affected". (Doc. 130, 131)

In a Memorandum for the Deputy Minister, dated 2 September, 1908, Chief Surveyor Bray recommended that lands claimed by the Hudson Bay Company, "When they fall within the surrendered portions of Indian Reserves be for the present, reserved from sale." A notation initialled by Frank Pedley stated: "All lands may be advertised for sale making no mention of H.B.C. claims but excluding the parcels by claim." (Doc. 132)

77. A notice signed by Secretary McLean, dated 15 September, 1908, advertised the details of the Public Auction of the lands surrendered by the Kahkewistahaw and Cowesses Bands. It set out the date (25 November, 1908 at 12 o'clock noon) and place (Broadview) and terms: "the lands will be offered for sale in quarter sections, cash, or one-tenth cash and the balance in 9 equal, annual instalments, with interest at 5%". (Doc. 133) The reserve prices were to be made known at the time of sale. (Doc. 134)

78. A list set out 74 names, including government officials, that were to receive the notices of sale. (Doc. 135) Arrangements for newspaper advertising, in accordance with the wishes of the Band, is not found in the files.

79. The Broadview Board of Trade sponsored display advertisements in the Regina Morning Leader on October 13, 14, 15, 16, 17 and 19. They advertised the sale of 50,000 acres of Indian lands. (Doc. 136)

80. In October-November, the Regina Morning Leader contained many advertisements regarding the sale of land. For instance, the Saskatoon and Western Land Co., Ltd. advertised its sale of 250,000 acres of land. "Nearly all within ten miles of an up-to-date railroad." (Doc. 138) The sale took place between

October 12 to 17, 1908 in Regina. A Newspaper report on 4 October, 1908 indicated that sales were "somewhat slow"

All the bidding was solicited at an upset price of \$5 per acre and values were held firm at that figure. No disposition was shown either to sacrifice the land or to boost the figures beyond offers legitimately made." (Doc. 138)

81. The average price resulting from the auction sales of school lands in Saskatchewan held during the year ending 30 June, 1906 was \$14.32 per acre based on 8 sales for which the average

price ranged from \$7.00 per acre to \$116.95 per acre (median price \$10.12 per acre). (Doc. 139)

During the nine month period ending 31 March, 1907, the average price realized at the one auction sale which occurred was \$14.67 per acre. (Doc. 140)

The Annual Report of the Department of the Interior for the fiscal year ending 31 March, 1908, reported that several auction sales of school lands planned for the fall of 1907 were postponed:

In view, however, of the unfavourable season, and of the unusual financial stringency, it was found necessary to postpone them, and in consequence no general auction sales were held in that province during the fiscal year. (Doc. 141)

Several small parcels were sold as school sites where there was demand and upon request of the Canadian Pacific Railway Company. Sales by public auction totalled 806 acres, and resulted in an average price of \$15.21 per acre. Sales under The Railway Act to railway companies for right of way and other purposes averaged \$13.06 per acre. (Doc. 141)

General auction sales of school lands in Manitoba, Saskatchewan, and Alberta were not held in the fiscal year ending 31 March, 1909, "in view of the comparatively poor harvest of the year 1908, and of the financial stringency then prevailing." (Doc. 142)

There was an auction sale of subdivided lots at Chaplin, Saskatchewan in November, 1908 to permit those who had settled and erected buildings in these lots to acquire them. Fifty-four lots

sold for \$771.00 (\$14.28 / lot). There were some sales of small parcels (1 - 5 acres) for school purposes at the statutory minimum price of \$10 per acre, and for cemeteries. (Doc. 142)

Sales of portions of school sections to railway companies under the Railway Act for right of way and other purposes in Alberta, Saskatchewan and Manitoba resulted in the average price of \$19.26 per acre (350.76 acres for a total of \$6,754.86). (Doc. 142)

82. By letter dated 10 November, 1908, D.S.G.I.A. Pedley requested that Inspector Graham "take charge of the auction sale of the portions of Indian Reserves #72 and 73 to be held at Broadview on the 25th instant . . ." He provided instructions as to record keeping and that "the land is to be sold in quarter sections, at not less than upset price stated, on the terms and conditions specified in advertisement . . ." (Doc. 143)

83. Inspector Graham, on 16 November, 1908 acknowledged receipt of these instructions in connection with the sale of portions of Indian Reserves #72 and 73. Inspector Graham's expectations of the sale were that, "If the land all sells it will take the best part of four days to complete the work..." (Doc. 144)

84. By telegram dated 26 November, 1908, Inspector Graham advised D.S.G.I.A. Pedley that the sale of surrendered lands from Kahkewistahaw and Cowesses Reserves, had been completed. In other words the sale was completed in two days. (Doc. 145) Mr. J.L. Lamont of Whitewood acted as Auctioneer (Doc. 146) Out of the 322 parcels for sale, 199 sold realizing \$229,117.20 of which 10% was paid at time of sale. In his report to D.S.G.I.A. Pedley on 26 November, 1908, Inspector Graham considered the sale, at which he estimated 150 people attended, a qualified success:

The sale I consider was a most successful one considering the existing conditions in this country at the present time.

The sale was a surprise to most people here as the general impression was that it would not be a success owing to the slump in real estate. (Doc. 147)

In Inspector Graham's opinion the land that remained unsold "was the poorest on the surrendered portion of the Reserve and when it is offered again I would advise reducing the upset price unless conditions change." (Doc. 147)

85. On 3 December, 1908, Inspector Graham forwarded to Secretary McLean the records of sale of the Kahkewistahaw and Cowesses surrendered lands. (Doc. 149) The sale prices all achieved the upset price, at least 37 sales were at prices higher than the upset price. In some instances, the sale price exceeded the upset price by as much as \$3.00 per acre. The sale prices achieved ranged from \$4.00 to \$12.00 per acre. (Doc. 150) A file

note dated 1 March, 1909, reported that the average price was \$7.15 per acre. (Doc. 152) (W.A. Orr, In Charge of Lands, reported that 58 of the 199 parcels that sold, were sold at higher than the upset price - Doc. 151.)

86. Agent M. Millar purchased 3 quarter sections of land at the auction sale. He bid the upset price of \$8.00 per acre for NE1\4-21-17-5-W2 and bid more than the upset price for NW1\4-27-17-5W2 (paid \$10.25 per acre) and SW1\4-27-17-5-W2 (paid \$9.75 per acre). Harry Cameron, Interpreter for the Crooked Lake Agency purchased the SW1\4-31-17-4-W2 at the upset price of \$4.00 per acre. (Doc. 150)

87. On 19 February, 1909, Secretary McLean forwarded to Agent Millar the cheques for the payment of the second instalment on the one-tenth of sale proceeds. The cheque amount was calculated on the basis of \$94 for each of the 96 members. Secretary McLean urged Agent Millar to make "every effort . . . to induce these Indians to pay their debts with this money. (Doc. 153)

88. By letter dated 29 March, 1909, W.A. Orr reported to the Deputy Minister on a visit to him by Inspector Graham. (Doc. 154) Inspector Graham had provided a schedule fixing lower upset prices for the unsold lands than those originally fixed by Mr. Graham. (Doc. 155)

However Mr. Orr opposed reducing the prices as he understood, "from the Accountant that there is no urgent necessity for the sale of these lands". Mr. Orr recommended, "that the sale of lands be allowed to remain in abeyance until there is an improvement in the market and more demand therefore". (Doc. 154)

89. On 11 January, 1910, Agent Millar advised Secretary McLean, by letter, that "leading Indians of Kahkewistahaw Band No. 72" had enquired when they might expect, "a distribution of interest money from their land fund which they understood was to be distributed annually, and also when do [sic] the Department intend to put the land remaining unsold up for sale." (Doc. 156)

90. In forwarding a cheque for the distribution of interest on 10 February, 1910, Secretary McLean instructed Millar that:

. care should be taken that the Indians spend this ~y judiciously in paying their debts and in purchasing necessary supplies, seed, etc. Where there are old people dependent on the Dept their money should be retained by you and expended monthly as required in supplies such as food, clothing, comforts, etc~. This is not the full amount of interest at the credit of this Band but it is a substantial payment on account thereof and all that it is considered in the interests of the Indians to pay them at present. The balance will remain at their credit and be available to meet other requirements of the Band. (Doc. 159)

91. On 15 June, 1910 a second public auction of surrendered lands was held. All the parcels offered for sale were sold.

Inspector Graham reported that about 200 people attended the sale and the proceeds realized were \$19,118.37. (Doc. 158) A file memorandum dated 3 July, 1910, reported that the average price per acre was \$9.93. (Doc. 159) The notice of auction sale, dated 23 April, 1910, lists the lands that were offered for sale. (Doc. 160)

92. Initial grants for parcels of land in the surrendered portion of the Kahkewistahaw Reserve were issued between 1909 and 1953. (Doc. 162)

93. During the first decade of the century there was a decline in the number of Band members involved in farming on the Kahkewistahaw reserve.

According to the 1903 Annual Report of L.J. Arthur Levesque for the Qu'Appelle Inspectorate, 10 families were involved in farming and cattle raising and four other families were involved in stock-raising only. (Doc. 163)

In his 1906 report, Agent Millar reported, "only five Indians of the band may be said to do any farming in the way of growing grain, in addition to which they have herds of cattle." He also indicated that, "the proportion of old people is large, and the death rate proportionately high". (Doc. 164)

In his 1907 report, Agent Millar again reported that only five Kahkewistahaw Band members were involved in farming. (Doc. 165)

Agent Millar's annual report dated 27 May, 1908 noted that:

Most of the Indians who farm on this reserve were required to establish new places this year, their old holdings being within the surrendered area, considerable new land was broken, and new houses and stables erected. (Doc. 166)

94. In the years immediately following the 1907 surrender, there did not appear to be a shortage of hay. For instance, in Agent Millar's annual report dated 4 June, 1909, he described the reserve as having "an abundant supply of wood, hay and water". (Doc. 98) The selling of hay was also listed as one of the important occupations of the band in 1909 (Doc. 98) and again in 1910. (Doc. 167).

