

INDIAN CLAIMS COMMISSION

CARRY THE KETTLE FIRST NATION 1905 SURRENDER INQUIRY

PANEL

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SUMMARY

CARRY THE KETTLE FIRST NATION 1905 SURRENDER INQUIRY Saskatchewan

This report may be cited as Indian Claims Commission, *Carry the Kettle First Nation Inquiry: 1905 Surrender Inquiry* (Ottawa, December 2008).

*This summary is intended for research purposes only.
For a complete account of the inquiry, the reader should refer to the published report.*

Panel: Commissioner S.G. Purdy (Chair), Commissioner J. Dickson-Gilmore,
Commissioner A.C. Holman

Treaties - Treaty 4 (1874); **Reserve** - Surrender - Proceeds of Sale; **Indian Act** - Jurisdiction - Surrender; **Fiduciary Duty** - Pre-Surrender; **Saskatchewan**

THE SPECIFIC CLAIM

On December 16, 1988, the Carry the Kettle First Nation submitted a claim under the federal Specific Claims Policy challenging the validity of the 1905 surrender of approximately 5,760 acres of lands from the Assiniboine Indian Reserve No. 76. On May 24, 1994, the Department of Indian Affairs rejected the claim; the First Nation then applied to the Indian Claims Commission to inquire into its rejected claim. The ICC agreed to conduct an inquiry on December 1, 1994. Following a protracted period during which the inquiry was placed in abeyance at the request of the First Nation, awaiting the completion of another inquiry involving the Carry the Kettle First Nation, the inquiry was resumed on November 17, 2004.

BACKGROUND

The Carry the Kettle First Nation is descended from the Assiniboine bands led by Chiefs The Man Who Took the Coat and Long Lodge, which amalgamated in 1885, and adhered to Treaty Four in September 1877. Five years later, in May of 1882, a reserve was surveyed for the Carry the Kettle Band at Indian Head which was finalized in June 1885. Indian Reserve 76 (IR 76) was confirmed by Order in Council P.C. 1511 on May 17, 1889, and the lands were removed from the operation of the Dominion Lands Act in June 14, 1893.

In December 1904, the Band approached Indian Agent Aspdin to enquire about surrendering the nine southernmost sections of IR 76. Aspdin communicated the Band's request to the department, noting that, should the surrender proceed, the remaining lands were sufficient to meet the requirements of the Band. The Band's request followed one made three years earlier by a settler for part of IR 76, which had been rebuffed by the resident Agent Aspdin, who reported the Band as adamantly opposed to any surrender.

Inspector of Indian Agencies W.M. Graham visited the reserve in March of 1905 to discuss the surrender request with the Band, whom he reported as most anxious for the surrender. At the ensuing meeting, the Band outlined six conditions of surrender to Graham, including: that the proceeds of the surrender and sale be applied against the Band's debts to the department, and the remainder used to purchase lumber, to build a shed to house the thresher, purchase a new engine for the thresher and compensate band members who had invested labour in the lands surrendered. The Band requested that any monies remaining after these expenditures be managed by the department as it saw fit, and that money should be made available to ease destitution among elderly and vulnerable members on the reserve. Although Graham did not add this last item to the list of conditions for the surrender, he encouraged the department to consider the Band's request.

The department agreed to proceed with the surrender, and on April 12, 1905, Deputy Superintendent General of Indian Affairs Frank Pedley forwarded the forms for surrender to Graham and authorized Aspdin to take the surrender in accordance with the provisions of the *Indian Act*. Aspdin's May 3, 1905 record of

the surrender meeting reports that there was a ‘decided majority in favour of the sale’, and ‘a number of absentees whom it is known are favorable’. A surrender for sale of 5,760 acres (sections 25, 26, 27, 28, 29 and 30, in township 15, range 11; sections 25, 26, 27 in township 15, range 12) was signed on April 26, 1905. The surrender document, which includes the six conditions set out by the Band, was signed or marked by Chief Carry the Kettle and Head Men Broken Arm, Chas. Rider and Eah Sickan (also known as The Saulteaux or David Saulteaux), and the affidavit to the surrender was signed by Indian Agent Aspdin and Chief Carry the Kettle on May 3, 1905, before a justice of the peace. On May 23, 1905, the Governor in Council approved the surrender. In September of 1905 a survey of the surrendered lands was undertaken, and on February 14, 1906, 34 of the 36 quarter sections surveyed were sold at an auction held in Sintaluta. Proceeds from the sales were distributed consistent with the six conditions of the surrender specified by the Band.

ISSUES

Given the terms and conditions of the 1905 surrender, did the Governor in Council exceed its jurisdiction under the *Indian Act*, when it (a) consented to the surrender; (b) sold the lands subject thereto; or (c) used the proceeds of the sale for certain of the purposes directed therein? Was the 1905 surrender taken in compliance with the requirements mandated by the *Indian Act*? Did Canada breach any fiduciary duty owed to the First Nation relative to the 1905 surrender? As a result of the answers to questions 1 to 3 above, does Canada have an outstanding lawful obligation to the First Nation?

FINDINGS

The Governor in Council did not exceed its jurisdiction under the *Indian Act* when it consented to the 1905 surrender of the southern portion of the reserve, and used the proceeds from the surrender for the purposes set out in the surrender document, in particular, repayment of a debt to the Crown and the purchase of farming machinery. Sections 70 and 139 of the Act do not contain exhaustive lists of items, thus permitting the government broad discretion to direct funds to purposes not specified in the sections, such as farming equipment. Furthermore, the Band’s debt for previous purchases of farm machinery was assumed by the Band as a whole, and the expenditure was of value to the whole Band, not only to the individuals farming at that time.

The Crown complied with the surrender requirements of the *Indian Act* when it took the 1905 surrender. The record indicates that a surrender meeting did, in fact, take place; it was called in accordance with the rules of the Band; there was a majority of eligible voters who attended the surrender meeting; and, a majority of those voted in favour of the surrender.

The Crown did not breach its fiduciary duty to the Band. The evidence shows that the Band understood the terms of the surrender and did not cede their decision-making powers to the Crown when they decided to proceed with a surrender. It was the Band who requested the surrender and the conditions attached to it. There exists no evidence to suggest that Indian Agent Aspdin exerted any pressure or undue influence on the Band. The 1905 surrender was not exploitive of the Band; the surrendered land comprised a small portion of the reserve, which at that time, was largely unused. It would have been reasonable from the Band’s perspective to sell off this portion and use part of the proceeds to refurbish the farm machinery, which in turn would lead to greater self-sufficiency.

Recommendation

That the claim of the Carry the Kettle First Nation regarding the 1905 surrender of a portion of Indian Reserve 76 not be accepted for negotiation under Canada’s Specific Claims Policy.

REFERENCES

In addition to the various sources noted below, ICC inquiries depend on a base of oral and documentary research that is fully referenced in the report.

Cases Referred to

Cardinal et al v. R., [1982] 1 S.C.R. 508; *Weywaykum Indian Band v. Canada*, [2002] 4 S.C.R. 245; *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 S.C.R. 344 (sub nom. *Apsassin*).

ICC Reports Referred to

ICC, *Paul First Nation: Kapsiwin Townsite Inquiry* (Ottawa, February 2007).

Treaties, Statutes, Regulations Referred to

Indian Act, RSC 1886, c.43; *Interpretation Act*, RSC 1985, c. I-2.

Other Sources Referred to

DIAND, *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Services, 1982).

Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Toronto: Butterworths Canada Ltd., 2002).

COUNSEL, PARTIES, INTERVENORS

W.A. Brabant, D.J. Maddigan for the Carry the Kettle First Nation; D. Faulkner for the Government of Canada; J. McGregor to the Indian Claims Commission.

KEY HISTORICAL NAMES CITED

Aspdin, Thomas, Farmer in Charge Assiniboine Reserve, 1898 - 1900; Indian Agent, Assiniboine Reserve, 1901 - 1905.

Bray, Samuel, Chief Surveyor, Department of Indian Affairs, 1899 - 1903.

Carry the Kettle, Chief and member of the Carry the Kettle First Nation, 1891.

Donnelly, Thomas A., Indian Agent, Assiniboine Agency, 1912 - 1916.

Douglas, Dr. J., Member of Parliament, Assiniboine East, 1896-1906; Senator, 1906 - 1920.

Graham, W.M., Inspector of Indian Agencies, February 1904 - February 1918.

Grant, W.S., Indian Agent, Assiniboine Reserve, 1886 - 1897, 1906 - ca. 1911.

Jack, Joseph, member of Carry the Kettle First Nation.

Kennedy, Daniel, Chief and member of Carry the Kettle First Nation.

Laird, David, Indian Commissioner 1879 - 1888 and 1898 - 1914.

Lake, R.S., Member of Parliament for Qu'Appelle, SK, 1904 - 1911.

Long Lodge, Chief and member of the Assiniboine Band, 1870 - 1885.

Man Who Took The Coat, Chief of the Assiniboine Band.

McGibbon, Alex, Inspector of Indian Agencies and Reserves, in 1889 - 96.

McKenna, J.A., Assistant Indian Commissioner in 1901 - 1908.

Mackenzie, Rev. E., Hurricane Hills Mission.

McLean, J.D., Secretary for the Department of Indian Affairs, 1897 - 1910; Assistant Deputy and Secretary for the same department 1910 - 1916.

McLean, J.K., Dominion Land Surveyor, 1905 - 1910.

Oliver, Frank, Minister of the Interior and Superintendent General of Indian Affairs, April 1905 - October 1911.

Orr, W.A., In Charge, Lands and Timber Branch for the Department of Indian Affairs, 1894 - 1921.

Paget, F.H., Accountant for the Department of Indian Affairs, 1898 - 1913.

Pedley, Frank, Deputy Superintendent General of Indian Affairs, 1902 - 1913.

Rider, Charles, member of Carry the Kettle First Nation.

Rider, Tom, member of Carry the Kettle First Nation.

Ross, William, Senator, Victoria, Nova Scotia, 1905 - 1912.

Scott, D.C., Accountant for the Department of Indian Affairs, 1894 - 1913.

Smart, James A., Deputy Superintendent General of Indian Affairs, 1897 - 1902.

Smith, Peter, Auctioneer, Sintaluta, Saskatchewan.

The Man Who Took The Coat, Chief and member of the Assiniboine Band, 1885 - 1891.

The Saulteaux, member of Carry the Kettle First Nation.

Thomson, Levi, Member of Parliament, Qu'Appelle, SK, 1911 - 1921.

Tremandan, A.H., Settler, Montmartre, Saskatchewan.

PART I

INTRODUCTION

Background to the Inquiry

The modern Carry the Kettle First Nation traces its ancestry to the Assiniboine Chiefs The Man Who Took the Coat and Long Lodge, whose peoples originally resided within their traditional territories in the Cypress Hills of southern Saskatchewan, and who amalgamated as one band under their present name in 1885. In 1877, these bands signed Treaty 4, and surveys in May 1882 and June 1885 laid out and finalized their reserve at Indian Head. Indian Reserve 76 (IR 76) was confirmed by Order in Council P.C. 1511 on May 17, 1889, and the lands were removed from the operation of the Dominion Lands Act in June 14, 1893.

In December 1904, the Band approached Indian Agent Aspdin to enquire about surrendering the nine southernmost sections of IR 76. Aspdin communicated the Band's request to the department, noting that, should the surrender proceed, the remaining lands were sufficient to meet the requirements of the Band. Inspector of Indian Agencies W.M. Graham visited the reserve in March of 1905 to discuss this request with the Band, whom he reported as most anxious for the surrender. At the ensuing meeting, the Band outlined six conditions of surrender to Graham, including: That the proceeds of the surrender and sale be applied against the Band's debts to the department, and the remainder used to purchase lumber, etc., to build a shed to house the thresher, purchase a new engine for the thresher and compensate Band members who had invested labour in the lands surrendered. The Band requested that any monies remaining after these expenditures be managed by the department as it saw fit, and the Band requested that a portion of the remainder be made available to ease destitution among elderly and vulnerable members on the reserve. Graham encouraged the department to consider the Band's request.

The department agreed to proceed with the surrender, and on April 12, 1905, Deputy Superintendent General of Indian Affairs, Frank Pedley, forwarded the forms for surrender to Graham and authorized Aspdin to take the surrender in accordance with the provisions of the *Indian Act*. Aspdin's May 3, 1905 record of the surrender meeting reports that there was a 'decided majority in favour of the sale', and 'a number of absentees whom it is known are favorable'. A surrender for sale of 5,760 acres (sections 25, 26, 27, 28, 29 and 30, in township 15, range 11;

sections 25, 26, 27 in township 15, range 12) was signed on April 26, 1905. The surrender document, which contains the six conditions set out by the Band, was signed or marked by Chief Carry the Kettle and Head Men Broken Arm, Chas. Rider and Eah Sickan (also known as The Saulteaux or David Saulteaux), and the Affidavit of Surrender was signed by Indian Agent Aspdin and Chief Carry the Kettle on May 3, 1905, before a justice of the peace. On May 23, 1905, the Governor in Council approved the surrender. In September of 1905 a survey of the surrendered lands was undertaken, and on February 14, 1906, 34 of the 36 quarter sections surveyed were sold at an auction held in Sintaluta. Proceeds from the sales were distributed consistent with the six conditions of the surrender specified by the Band.

On December 16, 1988, the Carry the Kettle First Nation submitted a specific claim to the Department of Indian Affairs challenging the validity of the 1905 surrender of approximately 5,760 acres of IR 76 lands. The department rejected this claim in a letter from its Specific Claims Branch dated May 24, 1994. The First Nation subsequently approached the Indian Claims Commission to conduct an inquiry into its rejected claim, and on December 1, 1994, the Commission agreed to do so. To this end, a planning conference was held at Regina on April 12, 1995, and a community session was undertaken in the Carry the Kettle community on October 25, 1995. Shortly thereafter, at the Band's request, the Carry the Kettle First Nation's 1905 Surrender Inquiry was placed into abeyance while another claim involving this Band was completed (Cypress Hills). The 1905 Surrender Inquiry was reactivated on November 17, 2004. Given the passage of time during which the inquiry was in abeyance, the Commission held a second planning conference at Regina on December 5, 2005, and held a second community session at Carry the Kettle on November 29, 2006. As Elder Percy Ryder was not available for this session, his testimony was taken via video conference at Regina on May 24, 2007. Written legal submissions on behalf of the First Nation were received by the Commission on August 24, 2007; Canada's submissions were received October 26, 2007, and the First Nation's reply to Canada's submissions was received on November 13, 2007. The Commission received oral submissions from the parties at Regina on November 20, 2007.

A summary of the written submissions, documentary evidence, transcripts, and a balance of the record in this inquiry is set forth in Appendix B of this report.

Mandate of the Commission

The mandate of the Indian Claims Commission is set out in federal orders in council providing the Commissioners with the authority to conduct public inquiries into specific claims and to issue reports on "whether a claimant has a valid claim for negotiation under the [Specific Claims] Policy where the claim was already rejected by the Minister."¹ This 1973 Policy, outlined in the Department of Indian Affairs and Northern Development's 1982 booklet entitled *Outstanding Business: A Native Claims Policy – Specific Claims*, states that Canada will accept claims for negotiation where they disclose an outstanding "lawful obligation" on the part of the federal government.² The term "lawful obligation" is defined in *Outstanding Business* as follows:

The government's policy on specific claims is that it will recognize claims by Indian bands which disclose an outstanding "lawful obligation", i.e., an obligation derived from the law on the part of the federal government.

A lawful obligation may arise in any of the following circumstances:

- i) The non-fulfillment of a treaty or agreement between Indians and the Crown.
- ii) A breach of an obligation arising out of the *Indian Act* or other statutes pertaining to Indians and the regulations thereunder.
- iii) A breach of an obligation arising out of government administration of Indian funds or other assets.
- iv) An illegal disposition of Indian land.³

¹ Commission issued September 1, 1992, pursuant to Order in Council PC 1992-1730, July 27, 1992, amending the Commission issued to Chief Commissioner Harry S. LaForme on August 12, 1991, pursuant to Order in Council PC 1991-1329, July 15, 1991.

² Department of Indian Affairs and Northern Development (DIAND), *Outstanding Business: A Native Claims Policy - Specific Claims* (Ottawa: Minister of Supply and Services, 1982), 20; reprinted in (1994) 1 *Indian Claims Commission Proceedings* (ICCP) 171-85 (hereafter *Outstanding Business*).

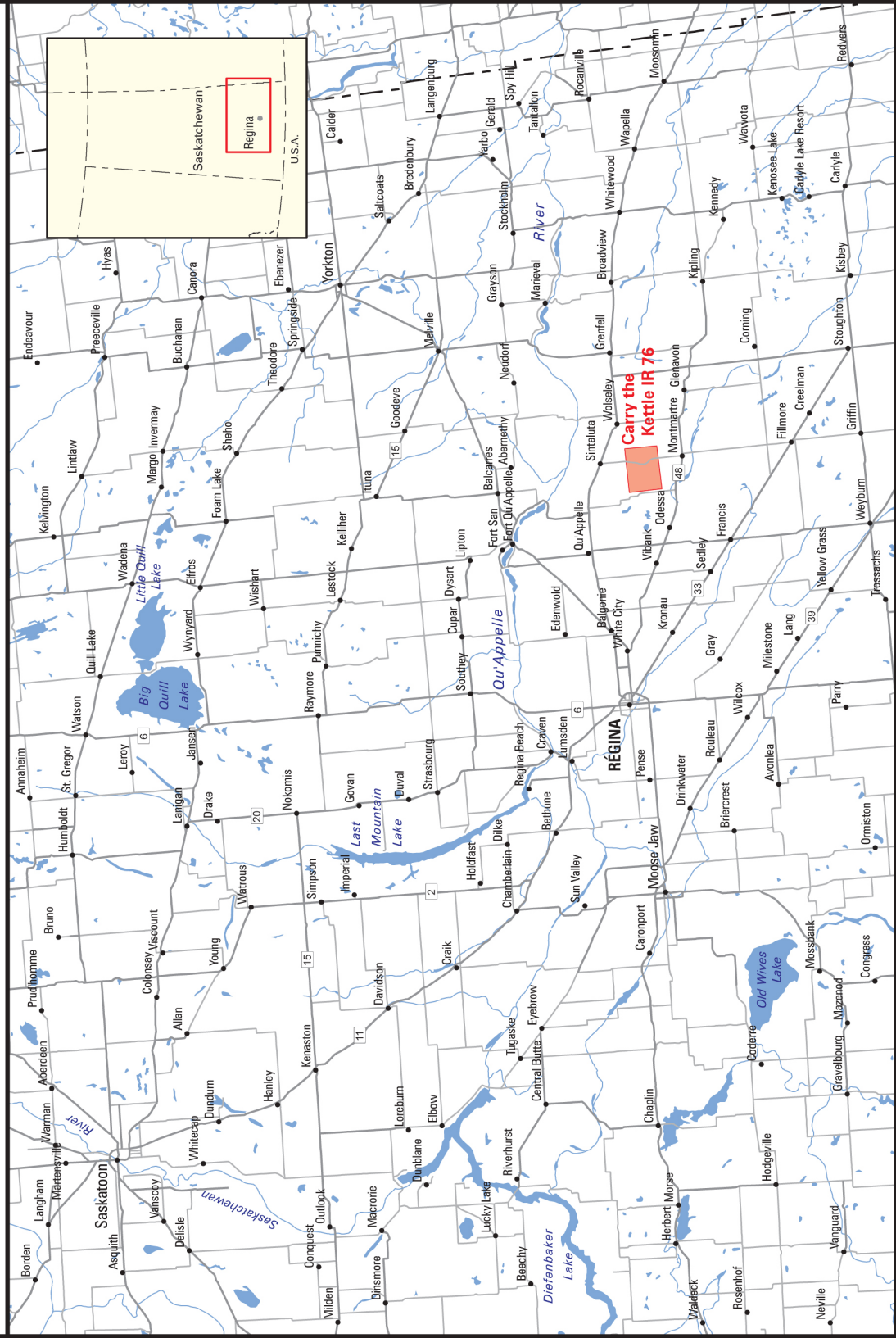
³ *Outstanding Business*, 20; reprinted in (1994), 1 ICCP 179-80.