Inspector Graham's report on the Crooked Lake Agencies for the year ended 31 March, 1913 noted: "The Indians on all four reserves sell a great deal of hay and wood in the neighbouring towns, for which there is always a great demand. (Doc. 168)

95. Livestock continued to be a valuable resource for the Kahkewistahaw Band after the land surrender. For instance, in his 1909 annual report, Agent Millar stated:

During the year the Indians of this agency sold and used for beef from cattle of their own raising \$4,200. The income from this source and the excellent food supply is very satisfactory. (Doc. 98)

However, in Agent Millar's opinion, in the years following the land surrender, band members did not show much interest in cattle

raising. For example, speaking of the Crooked Lake Agency generally in his 1910 agency report he stated:

Their cattle are a most valuable source of food supply. Besides a means of making money to provide other necessary supplies, it is to be regretted that some of the Indians on their part often seem to lack appreciation of their value, and difficulty is experienced in getting them to take proper care of them. (Doc. 167)

In his report for 1911, Agent Millar stated:

Some of the Indians engage in farming and cattle-raising. In cultivating the soil they make some progress, but in cattle-raising they have gone back. The younger generation will not tie themselves down to the close attention necessary for successful stock-raising; in fact, they do not want to keep stock at all. (Doc. 100)

In his 1912 report Agent Millar stated:

A few members of this band are making some success of farming, although taken as a whole, they are not progressing nearly so fast as their circumstances should warrant. The younger generation simply will not tie themselves to the care and feeding of stock. (Doc. 101)

In his 1913 report Agent Millar noted the profitability of cattle raising as compared to grain growing but regretted the lack of interest shown by the Indians of the Crooked Lake Agency:

The Indians' cattle on all the reserves came through the severe winter in good condition. The value of cattle sold and used for food during the year of their own raising was \$4,870. It is greatly to be regretted that more of the Indians will not take a greater interest in their cattle and increase their herds, as this branch of their work is more profitable and satisfactory with many of them than grain-growing, but they are very difficult to keep in the industry. (Doc. 102)

Indian Agent, E. Taylor expressed a similar opinion in his Agency report for 1914. (Doc. 169)

96. Agent Millar was of the opinion that the interest income from the sale of the surrendered land enabled the members of Kahkewistahaw Band to improve their living conditions and provided a social safety net for the older band members. For instance, in Agent Millar's Agency Report dated 4 June, 1909, he stated:

. a second advance payment of \$94 per head was paid to Kahkewistahaw band on account of surrendered land. This money was used to pay all their debts made through authority of the agency, besides which they were able to provide themselves with many useful supplies, and a number of the old people deposited amounts with the agent, which are paid out to them in monthly instalments; in this way they get more benefit from the money than if taken at one time. (Doc. 98)

In his 1910 annual Agency report dated 18 May, 1910 he stated:

The conditions under which this band live in regard to dwellings, food and clothing, have steadily improved. In my opinion this is largely the result of the use made of their income from interest accruing from surrendered land. Especially useful is this income to old people who have no means of making their own living. (Doc. 167)

He made further remarks to a similar effect:

In March payment of interest money from land fund was made to Cowessess and Kahkewistahaw bands. These payments came most opportunely at a season of the year when most needed; these payments enabled the Indians to settle their debts and provide many useful supplies; they are especially useful in assisting the old people. (Doc. 167, p. 128)

In his 1911 annual report Agent Millar stated:

the interest accruing from surrendered land provides for the old people many luxuries that they could not otherwise obtain. (Doc. 100)

Further in the same report he stated:

Three out of the four bands in this agency have a land fund from which interest payments were made in March.

These payments came very useful after so severe a winter, enabling the Indians to provide much of the necessary supplies for spring work. While some of this money is foolishly expended, still on the whole it does much good, especially for the old and helpless people, and the system of holding the capital intact and distributing the interest is a good one. (Doc. 100)

In his report for the year ended 31 March, 1912 Agent Millar stated:

Three out of the four bands in this agency received interest payments from their land fund account. These payments are especially useful to the old people, who would otherwise get very little benefit from the land. (Doc. 101)

In his report for the year ended 31 March, 1913, Agent Millar expressed some disapproval of the uses to which the interest distribution was put:

Three out of the four bands in this agency having interest fund accounts from surrendered land receive payments aggregating \$10,625. The payment of this large amount of money is especially useful in caring for the old people, but it is to be feared that a good deal of it with some others goes into useless purposes. However, many now, and others will no doubt in time, learn to use their money carefully and wisely. (Doc. 168)

In his report for the year 1914 Mr. E. Taylor, who succeeded M. Millar as Indian Agent for the Crooked Lake Agency, suggested that the payment of interest money had an adverse effect on the progress of the Indians:

Owing to tribal customs, the progress in this agency is slow. The younger generation of the Kahkewistahaw band are disappointing and appear to rely to a great extent on interest money from surrendered land as a chief support, and they dislike to take advice. (Doc. 169)

IV. ANALYSIS OF CLAIM

A. IS SURRENDER NULL AND VOID DUE TO UNCONSCIONABLE TARING AND SALE?

The provisions of the Indian Act, R.S.C. 1906 placed the members of the Kahkewistahaw Band under a legal "infirmity" regarding the disposition of reserves lands. It is clear from s. 49 that Indians may only surrender their lands to the Federal government in accordance with the procedures set out.

The bargaining power of the Kahkewistahaw Band could be said to be further seriously impaired at the time of the surrender councils, in as much as Chief Kahkewistahaw died in June, 1906 (Doc. 63) and the two Headmen, Wasacase and Louison had died before July, 1906. (Doc. 64) No Chief or Headmen were selected as replacements until 1911. (Doc. 69) In other words, the Band was without any leadership for at least 6 months prior to the surrender council.

The absence of a Chief or Council was apparent from the Band payroll for 1906. (Doc. 64) Accordingly, Department officials ought to have been aware of this fact. There is no indication that Inspector Graham made any attempt to compensate for this absence of band leadership.

Inspector Graham's reports of the meetings leading up to the surrender and Agent Millar's record of the meetings indicate that most, if not all of the advice given to Kahkewistahaw Band members about the surrender was that given by Inspector Graham. Mr. Graham

spent 3 days in or around June, 1906 discussing the matter of a land surrender with the Indians of the Crooked Lake Agency. While the Indians were aware of the Pasquah Surrender and the "good cash payment" that Band had received, Inspector Graham made it clear in his report of this meeting, that he did not want "outside people" such as the Town Council and Board of Trade talking to the Crooked Lakes Indians about a surrender. (Doc. 72) Inspector Graham reported that, on 23 January 1907, he "spent two hours explaining to these people the advantage it would be to them if they surrendered". (Doc. 88) At the 28 January 1907 meeting, Inspector Graham reported there was "a great deal of talk" before the vote was taken. (Doc. 88) Mr. Millar's minutes of the two meetings indicate that Mr. Graham "fully explained the terms of the proposed surrender". (Doc. 82, 83)

Some circumstances raise doubts about the independence of any advice that might have been given to the Kahkewistahaw Band. It is clear from his reports that Inspector Graham (as did the entire Department) viewed the obtaining of a surrender to the southern portion of the 3 Crooked Lakes Reserves as desirable. (Doc. 72, 88) Inspector Graham was subsequently rewarded with a salary increase for "furthering the wishes" of the Department in obtaining the Kahkewistahaw and other surrenders. (Doc. 127) Indian Agent Millar and Agency Interpreter, Harry Cameron, purchased land at the Public Auction of lands surrendered by the Cowesses and Kahkewistahaw Bands. (Doc. 150)

Up to the time of Indian Commissioner Laird's report in the fall of 1904 (Doc. 61), Agents' McDonald (Doc. 29, 40) and Wright (Doc. 47), Commissioner Laird (Doc. 47, 55) and Assistant Commissioner McKenna (Doc. 58) had consistently opposed a surrender of the southern portion of the Crooked Lakes Reserves on the basis that it contained the best haylands and wood. They expressed concern about the adverse affect on the cattle herd if these lands were given up. Mr. Graham's reports did not make reference to this objection. In referring to the surrender, Inspector Graham assumed that the land in question was little used. (Doc. 76) Most of the few Kahkewistahaw band members who farmed at this time, had their holding in the portion of the reserve surrendered. (Doc. 166)

The surrender proposal, when considered by Headquarters' officials, was presented on the basis that the population of Kahkewistahaw Band was 84 persons, the population figure for 1905. (Doc. 94) The area of the reserve that would remain after the surrender of the portion proposed by Inspector Graham was 13,535 acres, slightly in excess of allowing 160 acres per capita based on the 1905 data. By the time the surrender was taken, the Kahkewistahaw Band population had risen to at least 88. (Doc. 95) (This fact would have been known to Agent Millar at the time of paying annuities, 11 July, 1906.) (Doc. 64) Allowing 160 acres per person would have required 14,080 acres.

An attempt to predict trends in the population, on the part of any Department official is not evident. In his 1906 report, Agent Millar did note that the band was experiencing a high death rate and there was a high proportion of old people. (Doc. 164) However, the total population had grown over the previous year and at least one-third of the population was children. (Doc. 94, 95) Arguably, it would not have been unreasonable for Agent Millar or Inspector Graham to predict the increase in the population, that

did occur. From the fifteen year low of 84 in 1905, the population had recovered to a hundred or over by 1910. (Doc. 99) The size of reserve after the surrender is shown to be inadequate using the conservative guide of 160 acres per person.

The historical record shows that residents of the Broadview and Whitewood districts made repeated requests between 1885 and 1904 to various Department officials to open up the southern portion of the Crooked Lakes Reserves for settlement by actual settlers. Department officials refrained from raising the matter directly with the Indians concerned on some of these occasions. (e.g. Doc. 40) The proximity of the Kahkewistahaw Reserve to Broadview suggests that the Indians there would have been aware of the wishes of the townspeople. On occasion, the petitions of area residents referred to the willingness of the Indians to surrender land, suggesting that settlers did discuss the matter with some Indians. (e.g. Doc. 32)

The memorandum of agreement of 1889 (Doc. 34) and the surrender of 2 road allowances through the Kahkewistahaw Reserve in 1890 (rescinded by 1902 surrender and OIC) (Doc. 35) is evidence of direct pressure by area residents on Indians to accommodate the interests of settlers and the Towns of Broadview and Whitewood.

The possibility of a surrender was discussed directly with Kahkewistahaw Band members by Indian Commissioner Laird in 1902 (Doc. 55); Department Officer Lash in July, 1904 (Doc. 61) and, of course, Inspector Graham in 1906 and 1907 (Doc. 72,82,83).

Were the terms of the surrender and sale unfair? The

Kahkewistahaw Band members received monetary benefit from the surrender. There are some statements from Department officials between 1885 and 1902 to the effect that the land, particularly the hay land, was more valuable to the Band than money. In considering the fairness it is useful to consider the earlier suggestion of Agent McDonald that even if haylands on the southern portion of the reserve were exchanged for other haylands in the vicinity, the Band would be losing the best of its lands. (Doc. 29, 40)

Further, considering the known usefulness of the land in question, it is surprising that apparently no thought was given to surrendering some other portion of the reserve.