Furthermore, Canada is prepared to consider claims based on the following circumstances:

- i) Failure to provide compensation for reserve lands taken or damaged by the federal government or any of its agencies under authority.
- ii) Fraud in connection with the acquisition or disposition of Indian reserve land by employees or agents of the federal government, in cases where the fraud can be clearly demonstrated.⁴

Map 1

Claim Area Map



PLAN
of
ASSINIBOINE INDIAN RESERVE N^o 76
TREATY N^o 4
TOWNSHIPS 15 & 16 RANGE 11 & 12 WEST 2nd M.



PART II

THE FACTS

The modern Carry the Kettle First Nation traces its ancestry to the Assiniboine Chiefs The Man Who Took the Coat and Long Lodge, whose peoples originally resided within their traditional territories in the Cypress Hills of southern Saskatchewan, and who amalgamated as one Band under their present name in 1885. In 1877, these bands signed Treaty 4, and surveys in May 1882 and June 1885 laid out and finalized their reserve at Indian Head. Indian Reserve 76 (IR 76) was confirmed by Order in Council P.C. 1511 on May 17, 1889, and the lands were removed from the operation of the Dominion Lands Act in June 14, 1893.

Between 1895 and 1905 the Carry the Kettle Band was reportedly well-established on IR 76. A number of the band members were successful farmers, raising a variety of crops, while others obtained good incomes selling wood and hay to settlers residing in the environs of the reserve. The Band was reportedly quite prosperous, and had no debts as of 1901. In 1903-04, with financial assistance from the department, the Band purchased farm implements and equipment, including an \$820.00 thresher in 1903, for which they had reimbursed the department \$520.00 by 1904, and \$500.00 worth of fencing materials, purchased by the department and reimbursed by the band in 1904.

In December 1904, the Band approached Indian Agent Aspdin to enquire about surrendering the nine southernmost sections of IR 76. Aspdin communicated the Band's request to the department, noting that, should the surrender proceed, the remaining lands were sufficient to meet the requirements of the Band. The Band's request followed one made three years earlier by a settler for part of IR 76, which had been rebuffed by Aspdin, who reported the Band to be adamantly opposed to any surrender.

Inspector of Indian Agencies W.M. Graham visited the reserve in March of 1905 to discuss the surrender request with the Band, whom he reported as most anxious for the surrender. At the ensuing meeting, the Band outlined six conditions of surrender to Graham, including: That the proceeds of the surrender and sale be applied against the Band's debts to the department, and the remainder used to purchase lumber, etc., to build a shed to house the thresher, purchase a new engine

for the thresher and compensate Band members who had invested labour in the lands surrendered. Any monies remaining after these expenditures be managed by the department as it saw fit, and the Band requested that a portion of the remainder be made available to ease destitution among elderly and vulnerable members on the reserve. Although Graham did not add this last item to the list of conditions for the surrender, he encouraged the department to consider the Band's request.

The department agreed to proceed with the surrender, and on April 12, 1905, Deputy Superintendent General of Indian Affairs Frank Pedley forwarded the forms for surrender to Graham and authorized Aspdin to take the surrender in accordance with the provisions of the Indian Act. Aspdin's May 3, 1905 record of the surrender meeting reports that there was a 'decided majority in favour of the sale,' and 'a number of absentees whom it is known are favorable.' A surrender for sale of 5,760 acres (sections 25, 26, 27, 28, 29 and 30, in township 15, range 11; sections 25, 26, and 27 in township 15, range 12) was signed on April 26, 1905. The surrender document, which contains the six conditions set out by the Band, was signed or marked by Chief Carry the Kettle and Head Men Broken Arm, Chas. Rider and Eah Sickan (also known as The Saulteaux or David Saulteaux), and the Affidavit of Surrender was signed by Indian Agent Aspdin and Chief Carry the Kettle on May 3, 1905, before a justice of the peace. On May 23, 1905, the Governor in Council approved the surrender.

In September of 1905 a survey of the surrendered lands was undertaken, and on February 14, 1906, 34 of the 36 quarter sections surveyed were sold at an auction held in Sintaluta. Proceeds from the sales were distributed consistent with the six conditions of the surrender specified by the Band.

Just over a year after the surrender, the Band approached the department with the first of what would be six petitions between 1906 and 1917, requesting the distribution of interest accruing from the monies raised by the land sales. Per capita interest payments were made to the Band between 1913 and 1920, with a final payment made in 1923.

PART III

ISSUES

The Indian Claims Commission is inquiring into the following four issues as agreed to by the parties:

- 1 Given the terms and conditions of the 1905 surrender, did the Governor in Council exceed its jurisdiction under the *Indian Act*, when it:
 - i) consented to the surrender
 - ii) sold the lands subject thereto; or
 - iii) used the proceeds of the sale for certain of the purposes directed therein?
- 2 Was the 1905 surrender taken in compliance with the requirements mandated by the *Indian Act*?
- 3 Did Canada breach any fiduciary duty owed to the First Nation relative to the 1905 surrender?
- 4 As a result of the answers to questions 1 to 3 above, does Canada have an outstanding lawful obligation to the First Nation?

PART IV

ANALYSIS

ISSUE 1 JURISDICTION OF THE GOVERNOR IN COUNCIL UNDER THE INDIAN ACT

- 1 Did the Governor in Council exceed its jurisdiction under the *Indian Act*, when it:
- i) consented to the surrender;
 - ii) sold the lands subject thereto; or
 - iii) used the proceeds of the sale for certain of the purposes directed therein?

The panel is being asked to make a finding of whether the Governor in Council exceeded its jurisdiction under the 1886 *Indian Act* when it consented to the 1905 surrender, sold the surrendered lands and used part of the proceeds of the sale to repay a debt owed to the Crown. The First Nation claims that the 1886 *Indian Act* granted the Governor in Council limited powers to expend monies derived from the sale of surrendered lands and that those powers were exceeded. Canada argues that the Governor in Council exercised its powers reasonably and acted within the limits of the 1886 *Indian Act*.

The panel finds that, based on the documentary evidence before it and having examined the relevant law, the Governor in Council did not exceed its jurisdiction under the *Indian Act* when it consented to the 1905 surrender of the southern portion of the reserve; sold the surrendered lands; and, used the proceeds from the surrender for the purposes outlined in the surrender document itself.

Background

The current Carry the Kettle First Nation members consider themselves direct descendants of Assiniboine Chiefs The Man Who Took the Coat and Chief Long Lodge, whose respective Bands were amalgamated in 1885 under Chief The Man Who Took the Coat until his death in 1891, at which time he was succeeded by his brother, Carry the Kettle.⁵ The first survey of a reserve at Indian

⁵ ICC, *Carry the Kettle First Nation: Cypress Hills Inquiry* (Ottawa, July 2000), reported (2000) 13 ICCP 209 at 294-96.

Head for the Assiniboine commenced in May 1882, at which time the Bands were en route to Indian Head from their traditional lands in the Cypress Hills area where they had previously resided. At the time, John C. Nelson, Dominion Land Surveyor in charge of Indian Surveyors, surveyed 220 square miles for the Bands of the Man Who Took the Coat, Long Lodge and Piapot.

In January of 1885, following the death of Long Lodge a month earlier, Indian Commissioner Dewdney contacted the department and expressed a desire to amalgamate the two Assiniboine Bands under Chief The Man Who Took the Coat.⁶ By March, Indian Agent McDonald had met with Chief The Man Who Took The Coat and the principal men of both Bands and confirmed that “Little Mountain, the Principal Head Man of Band No. 77, said that he and the followers of their late Chief had decided to recognize The Man Who Took the Coat as their Chief”.⁷ The amalgamation of the two Bands was approved by the department on March 28, 1885.⁸

A second survey of the reserve was completed on June 16, 1885. Indian Reserve (IR) 76 was laid out nine miles from east to west, eight miles from north to south, and was situated seven miles south of the village of Sintaluta and 84 kilometres east of Regina.

The Band was encouraged by the Indian Agent, and later the Farming Instructor, to take up mixed farming. In addition to cultivating wheat, oats, potatoes, turnips, onions and carrots, they raised cattle, sheep, pigs, and chickens. Reports reveal that band members were slow to engage in the raising of cattle due to the difficulty of obtaining water and the attraction of quick money from the sale of hay and wood.

Between 1896 and 1905, it was reported that band members had purchased a variety of implements and that the Band, aided by loans from the department, also purchased various

⁶ E. Dewdney, Indian Commissioner, to Superintendent General of Indian Affairs, January 10, 1885, LAC, RG 10, vol. 3704, file 17825 (ICC Exhibit 1a, p. 139).

⁷ A. McDonald, Indian Agent, to Indian Commissioner, March 4, 1885, LAC, RG 10, vol. 3704, file 17825 (ICC Exhibit 1a, pp. 140-42).

⁸ Edgar Dewdney, Indian Commissioner, to Superintendent General of Indian Affairs, March 9, 1885, LAC, RG 10, vol. 3704, file 17825 (ICC Exhibit 1a, p.143) and unknown author to Dewdney, March 28, 1885, LAC, RG 10, vol. 3704, file 17825 (ICC Exhibit 1a, p. 144).

implements for the use of members and to make improvements to the reserve. In 1900, Inspector McGibbon reported that the Band was free of debt.

In October 1902, the Band presented the department with a request to purchase a thresher. In response, the department instructed the Agent to purchase machinery as cheaply as possible, but with the understanding that the thresher would not be paid for until July 1, 1903, as there were no funds immediately available.⁹ The department further specified that, “The Indians will be required to refund to the department the cost of the threshing outfit in the manner suggested by you.”¹⁰ The Indian Agent purchased an outfit from Massey Harris for \$820.00.¹¹

By January 1903, money had been collected from band members for the thresher.¹² It was reported in April 1904 that the Indian Agent had expressed concern that poor crops might prevent the Indians from keeping up with regular payments on the engine and had asked if stock could be sold to pay for the engine, although the record does not indicate whether this requested was granted. The same correspondence indicates that the department paid \$220.00 in 1903-1904, and \$300.00 in 1902-1903 toward the thresher.¹³

In 1904, the department advanced the Band \$500.00 for the fencing of a pasture, which permitted the cattle to roam and feed overnight. The Indian Agent proposed that this loan could be repaid at a rate of \$100 a year; the department, however, disagreed with this payment schedule and

⁹ S. Stewart, Asst. Secretary, to T.W. Aspdin, Indian Agent, October 11, 1902, LAC, RG 10, vol. 4998, (ICC Exhibit 1a, pp. 456-57).

¹⁰ S. Stewart, Asst. Secretary, to T.W. Aspdin, Indian Agent, October 11, 1902, LAC, RG 10, vol. 4998, (ICC Exhibit 1a, pp. 456-57). Please note that the record of Agent Aspdin’s proposed method of repayment has not been located.

¹¹ [J.D. McLean], Secretary, to T.W. Aspdin, Indian Agent, December 22, 1902, LAC, RG 10, vol. 5004, (ICC Exhibit 1a, p. 475). See also: Frank Pedley, Deputy Superintendent General of Indian Affairs, to the Massey Harris Co., August 8, 1903, LAC, RG 10, vol. 5034, p. 287 (ICC Exhibit 1a, p. 516).

¹² J.D. McLean, Secretary, to T.W. Aspdin, Indian Agent, January 22, 1903, LAC, RG 10, vol. 5008 (ICC Exhibit 1a, p. 477).

¹³ J.D. McLean, Secretary, to W.M. Graham, April 11, 1904, LAC, RG 10, vol. 5057 (ICC Exhibit 1a, pp. 564-65).

requested that the loan be repaid in two years at three per cent interest.¹⁴ The Indian Agent reported in his Annual Report that the Band had been able to make a “substantial repayment of the money advanced” by August of the same year.¹⁵ The Chief and Headmen of the Carry the Kettle Band approached Indian Agent Aspdin in December of 1904 to inquire about surrendering a portion of their land:

...[that] the Dept. sell for them the nine most southern sections and that in view of this that the Dept. do not press them for the money owing for the threshing outfit and also for the pasture made last summer but that these liabilities be paid out of sale of these lands and that the Dept. advance them enough at interest to pay the difference between the threshing engine now on hand and a new modern engine.¹⁶

The record is clear that it was the Band that made the request for a surrender, yet three years earlier, Agent Aspdin rebuffed an inquiry from a settler interested in acquiring reserve lands with a statement that the Band would “decidedly object” to a surrender of any portion of their reserve.¹⁷ Although the record does not disclose the exact reasons why the Band requested the surrender, the preceding quote would seem to indicate it was motivated in part by a desire to pay off existing debts and to replace the increasingly unsatisfactory second-hand thresher.

The Band’s request was communicated to W.M. Graham, Inspector of Indian Agencies, who visited the reserve in March of 1905. According to Graham, a majority of the Band seemed anxious to sell the land and was prepared to surrender lands if the following six conditions were met:

¹⁴ J.D. McLean, Secretary, to D. Laird, Indian Commissioner, February 17, 1904, LAC, RG 10, vol. 5051 (ICC Exhibit 1a, pp. 560-61).

¹⁵ Thos. W. Aspdin, Indian Agent, to Secretary, Department of Indian Affairs, August 15, 1904, *Annual Report of the Department of Indian Affairs for the Year ended June 30, 1904*, 125-27 (ICC Exhibit 1a, p. 595).

¹⁶ Thos. W. Aspdin, Indian Agent, to Secretary, Department of Indian Affairs, December 16, 1904, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 627-28).

¹⁷ James A. Smart, Deputy Superintendent General, Indian Affairs Branch, Ottawa, January 30, 1901, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 332).

That the present indebtedness on the threshing outfit of about \$1200.00 be paid off at the earliest possible date, out of the proceeds of the sale.

That the Department be paid for the money advanced to purchase wire for the pasture fence, from the proceeds of the sale.

That lumber etc. be purchased to build a suitable shed to house the threshing machine and engine, out of the proceeds of the sale of land.

That the present engine, which was a second-hand one when purchased, be exchanged on a new engine and the difference be paid out of the proceeds of the sale of the land.

That Daniel Kennedy and one or two other Indians be paid compensation for any ploughing that should happen to be on the strip of land that it is proposed to surrender, out of the proceeds of the sale.

That the balance of the money be funded and managed by the Department as it sees fit.¹⁸

As well, Graham supported an informal request from “[o]ne or two of the old people” who “expressed a desire that a portion of the money be spent at the beginning of each winter in the purchase of clothing and food for the very old who have no one to work for or look after them”.¹⁹ He did not incorporate this request into the terms of the surrender, but commented that “it could be granted and no abuse made of it”.²⁰

On April 26, 1905, a surrender for sale was taken of nine sections of IR 76 - 5,760 acres composed of projected sections 25, 26, 27, 28, 29 and 30 in township 15, range 11 and projected sections 25, 26, and 27 in township 15, range 12, all west of the 2nd initial meridian, (including road allowances).²¹ Chief Carry the Kettle and Head Men Broken Arm, Chas. Rider and Eah Sickan, also

¹⁸ W.M. Graham, Inspector of Indian Agencies, to Secretary, Department of Indian Affairs, March 30, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 638-40).

¹⁹ W.M. Graham, Inspector of Indian Agencies, to Secretary, Department of Indian Affairs, March 30, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 638-40).

²⁰ W.M. Graham, Inspector of Indian Agencies, to Secretary, Department of Indian Affairs, March 30, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Ex. 1a, pp. 638-40).

²¹ Surrender Document, April 26, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1s, p. 648).

known as The Saulteaux or David Saulteaux, signed the Surrender Document by making X's beside their names. It includes the six conditions set out in Graham's letter of March 30, 1905.²²

In correspondence dated June 28, 1905, the department explained that a new engine could not be purchased until the surrendered sections of land were sold and paid for. The Agent was instructed to obtain prices on engines.²³ No further information is known about this transaction.

First Nation's Position

The First Nation takes issue with the Governor in Council's jurisdiction to consent to and implement the terms and conditions of the 1905 surrender, asserting that the power delegated to the Governor in Council through the 1886 *Indian Act* was insufficient to permit the surrender according to those terms.²⁴ Insofar as the Band's title and interest in its reserve lands are inalienable except where the sale has been first lawfully authorized in accordance with the existing relevant legislation, the surrender and sale, in its view, are not lawful.²⁵

In particular, the First Nation argues that the Governor in Council's jurisdiction under the 1886 *Indian Act* was not broad enough to implement all of the terms and conditions of the 1905 surrender at the time.²⁶ Sections 70 and 139 of the 1886 *Act* provide the Governor in Council with the power and authority to: "invest and manage the sale proceeds of Indian lands"; "compensate band members for improvements made to Indian lands"; and "construct permanent improvements upon a band's reserve".²⁷ The Act did not, at the time of the surrender, and would not, until the 1924 amendments to the *Indian Act*, provide the necessary authority to the Crown to use proceeds from

²² Surrender Document, April 26, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 648-50).