On the other hand, the Annual Reports of Agent Millar for the years following the surrender indicate that moneys received as a result of the land sales were used to pay off debts, to improve their houses and to purchase useful supplies. It was of particular benefit to old people who had no source of income. (Doc. 98, 167, 100, 101, 168)

A decline in the number of heads of livestock held in the agency was noted in the years following the surrender. In the opinion of the Indian Agent, the band members were not interested in keeping cattle although they could be a significant source of income as well as food. (Doc. 100, 102, 169) It appears from the fact that band members continued to sell hay that the Kahkewistahaw Band did not experience a shortage of hay as a result of the surrender. (Doc. 98, 167, 168) This may have been due to the fact

that the cattle herds in the years following the surrender were smaller than previously.

The Public Auction of surrendered lands did not take place until 22 months after the surrender although the survey and valuation was completed in June, 1907. Inspector Graham and W.A. Orr had recommended June or July as favourable times to hold the sale. (Doc. 88, 125) The province and the Department had reached an agreement respecting the irregular trails crossing the surrendered portions of the reserve by December 1907, (Doc. 120) and the claims of the Hudson Bay Company were not an issue with respect to the Kahkewistahaw lands, and in any event need not have delayed the sale. (Doc. 129) These facts support the view that the sale was unnecessarily delayed.

The timing of the first auction sale, 25 November, 1908, was unfavourable. In his report on the sale, Inspector Graham acknowledged that there was a slump in the real estate market. (Doc. 146)

The School Lands Branch, Department of the Interior, did not hold any general auctions of school lands in the fiscal years ending 31 March, 1907 or 31 March, 1908, "in view of the comparatively poor harvest of the year 1907 and of the financial stringency then prevailing". (Doc. 141, 142). Small sales were made where the demand warranted it.

Less than two months before the Auction of surrendered lands from Kahkewistahaw and Cowesses Reserves, Saskatoon and Western Land Co. Ltd. attempted to sell 250,000 acres of land, all at the "wholesale" upset price of \$5.00 per acre, by Public Auction in Regina. (Doc. 137) Sales were reported to be slow. (Doc. 138)

At the 25 November, 1908 auction of Kahkewistahaw and Cowesses lands, all parcels sold achieved at least the upset value, and W.A. Orr reported that 58 sold at higher prices. (Doc. 151) The sale prices ranged between \$4.00 and \$12.00 per acre. (Doc. 150) The average price per acre was \$7.15. (Doc. 152)

Saskatchewan School lands sold by the Department of the Interior, averaged \$14.32 per acre, and \$14.67 per acre for the periods ending June, 1906 and March, 1907 respectively. (Doc. 140, 141) Sales of lands to railway companies averaged \$13.06 per acre and \$19.26 per acre for the periods ending March, 1908 and March, 1909 respectively. (Doc. 141, 142)

The second public auction of the surrendered lands which took place 15 June, 1910 yielded an average purchase price of \$9.93 per acre as compared to \$7.15 per acre at the 25 November, 1908 sale. Inspector Graham had described the lands unsold in 1908 as the "poorest" of the lands surrendered. (Doc. 147)

B. IS SURRENDER NULL AND VOID AS BEING IN BREACH OF FIDUCIARY AND TRUST OBLIGATIONS?

It has been submitted on behalf of the Kahkewistahaw Band that the Department of Indian Affairs breached its fiduciary obligation when it ratified and acted upon a surrender which was not in the best interests of the Band, and that the Department breached its trust obligation in selling the lands at less than fair market value.

In return for the surrender of 33,281 acres, members of the Kahkewistahaw Band received per capita shares of one-tenth of the sale proceeds and annual payments from the distribution of a portion of the interest on the land fund. The Indian agent attributed improvements in the band members living conditions to these payments, as well as enabling band members to pay off debts, purchase supplies. These payments provided a source of income to the elderly. (Doc. 98, 100, 101, 167, 168) Agent Taylor expressed some concern that the interest payments adversely affected the desire to work of some young people. (Doc. 169)

Most of the band members involved in farming had to relocate their operations from the surrendered land portion of the Reserve. (Doc. 166) The area of lands remaining after the surrender, was less than what was needed to allow 160 acres per person, nor did it seem to make provision for any increase in the population that might be reasonably expected to occur, and that did in fact occur. (Doc. 89 - 104)

The taking of a surrender of the southern portion of the reserve was contrary to the opinions of former Agent McDonald, (Doc. 29, 40) Commissioner Laird (Doc. 47, 55) and Assistant Commissioner McKenna (Doc. 58) that these valuable hay lands were necessary for the future growth of the cattle herd. The size of the cattle herd declined in the years following the surrender but this was attributed by Agent

Millar to disinterest on the part of band members rather than the lack of hay. (Doc. 100, 102, 169) It appears that band members continued to sell excess hay after the surrender was taken. (Doc. 98, 167, 168)

The absence of any band leadership, (Doc. 63, 64) in addition to the Band's statutory inability to deal with reserve land except through the government, emphasizes the need for Department officials to have provided full advice to band members. The descriptions of the surrender councils, provided by Agent Millar's minutes (Doc. 82, 83) and Inspector Graham's report (Doc. 88) suggest that the terms of the surrender were fully discussed. Was it incumbent on Department officials to provide advice as to the possible implications of the proposed surrender on livestock operations, implication for future generations, etc.?

The timing of the sale of surrendered land seems to have been unfortunate. Inspector Graham acknowledged there was a slump in the real estate market. (Doc. 146) The School Lands Branch, Department of the Interior refrained from holding any general public auctions in 1908 because of the poor crop in 1907 and poor economic conditions. (Doc. 141, 142) These facts suggest that there may have been little demand for the surrendered land at the time of the surrender or sale. On the other hand, the persistent pressure from neighbouring towns to open the lands in question for settlement, suggests that townspeople were optimistic that there would be a demand for the land. The Broadview Board of Trade also advertised the sale. (Doc. 136)

The offering for sale by the Saskatoon & Western Land Co. Ltd., of 250,000 acres at "Wholesale" prices about 6 weeks prior to the planned sale of Kahkewistahaw and Cowesses lands may have had a discouraging influence on attendance and prices. (Doc. 137)

On balance, would it have been better for the sale to have delayed? By 1910, there appeared to be some recovery in land sale prices. While the November, 1908 sale resulted in 199 parcels being sold at the upset price or higher, the average price of \$7.15 per acre (Doc. 152) was lower than that achieved at the June, 1910 auction of the remaining lands (\$9.93 per acre). (Doc. 159) Inspector Graham had described the later lands as the poorest on the surrendered portion of the reserves. (Doc. 147) It is fortunate that his advice to lower the valuations on these lands was not followed. (Doc. 154) The prices reached at both these sales were far below the average price resulting from the sale of school lands. (Doc. 140 - 142) On the other hand, both Agent McDonald and Inspector Graham described the land in the surrendered portion (southern) of the reserve as limited in quality, apart from the value as haylands.

In 1891, Agent McDonald described the land thus,

That part of township 17 immediately North of Broadview is of very little use for Agricultural purposes a great portion being under water in wet seasons, and the rest is gravelly and in dry season it is all more or less impregnated with alkalies and were it open to settlers tomorrow I do not think there would be six settlers on it in as many years. Its only value is for the purpose it is being used by the Indians, viz, putting up hay. (Doc. 40)

In 1906, Inspector Graham described the lands eventually surrendered by the Kahkewistahaw Band as, "very much cut up with small sloughs and scrub". (Doc. 76)

C. IS SURRENDER INVALID DUE TO NON-COMPLIANCE WITH INDIAN ACT

PROVISIONS?

Section 49 of the Indian Act, R.S.C. 1906, c. 81 reads:

49. Except as in this Part otherwise provided, no release or surrender of a reserve, or a portion of a reserve, held for the use of the Indians of any band, or of any individual Indian, shall be valid or binding, unless the release or surrender shall be assented to by a majority of the male members of the band of the full age of twenty-one years, at a meeting or council thereof summoned for that purpose, according to the rules of the band, and held in the presence of the Superintendent General, or of an officer duly authorized to attend such council, by the Governor in Council or by the Superintendent General.

2. No Indian shall be entitled to vote or be present at such council, unless he habitually resides on or near, and is interested in the reserve in question.

3. The fact that such release or surrender has been assented to by the band at such Council or meeting shall be certified on oath by the Superintendent General, or by the officer authorized by him to attend such council or meeting, and by some of the chiefs or principal men present thereat and entitled to vote before some judge of a superior, county or district court, stipendiary magistrate or justice of the peace, or, in the case of reserves in the province of Manitoba, Saskatchewan or Alberta, or the Territories, before the Indian Commissioner, and in the case of reserves in British Columbia, before the visiting Indian Superintendent for British Columbia, or, in either case, before some other person or officer specially there unto authorized by the Governor in Council.

4. When such assent has been so certified, as aforesaid, such release or surrender shall be submitted to the Governor in Council for acceptance or refusal.

1. It is alleged on behalf of the Kahkewistahaw Band that the officer appointed to attend the surrender council was not properly authorized to do so by s. 49(1) of the Indian Act.

Section 49 of the Indian Act, R.S.C. 1906, quoted above, contemplates that the Governor in Council or Superintendent General may "duly authorize" an officer to attend a surrender council. Section 2 of the Indian Act, 1906 states:

S. 2. In this Act, unless the context otherwise requires,
(a) 'Superintendent General' means the Superintendent General of Indian Affairs .

Relevant provisions of the Interpretation Act, R.S.C. 1906, c. 1, which applies to every act of the Parliament of Canada, are as follows:

s. 31. In every Act, unless the contrary intention appears,
(f) if a power is conferred or a duty imposed on the holder of any office, as such, the power may be exercised and the duty shall be performed by the holder for the time being of the office;

(m) words directing or empowering any other public officer or functionary to do any act or thing, or otherwise applying to him by his name of office, include his successors in such office, and his or their lawful deputy.

The "alleged" authorization of Mr. Graham to obtain a surrender from the Kahkewistahaw Band (and two others) was given by J.D. McLean designated as Acting Deputy Superintendent General of Indian Affairs on 3 October 1906. (Doc. 79)

For some time prior to and following this date Frank Pedley was the individual filling the position of Deputy Minister and Deputy Superintendent General of Indian Affairs (D.S.G.I.A.) and J.D. McLean's position was that of Secretary and Assistant D.S.G.I.A.