²³ J.D. McLean, Secretary, to T.W. Aspdin, Indian Agent, June 28, 1905, LAC, RG 10, vol. 5100 (ICC Exhibit 1a, pp. 666-67).

²⁴ Written Submission on Behalf of the Carry the Kettle First Nation, August 24, 2007, p. 3.

²⁵ Written Submission on Behalf of the Carry the Kettle First Nation, August 24, 2007, p. 4.

²⁶ Written Submission on Behalf of the Carry the Kettle First Nation, August 24, 2007, p. 8.

²⁷ Written Submission on Behalf of the Carry the Kettle First Nation, August 24, 2007, p. 8.

the sale of Indian lands to purchase farming implements or machinery. The Act also did not provide for the repayment of debts of the Band or its individual members from the proceeds of land surrenders and sales. Therefore, asserts the First Nation, the Governor in Council exceeded its jurisdiction under the Act by consenting to the surrender, selling the surrendered lands and using the proceeds of the sale for the purposes directed in the Surrender Document, including and especially those related to the purchase of machinery or the repayment of debts to the Crown.²⁸

In support of this argument, the First Nation argues that the maxim “expressio unis est exclusio alterius” or the “implied exclusion rule”²⁹ should be applied when interpreting the meaning of sections 70 and 139 of the Act. This rule holds that if the legislature had meant to include a particular thing within legislation, it would have referred to that thing expressly, thus any exclusions from legislation must be deemed intentional.

The Governor in Council’s authority under section 70 was limited to direct expenditures for the following expenses: surveys, compensation for improvements or any interest a band may have had in lands taken, construction or repair of roads, bridges, ditches and watercourses on such reserve or lands and contributions to schools attended. Section 139 granted the Governor in Council, on consent of the Band, the ability to authorize the expenditure of moneys for purchases of land as a reserve or additions to the reserve, cattle purchases, construction of permanent improvements on the reserve, or such works of permanent value to the band. Insofar as this list of items does not include the implements and farming equipment that were purchased by Indian Agent Aspdin, prior to the surrender, or expressly permit the use of funds secured by surrender and sale of reserve lands to repay a band’s debts to the Crown, such expenditures are clearly beyond those expressly permitted in sections 70 and 139 of the 1886 *Indian Act*.

²⁸ Written Submission on Behalf of the Carry the Kettle First Nation, August 24, 2007, p. 9.

²⁹ Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Toronto: Butterworths Canada Ltd., 2002), pp. 187-89.

Canada's Position

It is Canada's position that the Governor in Council did not exceed its jurisdiction under the 1886 *Indian Act*. Canada maintains that the Governor in Council validly exercised its discretion and that it was reasonable to conclude that the Carry the Kettle First Nation's request that the proceeds be used to pay for important farming equipment and necessary fencing would be permitted as 'incidental to the management of the reserve' or of 'permanent value to the band'.³⁰ In Canada's view, the expenditures assisted the Band to continue to develop towards self-sufficiency and autonomy.³¹

Canada relies upon the "plain and ordinary meaning rule" to interpret sections 70 and 139 of the *Indian Act*, which suggests that the ordinary meaning of a legislative text is the meaning intended by the legislature.³² It is an accepted rule of construction that general words precede more specific words which are intended to provide specific examples from within the broad general category.³³ Canada for its part argues that the wording of section 70 is clear and unambiguous and does not state that the Governor in Council cannot use the monies for equipment or fencing. Canada suggests that the wording of both sections 70 and 139 is broad enough to provide the Governor in Council with discretion to decide how monies derived from the sale of surrendered lands were to be spent. The fact that section 70 goes on to list possible areas of expenditures does not limit the broad and inclusive wording of the provision. Additionally, section 139 does not limit the Governor in Council's authority but rather permits, with band consent, expenditures from the capital account of the band, for such works on the reserve that in the opinion of the Governor in Council, will be of permanent value to the band.³⁴ Canada asserts that the surrender conditions were completely within

³⁰ Written Submission on Behalf of the Government of Canada, October 26, 2007, para. 132.

³¹ Written Submission on Behalf of the Government of Canada, October 26, 2007, para. 132.

³² Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Toronto: Butterworths Canada Ltd., 2002), p. 9.

³³ Written Submission on Behalf of the Government of Canada, October 26, 2007, para. 131.

³⁴ Written Submission on Behalf of the Government of Canada, October 26, 2007, para. 130.

the limits of the broad wording of these sections and that the Governor in Council, validly exercising the discretion granted, could comply with the Band's surrender conditions.

Findings

To determine whether the Governor in Council exceeded its jurisdiction, it is necessary to review the sections of the *Indian Act* that were applicable to the 1905 surrender. Section 39 of the 1886 *Indian Act*³⁵ gave the Governor in Council authority to accept or refuse a surrender for which a band had given its consent.

Section 41 provided the Governor in Council with the authority to manage, lease and sell Indian lands, subject to the conditions of surrender and the provisions of the Act. Section 41 of the 1886 *Indian Act* is reproduced below:

41. All Indian lands, which are reserves or portions of reserves, surrendered or to be surrendered to Her Majesty, shall be deemed to be held for the same purposes as before the passing of this Act; and shall be managed, leased and sold as the Governor in Council directs, subject to the conditions of surrender and the provisions of this Act.³⁶

Section 70 authorized the Governor in Council to invest, manage and make specific expenditures of moneys arising from the disposal of Indian Lands, subject to the provisions of the Act. Specifically, section 70 of the 1886 *Indian Act*, as amended in 1898, states that:

70. The Governor in Council may, subject to the provisions of this Act, direct how, and in what manner, and by whom, the moneys arising from the disposal of Indian lands, or of property held or to be held in trust for Indians, or timber on Indian lands or reserves, or from any other source for the benefit of Indians (with the exception of such sum, not exceeding ten per cent of the proceeds of any lands, timber, or property, as is agreed at the time of the surrender to be paid to the members of the band interested therein), shall be invested from time to time, and how the payments

³⁵ *Indian Act*, RSC 1886, c. 43.

³⁶ *Indian Act*, RSC 1886, c. 43.

or assistance to which the Indians are entitled shall be made or given; and he may provide for the general management of such moneys, and direct what percentage or proportion thereof shall be set apart, from time to time, to cover the cost of and incidental to the management of reserves, lands, property and moneys under the provisions of this Act, and may authorize and direct the expenditure of such moneys for surveys, for compensation to Indians for improvements or any interest they have in lands taken from them, for the construction or repair of roads, bridges, ditches and watercourses on such reserves or lands, for the construction of school buildings, and by way of contribution to schools attended by such Indians.³⁷

Section 139, as amended in 1894, gave authority to the Governor in Council to expend capital moneys of the band, with the consent of the band, for specified purposes. Section 139 states:

139. The Governor in Council may, with the consent of a band, authorize and direct the expenditure of any capital moneys standing at the credit of such band, in the purchase of land as a reserve for the band or as an addition to its reserve, or in the purchase of cattle for the band, or in the construction of permanent improvements upon the reserve of the band, or such works thereon or in connection therewith as, in his opinion, will be of permanent value to the band, or will, when completed, properly represent capital.³⁸

The above sections of the 1886 *Indian Act* provide a foundation for the Governor in Council's authority to act. As outlined above, the parties have offered differing interpretations of these provisions.

The parties acknowledge that the Governor in Council had the authority to accept surrenders and sell surrendered lands. The First Nation, however, suggests that the Governor in Council was constrained by sections 70 and 139 of the *Act* and could not use the moneys for any purposes other than those listed in these sections. This would exclude those purposes directed in the Surrender Document. The First Nation also points to amendments that were adopted by Parliament in 1924 as evidence that the legislature never intended to include the expenditures listed in the 1905 surrender. They argue that the broader powers contained in the 1924 Act, namely, the right to purchase

³⁷ *Indian Act*, RSC 1886, c. 43, s. 70, as amended by S.C. 1898, c. 34, s. 6.

³⁸ *Indian Act*, RSC 1886, c. 43, s. 139, as amended by S.C. 1894, c. 32, s. 11.

“implements or machinery for the band”³⁹, are not found in the 1886 Act and as they are not stated explicitly in the earlier legislation, it must be presumed that Parliament intended their exclusion from that legislation. Section 45(3) of the *Interpretation Act* however, states that “the repeal or amendment of an enactment in whole or in part shall not be deemed to be or to involve any declaration as to the previous law.”⁴⁰ Thus we are directed not to presume anything about the 1886 Act from the amendments which characterize the 1924 Act.

The wording of section 70 does not explicitly include the purchase of farming implements or equipment. Nor does it explicitly permit the repayment of debts to the Crown. The Carry the Kettle First Nation, like many other First Nations, was urged by the government to take up mixed farming pursuits and it is likely that farming implements and equipment were necessary expenditures to achieve the goal of self-sufficiency.

The wording of section 70 is intentionally broad. The question then becomes at what point may the breadth of actions taken under the auspices of this section be deemed to have over-reached the intention of Parliament? In resolving this question, the panel has viewed section 70 as composed of two parts. The first portion of the section empowers the Governor in Council with the discretion to decide how moneys arising from the sale of surrendered lands are to be used, whilst the second part of the section permits the Governor in Council to provide for the “general management of such moneys” and “from time to time, to cover the cost of and incidental to the management of reserves, lands, property and moneys under the provisions of this Act”.⁴¹ It is the view of the panel that the term “general management” gives the Governor in Council broad discretion to direct funds to a number of expenditures which presumably could include farming equipment and implements. In this light, funds directed to farming equipment are no different from monies expended for costs associated with, and incidental, to lands and property. While section 70 goes on to list circumstances where expenditures may be made for such things as “construction or repairs of roads, bridges, ditches and watercourses on such reserves or lands, for the construction and repair of school buildings and

³⁹ *Indian Act*, RSC 1906, c. 81, s. 90, as amended by S.C. 1924, c. 47, s. 5.

⁴⁰ *Interpretation Act*, R.S.C. 1985, c. I-2, s. 45(3).

⁴¹ *Indian Act*, RSC 1886, c. 43, s. 70.

charitable institutions, and by way of contribution to schools attended by such Indians⁴², the panel does not interpret this as an exhaustive list of items, but rather as specific examples of the broad category of expenses which may be provided for within this section.

Similarly, the panel finds that the wording of section 139 is also intentionally broad and does not, as the First Nation suggests, constitute an exhaustive list of expenditures that could be made on the Band's behalf. During the oral hearing of this inquiry, counsel for the First Nation noted that if, at the time, a request was made to buy horses, the Governor in Council could not approve such an expenditure because section 139 only contemplated expenditures for "cattle".⁴³ Counsel for Canada, however, pointed out that in reserve surrender cases similar to this one, the record indicates that proceeds from the sale of surrendered lands were used for fencing, planers, shingles, mills, wagons, double harnesses, mowers, rakes and breaking ploughs in other words, for a wide range of expenditures relevant to the successful pursuit of farming and of permanent value to the band.⁴⁴

We cannot accept counsel for the First Nation's arguments, as these would lead to an absurdity in these circumstances. According to *Sullivan and Driedger on the Construction of Statutes*, "[A] proposed interpretation is likely to be labelled absurd if it would result in persons or things receiving different treatment for inadequate reasons or for no reason at all. This is one of the most frequently recognized forms of absurdity."⁴⁵ To interpret section 139 as allowing for expenditures such as cattle to the exclusion of horses would be at minimum an overly constraining interpretation, and more than likely would lead to precisely the sort of absurdity specified in *Sullivan and Driedger*. As well, the narrowing of section 139 to the degree suggested by the First Nation's counsel would quite probably render the sections incapable of meeting the Band's farming necessities in 1905.

⁴² *Indian Act*, RSC 1886, c. 43, s. 70, as amended by S.C. 1904, c. 20, s. 1.

⁴³ ICC Transcript, November 20, 2007.

⁴⁴ ICC Transcript, November 20, 2007.

⁴⁵ Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Toronto: Butterworths Canada Ltd., 2002), p. 244.

More importantly, and as previously stated, section 139, like section 70, is a broadly worded provision. In particular, the section makes reference to authorizing and directing expenditures of capital moneys for what, in the opinion of the Governor in Council, “will be of permanent value to the band”. The First Nation suggests that farming equipment and implements purchased for the Band had value to a limited number of people and did not benefit the Band as a whole. This argument, however, is not wholly supported by the documentary record. According to the correspondence of the Indian Agent of the time, farming on the reserve was steadily increasing and culminated in 1900 with an annual report confirming that the Band was free of debt.⁴⁶ Correspondence from Inspector McGibbon also stated that “the whole reserve was in a prosperous condition”.⁴⁷ The First Nation argues, however, that reports of the Band being free of debt may not have reflected the reality of the conditions on the reserve at this time. According to the First Nation, by 1903 the bulk of the Band’s farming was done by only six band member, including Dan Kennedy, Charles Ryder, Oaksheppy, Medicine Rope, Frank Risingsun and Wesecan. The First Nation asserts that the production records of the time, when compared to the Auditor General reports, indicate that these six men planted two-thirds of the wheat crop and 96 percent of the oat crop on the reserve. Therefore, although there were a reported 20 families involved in some aspects of farming, with the exception of the six members mentioned, most of the families would have only occasionally engaged in farming activities.

During the oral hearing, counsel for the First Nation queried where the responsibility for debts incurred for farming equipment ought to lie, with the Band as a whole, or with those few individuals who may have directly profited from the purchase of the equipment. There is nothing in the historical record to assist the panel in answering this question; nevertheless, we point to the fact that the debt for the farming equipment was assumed by the Band as a whole. Moreover, regardless of the number of band members who participated in farming or benefited from the proceeds, it is likely that the equipment purchased was of value to the Band. The threshing machine,

⁴⁶ Alex McGibbon to Superintendent General of Indian Affairs, August 7, 1900. Canada, *Annual Report of the Department of Indian Affairs for the Year ended June 30, 1900, 210-14, and 221* (ICC Exhibit 1a, p. 280).

⁴⁷ Alex McGibbon to Superintendent General of Indian Affairs, August 18, 1899. Canada, *Annual Report of the Department of Indian Affairs for the Year ended June 30, 1899, 194-96, and 205* (ICC Exhibit 1a, pp. 258-61).

like the replacement engine, was essentially an upgrade to more efficient equipment that would make it easier to farm successfully, which in turn would bring benefits to the Band. It was reasonable for the Indian Agent and the Farming Instructor to assume that the Band would require this equipment to continue to expand the Band's farming pursuits. These expenditures could thus rightly be characterized as being of "permanent value" to the Band.

The panel therefore concludes that the Governor in Council did not exceed its jurisdiction when it consented to the surrender, sold the lands subject thereto and used the proceeds of the sale for the purposes directed.

ISSUE 2 COMPLIANCE WITH THE INDIAN ACT

2 Was the 1905 surrender taken in compliance with the requirements mandated by the *Indian Act*?

The panel has been asked to determine whether the 1905 surrender was taken in accordance with the provisions of the 1886 *Indian Act*. The First Nation argues that a surrender meeting was not called in accordance with the rules of the Band and that a majority of eligible voting members of the Band was not in attendance at the surrender meeting. Canada claims that there is both oral and documentary evidence that notice of the meeting was given consistent with the Band's usual practice. They argue further that the documentary evidence confirms that an interpreter was present at the meeting to ensure that the membership understood what was being proposed; and that a majority of eligible voters probably attended; and a majority clearly voted in favour of the surrender.

The panel finds that, based on the documentary and oral evidence before it and having examined the relevant law, notice of the surrender meeting was given in accordance with the rules of the Band, a surrender meeting was held, a majority of male band members were in attendance, and a majority of those voted in favour of the surrender.

Background

In December 1904, the Chief and Headmen of the Carry the Kettle Band approached Indian Agent Aspdin to inquire about surrendering a portion of their land. The Band's request for a surrender was communicated to W.M. Graham, Inspector of Indian Agencies, who visited the reserve in March of 1905. According to Graham, the Band seemed anxious to sell the land. The documentary record does not provide insight into what, in addition to the repayment of the debt and a desire to replace the thresher, may have motivated the Band to request the surrender.

On April 12, 1905, following the Band's request for a surrender, the Deputy Superintendent General of Indian Affairs, Frank Pedley, forwarded surrender forms to W.M. Graham and authorized Indian Agent Aspdin to take the surrender in accordance with the provisions of the *Indian Act*.⁴⁸ As outlined in Issue 1, a surrender was taken and the Affidavit of Surrender was signed by Aspdin and Chief Carry the Kettle, on May 3, 1905, before Justice of the Peace A. Ferguson.⁴⁹

The record does not indicate whether Aspdin recorded attendance at the surrender meeting; however, his report to Graham, written the day of the execution of the surrender Affidavit informed that, “[a]t the meeting there was a most decided majority in favour of the sale and there are a number of absentees whom it is known are favourable.”⁵⁰ He also wrote that a new matter was raised with regards to the compensation of Carry the Kettle band members who were not involved in agriculture and claimed not to receive any benefits from the pasture or threshing machine. Aspdin explained, “[a]s they earn a living and support their families without any help from the department they cannot be considered as destitutes. They ask for a pro rata payment of either money or useful articles to offset the money paid to the others (meaning the pasture and threshing outfit).”⁵¹ Aspdin recommended that the idea be given full consideration.

⁴⁸ Frank Pedley, Deputy Superintendent General of Indian Affairs, to W.M. Graham, Inspector of Indian Agencies, April 12, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 645).

⁴⁹ Affidavit of Surrender, May 3, 1905, DIAND, file 675/30-12-76, vol. 1 (ICC Exhibit 1a, p. 651).

⁵⁰ Thos. Aspdin, Indian Agent, to W.M. Graham, Inspector of Indian Agencies, May 3, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 652).

⁵¹ Thos. Aspdin, Indian Agent, to W.M. Graham, Inspector of Indian Agencies, May 3, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 652).

While Inspector Graham agreed that funds should be provided to the very old, he disagreed with Aspdin on the matter of compensation for those who did not farm. Graham forwarded the surrender and Aspdin's letter to the Secretary, DIA, on May 6, 1905. He explained:

I cannot see that Indians who are not farming or raising cattle should receive special compensation. These people have the option of using the pasture and threshing machine any time they have occasion to do so.

The very old can be provided for with a portion of the funds, at the discretion of the Department as per section 6 on the surrender.⁵²

There is no further information in the record regarding compensation for non-farming band members.