In correspondence dealing with the matter of the Kahkewistahaw surrender, correspondence is directed to Mr. Pedley, D.S.G.I.A. on 28 June 1906 (Doc. 73) and 2 February 1907 (Doc. 87). In the intervening interval correspondence and memoranda are directed to J.D. McLean, variously designated as Secretary (e.g. Docs. 75, 76, 80, 81), Acting Deputy Minister (e.g. Doc. 78) and Acting D.S.G.I.A. (e.g. Doc. 79).

It appears that the purported authorization of Inspector W.M. Graham to submit a surrender to the Kahkewistahaw Band is a composite of various documents:

(a) W.A. Orr's 29 September 1906 memorandum to Acting Deputy Minister (Doc. 78) asking "Whether forms of surrender should be sent to Inspector Graham for submission to the Indians on terms as above proposed to him". The terms referred to were the surrender of 32,640 acres and a one-tenth payment to the Indians based on \$5.00 per acre selling price. By notation on the face of the letter, dated 28 September 1906, the Acting Deputy Minister submits this question to the Minister, whose approval is indicated by notation dated 29 September 1906.

(b) The 3 October 1906 letter to Mr. Graham from J.D. McLean, Acting Deputy Superintendent General of Indian Affairs (Doc. 79). Mr. McLean enclosed forms of surrender for 33,281 acres of the Kahkewistahaw Band. It would seem evident, from the discussion about the inclusion of a provision as to funding the shares of minors and from later correspondence, that the terms and conditions were not included on the surrender form forwarded at this time.

(c) By letter dated 9 October, 1906 addressed to "Secretary" McLean (Doc. 80), Inspector Graham sought authorization to "insert the same conditions as were in the Pasqua Surrender." This approval was given by J.D. McLean signing over the designation of "Secretary" by letter dated 16 October, 1906 (Doc. 81).

Inspector Graham did not sign the surrender Document itself (Doc. 85) but swore the affidavit certifying that the surrender had received majority assent. (Doc. 86)

From the forgoing facts, it is suggested the following questions arise: a) Is the 3 October 1906 a valid authorization of Inspector Graham to attend the Kahkewistahaw Surrender Council?

i) Was J.D. McLean, as Acting D.S.G.I.A. (arguably a holder for the time being of the office of D.S.G.I.A.) authorized by s. 49 of the Indian Act to authorize Inspector Graham to attend the Surrender Council (through a combination of s. 31(f) and (m) or

the Interpretation Act?, and

ii) Were the terms of the authorization complete in cope?

b) If the 3 October 1906 was not a valid authorization does the Minister's (S.G.I.A.) approval of 29 September 1906 (Doc. 74) constitute an authorization under s. 49 of the Indian Act?

c) Does some other combination of documents constitute a valid authorization?

d) If Inspector Graham was validly authorized to attend the surrender council, was it legally necessary to indicate on the Surrender Document that the meeting was held in his presence?

If it is concluded that Inspector Graham was not validly authorized by the Superintendent General to attend the surrender council, then he would not be an officer authorized to certify the Affidavit required by s. 49(3).

2. It is claimed on behalf of the Kahkewistahaw Band that a majority of the male members of the band of the full age of twentyone years did not assent to the release or surrender.

According to the annuity paylists of the Kahkewistahaw Band, 23 adult male band members were paid annuities at the Agency on 11 July 1906 and 10 July 1907. (Doc. 64, 84) All but 1 of the men were paid each of these years. In July, 1906 the 23rd male paid was one Kay-say-way-se-mal #22, who died sometime prior to July, 1907. It is not known whether or not he was alive at the time of the surrender councils. The 23rd male paid in July 1907 was Ie-ki-pewin #69 who was absent at the time of the 1906 annuity payment. Augustus Me-quah-quay #120, was absent from the reserve 28 January 1907 for a period of 8 months. (Doc. 122)

There are other adult male band members listed on the 1906 and 1907 paylists whose residence is in doubt. Say-way-coo-poo #44 was last paid in 1899, Michael Little Pine #114 had not been paid an annuity since 1897 and Tom #117 was last paid in 1900. Bulwer #91 was serving a prison sentence for manslaughter and had not been paid an annuity since 1900. Could one say that but for his involuntary confinement Bulwer was habitually resident on the reserve?

According to the minutes of the 23 January 1907 surrender council recorded by Indian Agent Millar (Doc. 82) 5 of the 19 male adult band members present at the meeting voted in favour of the surrender. One of the names (as recorded by Millar): "Seyat" does not appear on the 1906 or 1907 paylists for the Band. Similarly, one of the names, (as recorded by Agent Millar): "Sepit?", voting in favour of the surrender at the 28 January 1907 surrendercouncil, (Doc. 83) does not appear on the 1906 or 1907 Band paylists. This name does not appear on the surrender document itself; rather the name of Sagebassewnin appears on the surrender document. (Doc. 85)

In any event, the outcome of the vote at the 28 January 1907 surrender meetings was that a majority of eligible voters present at the meeting voted in favour of the surrender. It appears that this was not a majority of all the band members entitled to vote (11 out of at least 23 men).

The wording of s. 49 of the Indian Act (quoted above) differs from the wording of the Affidavit sworn by Inspector Graham and Kahkanowenapew attesting that the Surrender was assented to by a majority of the male members of the said Band of Indians ~L the full age of twenty-one years then

present." (Doc. 86)

3. It is claimed on behalf of the Kahkewistahaw Band that Kahkanowenapew was not authorized to certify the Affidavit required by s. 49(3) of the Indian Act. Further, it is claimed that a surrender cannot be validly obtained from a Band having no Chief or Council.

The wording of the Affidavit sworn by Mr. Justice E.L. Whetmore of the Supreme Court of Saskatchewan was altered and initialled by Whetmore, S.C.J. The standard form of the typed affidavit referred to the Indian signatory as "Chief of the said Band of Indians". The wording was altered so that Kahkanowenapew is referred to as "Indian of the said Band of Indians". (Doc. 86) In other words, it is not represented on the document, that Kahkanowenapew was a Chief or Headman.

The paylists (Doc. 64, 84) along with other Department records indicate that the Kahkewistahaw Band had no Chief or Headmen between July 1906 and 1911. (Doc. 63, 65 - 70)

Unless Kahkanowenapew could be considered to be a "principal man" the technical requirements of the Affidavit set out in s. 49(3) were not met.

The pattern of dealing with Indian lands established by the Royal Proclamation 1763 and continued in the treaty making process may have some bearing on the interpretation of s. 49 (as to whether a Chief or Council is required in order to legally obtain a surrender from a Band).

The relevant provision of The Royal Proclamation 1763, R.C.S. 1970, Appendices, 123-29 is as follows:

... we do, with the advice of our Privy Council, strictly enjoin and require, that no private-Person do presume to make any Purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where, We have thought proper to allow Settlement; but that, if at any time any of the said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for the Purpose of the Governor or Commander in Chief of our Colony respectively within which they shall lie;

The text of Treaty #4 (Doc. 1) describes the procedure followed in entering the treaty:

Whereas, the Indians, inhabiting the said territory have, pursuant to an appointment made by the said Commissioners, been convened at a meeting at Qu'Appelle Lakes, to deliberate upon certain matters of interest to the Most Gracious Majesty, of the one part, and the said Indians of the other:

And whereas, the said Indians have been notified and informed, by Her Majesty's said Commissioners, that it is the desire of Her Majesty to open up for settlement, immigration, trade and such other purposes as to Her Majesty may seem meet, a tract of country bounded and described as hereinafter mentioned; and to obtain the consent thereto of Her Indian subjects inhabiting the said tract . . .

And whereas, the Indians of the said tract, duly convened in councils as aforesaid, and being requested by Her Majesty's said Commissioners to name certain Chiefs and headmen who should

be authorized on their behalf to conduct such negotiations, and sign any treaty to be founded thereon, and to become responsible to Her Majesty for the faithful performance by their respective bands of such obligations as shall be named by them, the said Indians have thereupon named the following persons for that purpose.

Regarding disposition of reserve lands contemplated by Treaty #4, the following provision was made:

. and provided further that the aforesaid reserves of land, or any part thereof, or any interest or right therein, or appurtenant thereto, may be sold, -leased or otherwise disposed of by the said Government for the use and benefit of the said Indians, with the consent of the Indians entitled thereto first had and obtained .

The surrender document itself (Doc. 85) refers to "the undersigned Chief and Principal men" of the Kahkewistahaw Band, "for and acting on behalf of the whole people of our said Band in Council assembled" making certain commitments, e.g. surrender of land described for sale; ratifying and confirming whatever the Government may do in carrying out the sale and disposition of proceeds.

The seventeen band members present at the 28 January 1907 surrender council signed or affixed their marks to the surrender document. Inspector Graham apparently did not attach any particular significance to this fact. (Doc. 88) In his report to Secretary McLean, dated 12 February 1907, Inspector Graham noted:

Immediately the vote was taken the Indians signed the surrender the whole 17 affixing their signature voluntarily. I at once began paying the approximate one-twentieth, which was \$94.00 each. (Doc. 88)

There is nothing to indicate that Kahkanowenapew or the other 16 band members present were selected to act on behalf of the whole band or that they purported to act in such a representative capacity.

D. WERE THE ROAD ALLOWANCES VALIDLY SURRENDERED?

It is claimed on behalf of the Kahkewistahaw Band that it did not validly surrender the projected road allowances within the surrendered portion of the reserve.

The description of the land covered by the 28 January, 1907 Surrender of lands suggests that everything, including those areas which became road allowances, within the boundaries of the block described were surrendered by the document.

The description is as follows:

All that portion of the Kahkewistahaw or Broadview Indian Reserve, Number Seventy-two, in the Province of Saskatchewan, lying south of the road allowance, between projected Townships Seventeen and Eighteen, Ranges Four and Five, West of the Second Meridian, and including the said road allowance. (Doc. 85)

Lands included in the Kahkewistahaw Reserve #72 had been removed from the operation of the Dominion Lands Act "subject to existing rights as defined or created thereunder" by Order in Council

dated 12 June, 1893 (OIC 1694/1893 - Doc. 13). This Order in Council was authorized by provisions of the Dominion Lands Act. For instance, the relevant provision of the 1906 Act (R.S.C. 1906, c. 55, s.b.) read:

- s. 6. The Governor in Council may, a) withdraw from the operation of this Act, subject to existing rights defined or created thereunder, such lands as have been or are reserved for Indians; (Doc. 170)

The 28 January, 1907 Surrender was accepted by the Governor in Council by Order in Council #410 on 4 March, 1907. (Doc. 107) The surrender was forwarded to the Department of Secretary of State for registration on 13 March, 1907. (Doc. 108)

The Dominion Lands Act, R.S.C. 1906, c. 55 (in force until repealed and replaced by S.C. 1908, c. 20; assented to 20 July, 1908) provided:

- s. 4. None of the provisions of the Act shall apply to territory the Indian title to which is not extinguished. (Doc. 170)

To what extent did the actions of the acceptance and registration of the surrender have the effect of bringing the surrendered portion of the reserve within the operations of the Dominion Lands Act? Or have the effect of repealing Order in Council 1694/1893?