Another letter sent by Aspdin to the Secretary of the Department of Indian Affairs provides more detail on the taking of the 1905 surrender. The letter, dated May 15, 1905, requested payments of \$1.00 each to Carry the Kettle band members Daniel Kennedy and Archie Thomson. Aspdin reported that Archie Thomson had travelled around the reserve summoning band members to the surrender meeting, and that Daniel Kennedy had acted as an interpreter at the same meeting.⁵³ Aspdin justified the need for an interpreter, stating, "I thought it best to use a good interpreter although I do not do so on ordinary occasions. There was a good deal of explanations to make to to [sic] be sure that every Indian thoroughly understood the matter."⁵⁴ The oral testimony of the Carry the Kettle Elders, while at times consistent with the documentary record, offers conflicting views on some important questions such as whether the Band was debt-free, whether a surrender meeting happened at all, and whether the purpose of the surrender was for sale or lease of the land.

⁵² W.M. Graham, Inspector of Indian Agencies, to Secretary, Department of Indian Affairs, May 6, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 653).

⁵³ Thos. W. Aspdin, Indian Agent, to Secretary, Department of Indian Affairs, May 15, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 655).

⁵⁴ Thos. W. Aspdin, Indian Agent, to Secretary, Department of Indian Affairs, May 15, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 655).

Elder Kay Thomson told of the many stories of Agent Aspdin's and Inspector Graham's promises. She explained,

For example, there was a promise to pay off the debt incurred through the purchase of agricultural equipment... As well promises of more money to be made available to purchase more equipment, the tribe was promised that they would get money to buy equipment which was ploughs, disks, another thrashing machine, cattle, horses, buggies, housing material, and they received a promise of other money for the band, and that was yet another inducement.⁵⁵

The oral history of Carry the Kettle Elders indicates there was no formal meeting held to discuss the surrender. Elder Percy Ryder explained,

a lot of them didn't know that they were going to surrender. Like - - and they called for a meeting for - - to discuss this land, but nobody - - nobody went. Nobody didn't show up, so there was no meeting and no vote. It was - - Mr. Aspdin went around from house to house taking names. I don't know how many names he got, but that was what my grandfather talked about, that he came from house to house talking about it.

Ms. McGregor: Why didn't the people go to the surrender meeting; do you know?

Percy Ryder: Well a lot of them didn't care. They didn't really - - they couldn't understand too much anyway. You know, they - - a lot of them spoke the Assiniboine language, and that's all they spoke.

...

Yeah, they - - called for a meeting, but nobody showed up - - nobody came to the meeting, and they didn't have a meeting, and ... there was no vote. They didn't vote on anything. There was - - either to lease it or anything. There was no vote.⁵⁶

⁵⁵ ICC Transcript, October 25, 1995 (ICC Exhibit 5a, p. 35, Kay Thomson).

⁵⁶ ICC Transcript, May 24, 2007 (ICC Exhibit 5d, pp. 25-8, Percy Ryder).

Elder Ryder continued,

the council ... had a meeting. There was five or six of them, but that was mostly the council with - - they're the only ones that had the meeting with - - but there was nothing - - it turned into - - around to nothing.

...

Where they met, it was at the Indian agent's office.⁵⁷

Elder Andrew Ryder recalled hearing that Dan Kennedy acted as the interpreter for the Indian Agent and "told the people that this is going to be leased, this land is going to be leased by - - well, I could say it in Indian, in my language, but you wouldn't understand."⁵⁸ Mr. Ryder explained further that,

When the people at that time, I've heard this, when there's something that they don't want and they don't like, they don't go. If you called a meeting of them people that long ago, the tribe, and they all talked Nakoda, if you don't - - if you don't - - if they don't like what they understood, they will not go.⁵⁹

Elder Maurice Grey related that,

I used to sit in on - - when I was a youngster, in some of the meetings they had, and I heard them talk about the surrender, what we're talking today. And at that time they were talking that it - - the land was to be leased. They were getting pressure from the Indian Agent to lease it. It was - - it had lots to do with rations at that time. They were threatening to cut them off rations.⁶⁰

⁵⁷ ICC Transcript, May 24, 2007 (ICC Exhibit 5d, pp. 29-30, Percy Ryder).

⁵⁸ ICC Transcript, November 29, 2006 (ICC Exhibit 5c, p. 26, Andrew Ryder).

⁵⁹ ICC Transcript, November 29, 2006 (ICC Exhibit 5c, p. 26, Andrew Ryder).

⁶⁰ ICC Transcript, November 29, 2006 (ICC Exhibit 5c, pp. 103-04, Maurice Grey).

Mr. Grey also recalled,

I never heard them talk about a meeting. But I did hear from my other grandfather about a meeting, David Saulteaux. They tried to have a meeting and there wasn't enough Band members at the Indian office to have a meeting. There was people there and the Indian Agent called them in and they thought they were going to get rations, but it wasn't, it was supposed to be to a meeting, but there wasn't enough there.⁶¹

The surrender of Carry the Kettle IR 76 land was submitted to the Governor General in Council on May 11, 1905.⁶² The surrender of nine sections of land, comprising an area of 5,760 acres, was approved by Order in Council P.C. 940, dated May 23, 1905.⁶³

First Nation's Position

Section 39(a) of the 1886 *Indian Act*⁶⁴ mandates the procedures and conditions required to effect a valid surrender. The First Nation asserts that the 1905 surrender failed to comply with section 39(a) of the Act.⁶⁵ Elders' oral testimony indicates that the surrender meeting did not happen at all. Alternatively, if it was held, it was not called in accordance with the rules of the Band, including proper notice. At the meeting, the Indian Agent failed to prepare a detailed record of names of the band members in attendance, and while there is contrary evidence as to whether a vote was held, if there was one, the Agent failed to record the voting results. Consequently, argues the First Nation, the vote would have been non-binding due to the absence of a quorum.⁶⁶

⁶¹ ICC Transcript, November 29, 2006 (ICC Exhibit 5c, p. 107, Maurice Grey).

⁶² Frank Oliver, Superintendent General of Indian Affairs, to the Governor General in Council, May 11, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 654).

⁶³ Order in Council P.C. 940, May 23, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 658).

⁶⁴ *Indian Act*, RSC 1886, c. 43, s. 39(a).

⁶⁵ Written Submission on Behalf of the Carry the Kettle First Nation, August 24, 2007, pp. 13-14.

⁶⁶ Written Submission on Behalf of the Carry the Kettle First Nation, August 24, 2007, p. 17.

Canada's Position

Whether the requirements of section 39 of the *Indian Act* were met depends upon the facts of this inquiry.⁶⁷ The evidence regarding the number of eligible voters who attended the surrender meeting is conflicting. The Elders' evidence ranges from no one attended because there was no such meeting, to only a few people attended.⁶⁸ Although the Act at the time did not require the Crown to keep records of the proceedings of the surrender meeting, a voters list or a statement of the vote results, the documentary record is clear that a majority of male members attended the meeting and voted for the surrender.⁶⁹

Findings

Sections 39(a) and (b) of the 1886 *Indian Act*, as amended, set out the requirements for a valid surrender:

39. No release or surrender of a reserve, or portion of a reserve, held for the use of the Indians of any band, or of any individual Indian, shall be valid or binding, except on the following conditions:

- (a.) 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; but 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;
- (b.) 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

⁶⁷ Written Submission on Behalf of the Government of Canada, October 26, 2007, para. 148.

⁶⁸ Written Submission on Behalf of the Government of Canada, October 26, 2007, para. 145.

⁶⁹ Written Submission on Behalf of the Government of Canada, October 26, 2007, para. 148.

meeting, and by some one 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 Manitoba or the North-west Territories, before the Indian Commissioner for Manitoba and the North-west Territories, 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 thereunto authorized by the Governor in Council; and 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.⁷⁰

Did a surrender meeting actually take place?

Both parties acknowledge that the oral evidence regarding the surrender meeting is conflicting. Some of Elders suggest that a meeting was called but was poorly attended, while others suggests that no meeting was ever called. In light of this conflicting evidence greater deference must be shown to the documentary record, which contains relevant information on the surrender process. For example, a letter dated March 30, 1905, written by Inspector Graham to the Secretary of the Department of Indian Affairs tells us that he met with the Assiniboine Band on March 30, 1905 for the purpose of discussing the surrender of nine southern sections of the reserve⁷¹. This document indicates that Graham engaged in surrender discussions with band members several weeks before the surrender vote.

In addition, a review of the correspondence from Indian Agent Aspdin indicates that a meeting was called for the specific purpose of discussing the surrender. In a letter dated May 15, 1905, Aspdin states that the amount of one dollar was paid to Archie Thompson to go around the reserve and summon the Indians to a meeting at the Agency to discuss and give their final decision in the matter of the sale of the nine sections of the land.⁷² This same letter states that a dollar was also paid to Daniel Kennedy for the interpretation services he provided during the surrender meeting. Finally, on May 3, 1905, Aspdin reported to Inspector Graham that, “[a]t the meeting there was a

⁷⁰ *Indian Act*, RSC 1886, c. 43, as amended by S.C. 1898, c. 34, s. 2-3.

⁷¹ W.M. Graham, Inspector of Indian Agencies, to Secretary, Department of Indian Affairs, March 30, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 638-40).