In the letter of instructions dated 22 March, 1907, Secretary McLean instructed surveyor J. Lestock Reid to make the survey and subdivision of the surrendered portions of Reserves #72 and #73. Mr. McLean instructed: "as in former cases the system of Dominion Land surveys is to be continued in the surrendered lands". (Doc. 111)

The system of Dominion Land survey set out in s. 54 of the Dominion Lands Act, R.S.C. 1906, c. 55 was as follows:

- s. 54. The Dominion lands shall be laid off in quadrilateral townships, each containing thirty-six sections of as nearly one mile square as the convergence of meridians permits, with such road allowances between sections, and of such width as the Governor in Council prescribes . . . (Doc. 170)

The survey and subdivisions of the lands surrendered in Reserve #72, completed by J. Lestock Reid in June, 1907, included road allowances. For instance, Plan T766 of Township 17, Range 5, shows a road area of 432 acres out of the total area, in the Township, of 22,442 acres. (Doc. 174) Plan -T1444, of the Kahkewistahaw Reserve #72, certified by Chief Surveyor (D.I.A.) S. Bray, has road allowances drawn on the subdivisions of the surrendered portion of the reserve. (Doc. 175)

Section 54 of The Land Titles Act of Saskatchewan, S.S. 1906, c. 24 enabled the province to secure title to surveyed roads or trails shown on a plan forwarded to the Lands Titles Office Registrar by excluding such roads from the title issued to the owner unless the road is reserved.

- s. 54. If a certificate of title has not been granted for any land affected by a road or trail as shown upon the plan forwarded to the registrar as hereinbefore provided the registrar shall upon granting a certificate of title for such land cancel the area required for the road or trail as shown upon such plan for such certificate of title and from the duplicate thereof when issued and before delivered to the owner; and unless a reservation of such surveyed road or trail is

made in the grant from the crown of such land he shall upon being requested so to do by the Commissioner of Public Works for the province grant a new certificate of title to His Majesty in the right of the province and shall issue to His Majesty a duplicate of such certificate and forward the same to the Commissioner of Public Works. (Doc. 172)

An Order in Council dated 20 November, 1907 provided that in Alberta, Saskatchewan and Manitoba,

. every lease or sale of Dominion lands [was] made subject to the right of the province to take for road purposes, without compensation, such as may be required, not exceeding two and one-half percent of the total area, such right to cease upon the issue of patent for the land, provided the value of any improvements found on the parcel required for road purposes shall be paid for by the province, the said value to be fixed by the Minister of Interior; also that in the case of sale the purchaser shall not be required, when making the final payment, to pay for the area covered by the proposed roadway. (Doc. 173)

If the disputed road allowances are included in the lands described in the surrender document, the further question arises: were the lands comprising the road allowances dealt with in the manner contemplated by the surrender document. The surrender document stated that the land described was surrendered to the Crown "in trust to sell the same . . .". (Doc. 85) The subdivision and survey made by J. Lestock Reid clearly did not contemplate the sale of the section road allowances. (Doc. 174, 175)

The historical record does show that there was an exchange of sorts. There were 3 irregular trails or roads crossing the surrendered portion of the Kahkewistahaw Reserve. There was the trail from Fort Ellice to Fort Qu'Appelle, which both levels of government assumed had come under territorial control prior to the confirmation of the Kahkewistahaw Reserve by OIC. (Doc. 14-18) There were also two trails crossing the Kahkewistahaw Reserve that connected Broadview to settlements north of the reserve. Lands for these trails had been surrendered in 1890 to the Superintendent General of Indian Affairs. (Doc. 35) An accompanying Memorandum of Agreement, 1899 entered by certain individuals purporting to represent the townspeople of Broadview made certain undertakings on which the surrender of the trails was conditional. (Doc. 34) Arguably this agreement could be viewed as compensation for the surrender. For instance, the Indians were to be given first option of being hired to do work on the roads. (Doc. 34)

The 1890 Surrender was rescinded and replaced by a new surrender of the two road allowances in 1902. (Doc. 36, 37) These road allowances were then transferred to the management of the province. (Doc. 38) Following the surrender and survey for subdivision, J.D. McLean entered negotiations with the provincial Department of Public Works Assistant Commissioner F.J. Robinson to have the last described trails cancelled in exchange for the section road allowances. (Doc. 110, 113 - 120)

Mr. Robinson was agreeable to this proposal on the condition that certain deviations from the section road allowances be reserved from sale. (Doc. 118, 119)

In recommending the cancellation of the irregular trails Department officials (J.D. McLean - Doc. 114, 115, J. Lestock Reid - Doc. 112, and Inspector Graham - Doc. 113) expressed the opinion that the value of the quarter sections involved would be adversely affected by these trails.

The question remains whether or not the actions taken by the Department with respect to road

allowances could be said to fall within the terms of the surrender? (Doc. 85) Does the provision whereby the "Chief and Principal men"

"ratify and confirm . . . whatever the said Government may do, or cause to be lawfully done, in connection with the sale of the said lands and disposition of the money arising therefrom"

sanction the transfer of section road allowances to the province, in this case, in exchange for other irregular roads? Alternatively, could a surrender of lands to the Crown for sale empowering the Dominion Government to dispose of the land "to such person or persons and upon such terms as the Government of the Dominion of Canada may deem most conducive to our Welfare and that of our people" be construed as empowering the Dominion government to vest the direction, management and control in the Lt. Governor of the province since having such road allowances recognized as public roads would, arguably, enhance the value of adjoining lands.

V. DESCRIPTION OF DOCUMENTS

(listed in order of appearance in the report)

1. The Qu'Appelle Treaty, Number Four, 15 Sept., 1874, in Alexander Morris, The Treaties of Canada with the Indians, (Toronto: Coles Publishing Co.: 1971), pp. 330-335.
2. W.J. Christie and M.G. Dickieson to Minister of the Interior, 7 Oct., 1875, C.P.S.P. (1876), Annual Report Dept. of Interior, pp. xxii-xxviii (report on meetings with Treaty #4 Indians and payment of annuities).
3. William Wagner to Surveyor General Dennis, 2 Jan., 1877, PAC, RG 88, v. 300, f. 0644 (reporting progress of surveys of Treaty #4 reserves).
4. William Wagner to Minister of Interior, 19 Jan., 1877, PAC, RG 88, v. 300, f. 0644 (reporting surveys of Treaty #4 reserves completed during season).
5. Plan A969 Ka-west-a-haw-Reserve December, 1876, Energy, Mines & Resources Canada, Legal Surveys, Regina. Alternate: (PAC, RG 88, v. 300, f. 0644) (surveyed by William Wagner).
6. Allan Poyntz Patrick to S.G.I.A., 16 Dec., 1880, C.P.S.P.

- (1881), Annual Report Dept. Indian Affairs, pp. 113-117 (report of work during 1880).
7. Agent McDonald to S.G.I.A., 12 Sept., 1880 in C.P.S.P., 1881, Annual Report Dept. Indian Affairs, pp. 104-105 (settlement of Crooked Lake Bands on their reserves)
 8. John C. Nelson to S.G.I.A., 10 Jan., 1882, C.P.S.P. (1883), Annual Report Dept. Indian Affairs, pp. 130-135 (report of progress during 1881 season, sketch Kahkewistahaw Reserve). Alternate: PAC, RG 10, v. 3573, f. 154 pt. 2.
 9. John C. Nelson to Indian Commissioner, 31 Dec., 1884, in PAC, RG 10, v. 3703, f. 17, 728 (report on surveys during 1884, marked boundaries of fishing station).
 10. John C. Nelson's Field notes and plan Indian Reserve #72, August 1881, Energy, Mines and Resources Canada, Legal Surveys, Regina. Alternate: RG2 Series I:PC419.
 11. John C. Nelson's Field notes and plan Indian Reserve #72A, February, 1884, Energy, Mines and Resources Canada, Legal Surveys, Regina.
 12. O.C.P.C.1151/1889, PAC, RG 2, Series 1, 17 May, 1889 (OIC confirming Reserves #72 & #72A)
 13. O.C.P.C. 1694/1893, PAC, RG 2, Series 1, 12 June, 1893 OIC removing Reserves #72 & 72A from Dominion Lands Act).
 14. J. Dennis, Deputy Commissioner Public Works, N.W.T. to Indian Commissioner, A.E. Forget, 19 Oct., 1897 in PAC, RG 10, v. 3556, f. 25 pt. 4B (requested to cut timber on I.R. #72 and other reserves, to clear surveyed trail from Ft. Ellice to Ft. Qu'Appelle).
 15. J. Dennis, Deputy Commissioner Public Works to Indian Commissioner, 24 Nov., 1897 in PAC, RG 10, v. 3556, f. 25 pt. 4B (took position that surveyed trail was transferred to N.W.T. before reserve surveys were confirmed).
 16. OIC 2173, 17 Sept., 1889 in PAC, RG 10, v. 3556, f. 25 pt. G. (transferred named surveyed trails to N.W.T. pursuant to N.W.T. Act).

17. Assistant Secretary A. McNeill to Indian Commissioner, 28 Dec., 1897 in PAC, RG 10, v. 3556, f. 25 pt. 4B (agreed with Dennis that surveyed trail did not form part of reserves it crossed).
18. Indian Commissioner to J. Dennis, 3 Jan., 1898 in PAC, RG 10, v. 3556, f. 25 pt. 4B (trail does not form part of reserves).
19. A. McDonald to S.G.I.A., 19 Jan., 1882 in C.P.S.P. (1882), Annual Report Dept. Indian Affairs, pp. 224-225.
20. J. R. Hall, Secretary, Dept. Interior to L. Vankoughnet, D.S.G.I.A., 13 May, 1886, in PAC, RG 10, v. 3713, f. 20,813 (reserves on north shore Crooked Lake and Qu'Appelle River "surrendered" for reserves on south side). Draft found in: PAC, RG 15, v. 341, f. 89461-1.
21. Thos. Evans, J.P. to Sir John A. MacDonald, 26 May, 1885 in PAC RG 10, v. 7542, f. 29108-1 (request reserve north of Broadview be opened up for settlement).
22. Thos. Evans, J.P. to Sir David L. MacPherson, Minister of Interior, 26 May, 1885 in PAC, RG 10, v. 7542, f. 29108-1 (request opening up for settlement of reserve north of Broadview).
23. W. Vankoughnet, D.S.G.I.A. to E. Dewdney, Indian Commissioner, 5 June, 1885 in PAC, RG 10, v. 7542, f. 29108-1 (draft letter forwarding T. Evans' request).
24. L. Vankoughnet, D.S.G.I.A. to Thos. Evans, 5 June, 1885 in PAC, RG 10, v. 4510 p. 227 (draft letter saying no previous petition received; inquiry will be made into the matter).
25. P.B. Douglas, Asst. Secretary (Interior) to L. Vankoughnet, D.S.G.I.A., 8 June, 1885 in PAC, RG 10, v. 7542, f. 29108-1 (enclosing letter of Thos. Evans).
26. L. Vankoughnet, D.S.G.I.A. to A. M. Burgess, Deputy Minister of Interior, 15 June, 1885 in PAC, RG 10, v. 7542, f. 291081 (acknowledging receipt of letter, stating Indian Commissioner has been requested to report on the subject).

27. A.M. Burgess, Deputy Minister of Interior to L. Vankoughnet, D.S.G.I.A., 4 March, 1886 in PAC RG 10, v. 3732, f. 26623 (requesting opinion on proposal made to Minister by Moosomin area settlers re: moving reserve back 6 miles from C.P.R. in exchange for other available lands).
28. L. Vankoughnet, D.S.G.I.A. to E. Dewdney, Indian Commissioner, 15 March, 1886 in PAC, RG 10, v. 3732, f. 26623 (enclosing above proposal and requesting report).
29. A.M. McDonald, Crooked Lakes Agency Indian Agent to E. Dewdney, Indian Commissioner, 22 March, 1886 in PAC, RG 10, v. 3732, f. 26623 (report on proposed exchange of reserve lands for other lands).
30. E. Dewdney, Indian Commissioner to L. Vankoughnet, D.S.G.I.A., 24 March, 1886 in PAC, RG 10, v. 3732, f. 26623 (enclosing Agent McDonald's report).
31. L. Vankoughnet, D.S.G.I.A. to A.M. Burgess, Deputy Minister Interior, 7 April, 1886 in PAC, RG 10, v. 3732, f. 26623 (enclosing Agent McDonald's report and advising against disturbing Indians in possession of their lands).
32. A.M. Burgess to L. Vankoughnet, 15 April, 1886 in PAC, RG 10, v. 3732, f. 26623 (letter to clarify apparent misunderstanding - Minister has been told Indians would consent to change in reserve if given compensation).
33. L. Vankoughnet, D.S.G.I.A. to A.M. Burgess, 6 May, 1886 in PAC, RG 10, v. 3732, f. 26623 (not advisable to propose surrender).
34. Memorandum of acceptance of conditional surrender of lands for road purposes signed by residents of Broadview, 13 Aug., 1889 in PAC, RG 10, v.3556, f. 25 pt 4B (undersigned agree to be bound by conditions in order to obtain surrender of road allowances).
35. D. Laird to Secretary D.I.A., 28 Aug. 1902 in PAC, RG 10, v.3556, f. 25 pt 4B (description of 1890 surrender of certain road allowances, acceptance by OIC 7 March, 1893 and memorandum of agreement).
36. Surrender of certain road allowances by Kahkewistahaw Band, 29 Oct., 1902 in PAC, RG 10, v.3556, f. 25 pt. 4B.

37. J.J. McGee to S.G.I.A., 12 Dec. 1902 in PAC, RG 10, v.3556, f. 25 pt 4B (extract from report of Privy Council rescinding previous surrender, approving 1902 surrender).
38. Commissioner Laird to Deputy Commissioner Public Works, 17 Feb., 1903 in PAC, RG 10, v. 3556, f. 25 p. 4B (advised fresh surrenders had been taken, asked N.W.T. to prepare surveys).
39. G. Thorburn, Broadview to Minister of Interior, 26 Feb., 1891 in PAC, RG 10, v. 3732, f. 26623 (resolution to open up south range, Tp 17 of reserves; opportune time to approach Indians).
40. A.McDonald to S.G.I.A., 10 March, 1891 in PAC, RG 10, v. 3732, f. 26623 (report on proposal presented by Thorburn).
41. Willy to G. Thorburn, 16 April, 1891 in PAC, RG 10, v. 3732, f. 26623 (at direction of S.G.I.A., communicates opinion of Agent McDonald on action proposed by resolution).
42. Clifford Sifton to Mr. McKenna, 17 Jan., 1899 in PAC, RG 10, v. 3732, f. 26623 (forwarding proposal by R.S. Lake, M.L.A. N.W.T. to have portion of reserve north of C.P.R. opened for settlement).
43. Memorandum and sketch (prepared by R.S. Lake, M.L.A. of N.W.T.) in PAC, RG 10, v. 3732, f. 26623.
44. J.A. McKenna to Mr. Ponton, 24 Jan., 1899 in PAC, RG 10, v. 3732, f. 26623 (requesting report on Mr. Lake's suggestion to open up a portion of the reserve north of C.P.R.).
45. A.W. Ponton to Mr. McKenna, 17 Feb., 1899 in PAC, RG 10, v. 3732, f. 26623 (report on Mr. Lake's proposal).
46. Clifford Sifton to D. Laird, Indian Commissioner, 23 Feb., 1899 in PAC, RG 10, v. 3732, f. 26623 (forwarding Ponton's report, soliciting opinion of Laird and Agent re: proposal to open up portion of reserve north of railway).
47. D. Laird to Clifford Sifton, 22 April, 1899 in PAC, RG 10, v. 3732, f. 26623 (reports that lands are needed as hay lands, best to delay for few years).
48. Clifford Sifton to R.S. Lake, M.L.A., 29 April, 1899 in PAC, RG 10, v. 3732, f. 26623 (reporting on response from Laird: best to do nothing at present although desirable to meet wishes of settlers).
49. Agent Magnus Begg to D. Laird, 13 Jan., 1902 in PAC, RG 10, v.3561, f. 8214 (proposes surrender of reserve lands for sale to establish fund to pay debts, purchase

equipment).

50. D. Laird to Magnus Begg, 22 Jan., 1902 in PAC, RG 10, v.3461, f. 8214 (question of surrender best left alone at present; lands in question are needed as hay lands).
51. Petition to Minister of Interior from residents of Broadview, Whitewood and surrounding districts, 1902 in PAC, RG 10, v. 3732, f. 26623.
52. A.P. Collier to McLean, Secretary D.I.A., 31 March, 1902, in PAC, RG 10, v. 3732, f. 26623 (instructing McLean to respond to petitioners and to instruct Laird to dispatch official to discuss surrender with the Indians).
53. J.D. McLean to Rev. J. G. Stephens, 2 April, 1902 in PAC, RG 10, v.3461, f. 82 pt 4 (or RG 10, v. 3732, f. 26623) (acknowledging petition as instructed).
54. J. D. McLean to D. Laird, 2 April, 1902 in PAC, RG 10, v. 3732, f. 26623 (enclosing petition, directing Laird to assign appropriate official to discuss surrender with the Indians).
55. D. Laird to McLean, 6 May, 1902 in PAC, RG 10, v. 3732, f. 26623 (reporting that when met Indians in Council, they very much opposed surrender of any lands).
56. C. Sifton to F. Pedley, D.S.G.I.A., 8 March, 1904 in PAC, RG 10, v. 3732, f. 26623 (directed Commissioner's office to look into desirability to Indians of surrender desired by Broadview residents).
57. F. Pedley, D.S.G.I.A. to D. Laird, 15 March, 1904 in PAC, RG 10, v. 3732, f. 26623 (direction that McKenna consider desirability to Indians of surrender and likelihood of obtaining consent).
58. J.A. McKenna, Asst. Indian Commissioner to McLean, Secretary, 19 March, 1904 in PAC, RG 10, v. 3732, f. 26623 (advised against his meeting with Indians to discuss surrender, impression that Dept. acting for settlers).
59. J.D. McLean to D. Laird, 28 March, 1904 in PAC, RG 10, v. 3561, f. 82-4 (Agent may discuss matter of surrender with the Indians; if surrendered, land would be sold for best price obtainable).
60. M. Begg to D. Laird, 11 April, 1904 in PAC, RG 10, v. 3561, f. 82-4 (will have a council with Kahkewistahaw, Cowesses and Ochapowace Bands "at once").
61. D. Laird to J.D. McLean, 30 Sept., 1904 in PAC, RG 10, v. 3732, f. 26623 (at July annuity payments, circumstances suggest that time might be right to obtain surrender).
62. J.D. McLean to D. Laird, 4 Oct., 1904 in PAC, RG 10, v. 3732, f. 26623 (approve suggestion to

allow matter of further action on surrender to rest until new agent appointed).

63. D. Laird to Secretary McLean, 10 July, 1906 in PAC, RG 10, v. 3939, f. 121,698-8 (reporting death in June, 1906 of Chief Kahkewistahaw).
64. Kahkewistahaw Band Paylist, 1906.
65. M. Millar to Secretary McLean, 3 Aug., 1910 in PAC, RG 10, v. 3939, f. 121,698-8 (convey request of Band members, who had not had council for some years, to be permitted to elect chief and councillors).
66. Asst. Secretary Stewart to M. Millar, 13 Aug., 1910 in PAC, RG 10, v. 3939, f. 121,698-8 (Dept. records show band still has two councillors Wahsacase & Louison).
67. Asst. Deputy & Secretary McLean to M. Millar, 9 Feb., 1911 in PAC, RG 10, v. 3939, f. 121,698-8 (clear from annuity payroll that band has no headmen; inform band it is entitled to 1 Chief and 1 Headman).
68. Asst. Deputy and Secretary McLean to M. Millar, 10 Feb., 1911 in PAC, RG 10, v. 3939, f. 121,698-8 (promptly report any vacancy in position of chief or councillor).
69. M. Millar to Secty McLean, 29 June, 1911 in PAC, RG 10, v. 3939, f. 121,698-8 (reported on band meeting held to elect chief and headman).
70. J.D. McLean to M. Millar, 7 July, 1911 in PAC, RG 10, v. 3939, f. 121,698-8 (confirmed selection of Chief and Councillor).
71. Inspector W.M. Graham to D.S.G.I.A., 14 July, 1906 in C.P.S.P. 1907, Annual Report D.I.A., 1906, p. 156 (no special inspection made of Agency, prosperous year for Indians).
72. W.M. Graham to Frank Oliver (Personal), 19 June, 1906 in PAC, RG 10, v. 3732, f. 26623 (had spent three days at Agency; optimistic about chances of obtaining surrender if handled properly).
73. J.D. McLean to Frank Pedley, 28 June, 1906 in PAC, RG 10, v. 3732, f. 26623 (enclosing Graham's letter, Minister instructed D.S.G.I.A. to prepare report re: proper basis of surrender).
74. W.A. Orr to Secretary J.D. McLean, 3 July 1906, in PAC, RG 10, v. 3732, f. 26623 (memorandum re: acreage and population figures for 3 Crooked Lake Reserves, wanted to know how much land Mr. Graham proposed taking).
75. J.D. McLean to W.M. Graham (telegram), 6 July, 1906 in PAC, RG 10, v. 3732, f. 26623 (How much land from each reserve proposed surrendering?).
76. W.M. Graham to J.D. McLean, 24 Sept., 1906 in PAC, RG 10, v. 3732, f. 26623 (propose asking bands to surrender all lands in Tp. 17, R 3, 4, 5, and 6; money for 1st payment should be on hand, estimated land value, thought land little used).

77. Accountant D. Schirr to Acting D.S.G.I.A., 26 Sept., 1906 in PAC, RG 10, v. 3732, f. 26623 (can send Graham half of 10% estimated sale proceeds for payment when surrender signed).
78. W.A. Orr to Acting Deputy Minister, 28 Sept., 1906 in PAC, RG 10, v. 3732, f. 26623 (outlined surrender proposal re: 3 Crooked Lake Reserves and asked whether surrender forms on these terms should be sent to Graham for submission. Marginal notes indicate Acting D.M. submitted same to Minister for approval, 28 Sept., 1906 and approval was given 29 Sept., 1906).
79. J.D. McLean, Acting D.S.G.I.A. to Inspector W.M. Graham, 3 Oct., 1906 (authorized Graham to submit enclosed surrenders to Kakewistahaw (#72), Kakeesheway (#71) and Cowesses (#73) Bands, enclosed cheque for 1/2 of 10% estimated sale price; suggested terms to be included).
80. W.M. Graham to Secretary McLean, 9 Oct., 1906 in PAC, RG 10, v. 3732, f. 26623 (reported that he was unable to deal with the surrenders at that time, sought authorization to insert same conditions as in Pasquah Surrender, agreed with suggested provision to fund shares of minors' after 1st payment).
81. Secretary J.D. McLean to Inspector Graham, 16 Oct., 1906 in PAC, RG 10, v. 3732, f. 26623 (authorized Graham to insert conditions in Pasquah surrender with any necessary changes and authorizes Graham to estimate value of improvements).
82. Minutes of Meeting of Kahkewistahaw Band Re: Land Surrender Proposed by Department, 23 Jan., 1907 in Broadview Area Minute Book.
83. Minutes of Meeting of Kahkewistahaw Band Re: Land Surrender Proposed by Department, 28 Jan., 1907 in Broadview Area Minute Book.
84. Kahkewistahaw Band Paylist, 1907, D.I.N.A., Hull, P.Q.
85. Surrender Document with Signatures/Marks of 17 Band members affixed in presence of M. Millar, H. Nichol, E.D. Sworder, 28 Jan., 1907.
86. Affidavit certifying assent to surrender by majority of voting members present at meeting. Sworn before E.L. Whetmore, J. at Moosomin by W.M. Graham and Kahkanowenapew (Indian of said Band), 2 Feb., 1907.
87. W.M. Graham to D.S.G.I.A. Pedley (telegram), 2 Feb., 1907 in PAC, RG 10, v. 3732, f. 26623 (reported that Indians of Reserves #72 & #73 surrendered over 50,000 acres).
88. W.M. Graham to Secretary McLean, 12 Feb., 1907 in PAC, RG 10, v. 3732, f. 26623 (report on surrenders; he promised Indians sale would be well advertised; recommended June is best time for sale).
89. Agent J.P. Wright to S.G.I.A., 27 July, 1900 in C.P.S.P. 1901, Annual Report Dept. Indian Affairs

(1900) pp. 145-151.

90. Agent M. Begg to S.G.I.A., 31 July, 1901 in C.P.S.P. 1902, Annual Report Dept. Indian Affairs (1901) pp. 140-145.
91. Agent M. Begg to S.G.I.A., 12 Aug., 1902 in C.P.S.P. 1903, Annual Report Dept. Indian Affairs (1902) pp. 136-139 (excerpt).
92. Agent M. Begg to S.G.I.A., 17 Aug., 1903 in C.P.S.P. 1904, Annual Report Dept. Indian Affairs (1903) pp. 156-161 (excerpt).
93. Acting Agent J.A. Sutherland to S.G.I.A., 1 Aug., 1904 in C.P.S.P. 1905, Annual Report Dept. Indian Affairs (1904) pp. 148- 150.
94. Agent M. Millar to D.S.G.I.A., 30 June, 1905 in C.P.S.P. 1906, Annual Report Dept. Indian Affairs (1905) pp. 121-123.
95. Census Return, as of 31 March, 1906 in C.P.S.P. 1907, Annual Report Dept. Indian Affairs (1906) p. 82.
96. Census Return, as of 31 March, 1907 in C.P.S.P. 1908, Annual Report Dept. Indian Affairs (1907) pp. 82-83.
97. Census Return, as of 31 March, 1908 in C.P.S.P. 1909, Annual Report Dept. Indian Affairs (1908) pp. 82-83.
98. Agent M. Millar to D.S.G.I.A., 4 June, 1909 in C.P.S.P. 1910, Annual Report Dept. Indian Affairs (1909) pp. 136-139.
99. Census Return, as of 31 March, 1910 in C.P.S.P. 1911, Annual Report Dept. Indian Affairs (1910) p. 126.
100. Agent M. Millar to D.S.G.I.A., 18 May, 1911 in C.P.S.P. 1912, Annual Report Dept. Indian Affairs (1911) pp. 135 - 138.
101. Agent M. Millar to D.S.G.I.A., 26 May, 1912 in C.P.S.P. 1913, Annual Report Dept. Indian Affairs (1912) pp. 139-142.
102. Agent M. Millar to D.S.G.I.A., 3 June, 1913 in C.P.S.P. 1914, Annual Report Dept. Indian Affairs (1913) pp. 141-143.
103. Census Return, as of 31 March, 1914 in C.P.S.P. 1915, Annual Report Dept. Indian Affairs (1914) p. 46.
104. Census Return, as of 31 March, 1915 in C.P.S.P. 1916, Annual Report Dept. Indian Affairs (

1915) p. 44.

105. A.R. Colquhoun & F. Johnston to Frank Oliver, 19 Feb., 1907 in PAC, RG 10, v. 3732, f. 26623 (convey appreciation of Broadview Board of Trade to Minister, Graham and Miller for assistance in opening up part of Crooked Lake Reserves).

106. Frank Oliver to Governor General in Council, 26 Feb., 1907 in PAC, RG 10, v. 3732, f. 26623 (submitted Kahkewistahaw Surrender).

107. O.C.P.C. 410, 4 March, 1907 in PAC, RG 10, v. 3732, f. 26623 (approving surrender).

108. Secretary McLean to Under Secretary of State, 13 March, 1907 in PAC, RG 10, v. 3732, f. 26,623 (Kahkewistahaw Surrender submitted for registration)

109. Under-Secretary of State to Secretary McLean, 14 March, 1907 in PAC, RG 10, v. 3732, f. 26,623 (matter of registration will receive attention).

110. Secretary McLean to F.J. Robinson, Deputy Commissioner of Public Works (Sask.), 19 March, 1907 in PAC, RG 10, v. 3732, f. 26623 (requested that province retransfer certain roads through reserves #72 & #73 which had been previously surrendered and transferred to province in exchange for the new roads to be laid out in subdivision survey of surrendered lands).

111. Secretary McLean to J. Lestock Reid, 22 March, 1907 in PAC, RG 10, v. 3568, f. 84 pt. G (instructions to make survey and subdivisions for sale of surrendered portions of IR 72 and 73).

112. J. Lestock Reid to J.D. McLean, 8 June, 1907 in PAC, RG 10, v. 4006, f. 240,050-5 (reported subdivision surveys of surrendered portions of IR 72 & 73 completed; support application to have irregular trails cancelled in exchange for section roads).

113. W.M. Graham to Secretary McLean, 11 June, 1907 in PAC, RG 10, v. 3732, f. 26623 (recommended cancellation of irregular trails through surrendered lands before sale).

114. J.D. McLean to F.J. Robinson, 22 June, 1907 in PAC, RG 10, v. 3732, f. 26623 (want reply to request to cancel irregular roads).

115. J.D. McLean to F.J. Robinson, 23 July, 1907 in PAC, RG 10, v. 3732, f. 26623 (enclosed survey plans of surrendered lands, repeated request that province cancel irregular trails).

116. F.J. Robinson to J.D. McLean, 27 July, 1907 in PAC, RG 10, v. 3732, f. 26623 (advised that report of Dept. official needed before taking action on D.I.A. request).

117. F.J. Robinson to J.D. McLean, 31 July, 1907 in PAC, RG 10, v. 4006, f. 240,050-1 (explanation of plans).

118. F.J. Robinson to J.D. McLean, 10 Dec., 1907 in PAC, RG 10, v. 3732, f. 26623 (prepared to recommend closure of trail through Tp 17, R 5 & 6 - in exchange for road allowances if certain small diversions are reserved).

119. F.J. Robinson to J.D. McLean, 10 Dec., 1907 in PAC, RG 10, v. 3732, f. 26623 (prepared to recommend closure of trail through Tp 17, R 4 & 5, W2M in exchange for a road allowance - certain small diversions will be required).

120. J.D. McLean to F.J. Robinson, 17 Dec., 1907 in PAC, RG 10, v. 3732, f. 26623 (agreed sales would be made subject to the road allowance deviations requested by province).

121. W.M. Graham to J.D. McLean, 24 June, 1907 in PAC, RG 10, v. 3732, f. 26623 (submitted paysheets, receipt, etc.; 2-3 additional fields for which compensation is needed, calculation of compensation).

122. W.M. Graham to J.D. McLean, 31 Jan., 1908 in PAC, RG 10, v. 3732, f. 26623 (reported names of Indians, absent at time of surrender, who had applied for share).

123. W.M. Graham to J.D. McLean, 31 Jan., 1908 in PAC, RG 10, v. 3732, f. 26623 (submitted proposed compensation for improvements).

124. J.D. McLean to M. Millar, 6 April, 1908 in PAC, RG 10, v. 3732, f. 26623 (cheque to pay compensation for improvements enclosed).

125. W.A. Orr to Deputy Minister, 19 Feb., 1908 in PAC, RG 10, v. 3732, f. 26623 (reported on conditions of surrender, recommended sale be held in July, 1908, submitted copy of J. Lestock Reid's valuations).

126. Valuation of Lands - J. Lestock Reid, June, 1907 in PAC, RG 10, v. 3732, f. 26623.

127. Frank Oliver to Governor General in Council, 8 April, 1908 in PAC, RG 10, v. 1127 p. 639 (recommended increase in salary for Graham).

128. S. Bray--Memorandum for Deputy Minister, 12 Feb., 1908 in PAC, RG 10, v. 3732, f. 26,623 (section claimed by H.B.C. in Cowesses Reserve will not be sold; should attempt be made to obtain compensation?).

129. Secretary McLean to Dept. Interior Secretary Keyes, 14 Feb., 1908 in PAC, RG 10, v. 3732, f. 26,623 (requested compensation for section claimed by H.B.C.).

130. Secretary Keyes to Secretary McLean, 7 July, 1908 in PAC, RG 10, v. 3732, f. 26,623 (reaffirm Dept's position taken in 1890 correspondence, enclosed).

131. Asst. Secretary (Interior) Pereira to D.S.G.I.A. Vankoughnet, 29 Nov., 1890 in PAC, RG 10, v. 3732, f. 26,623 (Dept. of Interior not justified in attempting to effect exchanges where its interests not

affected).

132. S. Bray to Deputy Minister, 2 Sept., 1908 in PAC, RG 10, v. 3732, f. 26623-1 (recommended that lands claimed by Hudson Bay Company within surrendered lands be reserved from sale, marginal note: F.P.: advertise for sale but exclude by claim).

133. J.D. McLean, Notice of Public Auction of Indian Lands, 15 Sept., 1908 in PAC, RG 10, v. 3732, f. 26623-1 (set out date, place, terms).

134. Secretary McLean to R.H. Varney, 2 Nov., 1908 in PAC, RG 10, v. 3732, f. 26,623-1 (advised reserve prices would be made known at sale).

135. List of recipients of sale notices (3 pages) in PAC, RG 10, v. 3732, f. 26623-1.

136. Broadview Board of Trade Advertisement for Sale of 50,000 Acres of Indian Reserve Lands in The Morning Leader, Regina, 14-17 & 19, Oct., 1908).

137. Saskatoon & Western Land Co. Ltd. Advertisement: 250,000 acres at Auction in 1 Oct., 1908 in The Morning Leader, Regina.

138. Article: "Progress of the Land Auction", 14 Oct., 1908 in The Morning Leader, Regina (Sale described as slow, upset price \$5.00 per acre, list prices generally higher).

139. Report of School Lands Branch, 4 October, 1906 in C.P.S.P. 1907, Annual Report of Department of Interior (1906) p. 98 at 100 .

140. Report of School Lands Branch, 19 June, 1907 in C.P.S.P. 1908, Annual Report of Department of Interior (1907) p. 57 at 58.

141. Report of School Lands Branch, 14 July, 1908 in C.P.S.P. 1909, Annual Report of Department of Interior (1908) p. 89 at 90.

142. Report of School Lands Branch, 15 June, 1909 in C.P.S.P. 1910, Annual Report of Department of Interior (1909) p. 131 at 132.

143. F. Pedley, D.S.G.I.A. to W.M. Graham, 10 Nov., 1908 in PAC, RG 10, v. 3732 (instructed Graham to take charge of sale of Kahkewistahaw & Cowesses lands).

144. W.M. Graham to J.D. McLean, 16 Nov., 1908 in PAC, RG 10, v. 3732, f. 26623-1 (expected sale of surrendered lands to last 4 days).

145. W.M. Graham to F. Pedley, D.S.G.I.A. (telegram), 26 Nov., 1908 in PAC, RG 10, v. 3732, f. 26623-1 (200 quarter sections sold at "most successful sale").

146. Joseph L. Lamont, Whitewood to (telegram), to J.D. McLean 23 Nov., 1908 in PAC, RG 10, v.

3732, f. 26623-1 (accepted position as auctioneer).

147. W.M. Graham to F. Pedley, D.S.G.I.A., 26 Nov., 1908 in PAC, RG 10, v. 3732, f. 26623-1 (reported 199 parcels sold for \$229,117.20).

148. W.M. Graham to J.D. McLean, 28 Nov., 1908 in PAC, RG 10, v. 3732, f. 26623-1 (enclosed draft of first instalment on price of lands sold - \$22,912.72).

149. W.M. Graham to J.D. McLean, 3 Dec., 1908 in PAC, RG 10, v. 3732 f. 26623-1 (enclosed sale record books).

150. Record of Sale of Crooked Lake Lands in PAC, RG 10, v. 3732, f. 26 623-1.

151. W.A. Orr to Deputy Minister, 19 Dec., 1908 in PAC, RG 10, v. 3732, f. 26623-1 (report on land sale).

152. File Note, 1 March, 1909 in PAC, RG 10, v. 3732, f. 26,6231 (calculation of average sale price--\$7.15 per acre).

153. Secretary McLean to Agent Millar, 19 Feb., 1909 in PAC, RG 10, v. 3732, f. 26,623-1 (enclosed cheque for payment of second instalment of one-tenth payment).

154. W.A. Orr to Deputy Minister, 29 March, 1909 in PAC, RG 10, v. 3732, f. 26,623-1 (advised against reducing upset prices on unsold lands, recommended delaying sale until market improved).

155. Inspector Graham's schedule of reduced upset prices for unsold lands (enclosed with #154) in PAC, RG 10, v. 3732, f. 26,623

156. Agent Millar to Secretary McLean, 11 Jan., 1910 in PAC, RG 10, v. 3732, f. 26,623-1 (Kahkewistahaw band members had enquired about interest distribution and timing for sale of unsold lands).

157. Secretary McLean to Agent Millar, 10 Feb., 1910 in PAC, RG 10, v. 3732, f. 26,623-1 (forwarded cheque for interest distribution, not full amount of interest, exhorted Agent to encourage wise spending of money).

158. W.M. Graham to J.D. McLean, 18 June, 1910 in PAC, RG 10, v. 6660, f. 108B-1-1 (reported on second sale of surrendered lands held 15 June, 1910).

159. File Memorandum, 3 July, 1910 in PAC, RG 10, v. 6660, f. 108B1 (reports average price per acre of \$9.93 at 15 June, 1910 sale).

160. Notice of Auction of Indian Lands, 23 April, 1910 in PAC, RG 10, v. 6660, f. 108B-1 (lists lands offered for sale).
161. Statement showing lands sold (and purchasers) in Tp 17, Range 4, 5 & 6, W2M (n.d.) in PAC, RG 10, v. 3732, f. 26,623-1.
162. List compiled from search of grants held by Land Titles Office, Regina Land Registration District, Dec. 1991.
163. Qu'Appelle Inspector Leveque to S.G.I.A.; 8 Sept., 1903 in C.P.S.P. 1904, Annual Report Dept. Indian Affairs (1903), pp. 231-232 (excerpt).
164. Agent Millar to D.S.G.I.A., 30 June, 1906 in C.P.S.P. 1907, Annual Report Dept. Indian Affairs (1906), pp. 125-126 (excerpt).
165. Agent Millar to D.S.G.I.A., 31 March, 1907 in C.P.S.P. 1908, Annual Report Dept. Indian Affairs (1907), pp. 120-121 (excerpt).
166. Agent Millar to D.S.G.I.A., 27 May, 1908 in C.P.S.P. 1909,
Annual Report Dept. Indian Affairs (1908), pp. 129-131.
167. Agent Millar to D.S.G.I.A., 18 May, 1910 in C.P.S.P. 1911,
Annual Report Dept. Indian Affairs (1910), pp. 126-128.
168. Inspector Graham to D.S.G.I.A., 28 April, 1913 in C.P.S.P.
1914, Annual Report Dept. Indian Affairs (1913), p. 166 (excerpt).
169. Agent E. Taylor, Report for Crooked Lake Agency in C.P.S.P.
1915, Annual Report Dept. Indian Affairs (1914), p. 58.
170. Dominion Lands Act, R.S.C. 1906, c. 55.
171. Director of Surveys, J.S. Dobie to F.J. Robinson, Deputy
Commissioner Public Works, 28 Feb., 1907 in PW2 Serials. Annual Reports Public Works
(Sask) 1905-1907, pp. 87-89.
172. Land Titles Act, S.C. 1906, c. 24, sections 53, 54, 160.
173. Department of Interior, Order in Council, 20 Nov., 1907, S.C.
1907, Orders and Proclamations, cxxxix.
174. Plan T766 (Tp 17-R5-W2M)--surveyed by J. Lestock Reid 1907.
Held by Energy, Mines, Resources Canada, Legal Surveys Division, Regina.

175. Plan T1444 (Kahkewistahaw Reserve)--certified by S. Bray.
Held by Energy, Mines, Resources Canada, Legal Surveys Division, Regina.

VI. SOURCES CONSULTED

A. Public Archives of Canada (* denotes relevant material)

RG10, v.3556, f.25-4A, f.25-4B, f.25-G
RG10, v.3561, f.81-G, f.82-4,
RG10, v.3562, f.82-7
RG10, v.3567, f.82-57
*RG10, v.3568, f.84-3

*RG10, v.3573, f.154-2 RG10, v.3581, f.808 RG10, v.3603, f.2036
*RG10, v.3613, f.4013, f.4040, f.4049, RG10, v.3614, f.4063, f.4125
RG10, v.3616, f.4490 RG10, v.3621, f.4754 RG10,
v.3622, f.5007 RG10, v.3624, f.5152
*RG10, v.3625, f.5489 RG10, v.3627, f.6131 RG10, v.3632, f.6418,
f.6567 RG10, v.3649, f.8255 RG10, v.3673, f.11305
*RG10, v.3703, f.17728
*RG10, v.3713, f.20813 RG10, v.3721, f.23818
*RG10, v.3732, f.26623, f.26623-1 RG10, v.3739, f.28227 RG10,
v.3758, f.31445
*RG10, v.3811, f.55152-1 RG10, v.3903, f.10262
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