⁷² Thos. W. Aspdin, Indian Agent, to Secretary, Department of Indian Affairs, May 15, 1905, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 655).

most decided majority in favour of the sale and there are a number of absentees whom it is known are favourable.”⁷³ There is no evidence to suggest that these accounts by Aspdin are false or misleading. We are satisfied, based on the documentary record, that a surrender meeting did take place.

Was a meeting called in accordance with the rules of the Band?

The First Nation asserts that, although there is some evidence to suggest that an effort was made to call a meeting to consider the surrender, proper notice of the meeting was not provided to all eligible voters. According to the oral evidence from the Community Session, it was the Band’s practice to have a rider on horseback go to each household and give notice of a meeting. Elder Andrew Ryder stated, “...when they have a meeting...at that time there would be what they called a rider, horseback, who ran from house to house for communication, telling the people what is going to ...what is going to go on.”⁷⁴ While there is limited evidence on this point, Elder Ryder’s account of how members were notified of meetings is supported by the 1905 letter from Indian Agent Aspdin. In the letter he reports to have paid Archie Thompson one dollar to go around the reserve and summon the Indians to a meeting at the Agency to discuss and give their final decision in the matter of the sale of the nine sections of the land.⁷⁵ The First Nation argues that although the Agent may have paid Archie Thompson to summon the people to the meeting, not all households received notice of the meeting. In particular, the First Nation contends that individuals living in the north end of the reserve, who were not engaged in farming, were not properly notified of the meeting;⁷⁶ however, there is no evidence to indicate that Mr. Thompson, who was retained by Aspdin to spread the word of the meeting, was selective in notifying the eligible voters. Further, Aspdin engaged the services of an interpreter to ensure that the surrender would be fully understood by the band members. There is

⁷³ Thos. Aspdin, Indian Agent, to W.M. Graham, Inspector of Indian Agencies, May 3, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 652).

⁷⁴ ICC Transcript, November 29, 3006 (ICC Exhibit 5c, p. 55, Andrew Ryder).

⁷⁵ Thos. Aspdin, Indian Agent, to Secretary, Department of Indian Affairs, May 15, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 655).

⁷⁶ Written Submission on Behalf of the Carry the Kettle First Nation, August 24, 2007, p. 16.

no evidence to suggest that Aspdin, the rider, or the interpreter was negligent in the execution of his duties, or that any of them was attempting to conceal information from certain band members.

In the absence of compelling evidence to the contrary, we find that a surrender meeting was called in accordance with the rules of the Band.

Was there a majority of eligible voting members in attendance at the surrender meeting?

In *Cardinal et al v. R.*⁷⁷, the Supreme Court reviewed section 49 of the 1906 *Indian Act*,⁷⁸ which is virtually identical to amended section 39 of the 1886 Act. The Supreme Court noted that the surrender provision required what has come to be called a “double majority”: a majority of the male members of the band, age 21 or older, must attend the meeting and a majority of those in attendance must vote in favour of the surrender.

Given the population of the Carry the Kettle Band at the time of the surrender, the required number of members needed to form a majority of eligible voters would have been approximately 19 to 20 eligible male members. Again, the oral testimony of the Elders regarding attendance at the surrender meeting is conflicting and varies from a few individuals having attended the meeting to no one having attended at all. Further, the documentary evidence does not confirm exact attendance numbers. Agent Aspdin, acting in accordance with the 1886 *Indian Act*, which did not require Indian agents to keep written records of surrender meetings, did not record the names of those in attendance.

In the *Paul First Nation: Kapasiwin Townsite Inquiry*, the panel noted that it is not unusual for documentation of the early historic surrenders to be inadequate to determine whether a majority of the voting band members attended a surrender meeting and voted in favour of the surrender.⁷⁹ The panel must, therefore, examine all evidence, including circumstantial evidence, to determine whether a valid surrender vote was conducted.⁸⁰

⁷⁷ *Cardinal et al v. The Queen.*, [1982] 1 S.C.R. 508, at para 23.

⁷⁸ *Indian Act*, RSC 1906, c. 81.

⁷⁹ ICC, *Paul First Nation: Kapasiwin Townsite Inquiry* (Ottawa, February 2007).

⁸⁰ ICC, *Paul First Nation: Kapasiwin Townsite Inquiry* (Ottawa, February 2007).

The record indicates that a meeting held in December 1904, which was requested by band members to discuss a possible surrender, was attended by the Chief, the Headmen and 25 other men.⁸¹ While we do not have a record detailing attendance at the surrender meeting itself, Aspdin's report to his superiors following the surrender, document clearly that "[a]t the meeting there was a most decided majority in favour of the sale and there are a number of absentees whom it is known are favourable."⁸² This document suggests that Aspdin was aware that a majority of eligible voters was required to be in attendance and that this was, in fact, the case. Furthermore, the Affidavit of Surrender, sworn by Chief Carry the Kettle before a justice of the peace, attests to fact that he and a majority of eligible male members present at the meeting assented to the surrender. Thus the preponderance of the evidence, although limited, supports a finding that a majority of eligible voters was in attendance at the surrender meeting.

Did a majority of eligible voters in attendance vote in favour of the surrender?

The *Cardinal* decision is clear that a majority of the eligible male members of the band must attend the meeting and a majority of those at the meeting must vote in favour of the surrender. As noted in the previous section, Agent Aspdin did not record the names of those who voted against or in favour of the surrender. The absence of records detailing the names of the eligible voters in attendance at the meeting, and the number who voted in favour of the surrender, is an unfortunate fact but consistent with the law and practice of most early surrenders. Since these records were not required, their absence was the rule, not the exception during this period. Absent any evidence of unscrupulous or negligent behaviour on Aspdin's part in conducting the surrender meeting, the panel does not interpret the lack of these records as suspicious or conducive to a finding that the vote was invalid.

A review of the correspondence which precedes the surrender indicates that several members of the Band were in favour of a surrender. Graham's correspondence suggests that previous

⁸¹ Thos. Aspdin, Indian Agent, to Secretary, Department of Indian Affairs, December 16, 1904, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 627-28).

⁸² Thos. Aspdin, Indian Agent, to W.M. Graham, Inspector of Indian Agencies, May 3, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 652).

meetings held to discuss the surrender were well attended by band members.⁸³ Also, Aspdin wrote in December 1904 that the “Chief and headmen in company with about 25 other Indians are those who asked me to open up the matter again.”⁸⁴ While this document is not conclusive of how members may have voted in favour of the surrender during the meeting, it does show that as many as 25 band members were actively lobbying the Indian agent for a surrender. The panel finds, however, that the most compelling evidence that a majority voted in favour of the surrender remains the Affidavit of Surrender.

The First Nation argues that Chief Carry the Kettle, who signed the Affidavit of Surrender, had a limited understanding of the English language and there is no evidence that the Affidavit was interpreted for his benefit. Unfortunately, both the documentary record and the oral testimony of the Elders fail to shed light on this assertion. Still, the record does state that Indian Agent Aspdin paid Dan Kennedy to provide interpretation during the surrender meeting to ensure that the members fully understood the matter.⁸⁵ Absent any evidence to the contrary, we are left to assume that Chief Carry the Kettle understood the contents of the surrender Affidavit and that a majority of male members present at the meeting voted in favour of surrender.

ISSUE 3 FIDUCIARY DUTY

3 Did Canada breach any fiduciary duty owed to the First Nation in relation to the 1905 surrender?

The panel has been asked to determine whether the Crown breached its fiduciary duty to the Carry the Kettle Band when it assented to the 1905 surrender of IR 76 lands. The First Nation argues that Canada breached its fiduciary duty to the Band by exceeding the scope of its discretion under the

⁸³ W.M. Graham, Inspector of Indian Agencies, to Secretary, Department of Indian Affairs, March 30, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 638-40).

⁸⁴ Thos. Aspdin, Indian Agent, to Secretary, Department of Indian Affairs, December 16, 1904, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 627-28).

⁸⁵ Thos. Aspdin, Indian Agent, to Secretary, Department of Indian Affairs, May 15, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 655).

Indian Act, by inducing the Band to surrender, and by allowing its self-interest and economic interests to conflict with its duty to the Band. Canada, it is alleged, failed to meet its duty to the Band to act with loyalty, good faith, full disclosure and ordinary prudence with a view to the Band's best interests, in the conduct of the surrender and in the disposition of its proceeds.⁸⁶ Canada, the First Nation argues, also failed to fully disclose the terms and consequences of the surrender.⁸⁷ Canada maintains it fulfilled its fiduciary obligations to the First Nation in relation to all aspects of the 1905 surrender.

The panel, having reviewed the documentary record, oral evidence, and the relevant law, finds that Canada did not breach any fiduciary duty owed to the First Nation in relation to the 1905 surrender.

Background

The surrender of Carry the Kettle IR 76 land was submitted to the Governor General in Council on May 11, 1905.⁸⁸ The surrender of the nine sections of land was approved by Order in Council P.C. 940, dated May 23, 1905.⁸⁹ J.K. McLean, Dominion Land Surveyor, carried out the subdivision of the surrendered portion of IR 76 in September 1905. He valued the lands at four to five dollars per acre for third class land, five to six dollars for second class land, and seven to eight dollars for first class land.⁹⁰ Those lands under cultivation in Section 28, Township 15, Range 11 W2M (28-15-11) received the highest upset prices, from seven to eight dollars per acre.⁹¹ The surveyor's upset prices

⁸⁶ Written Submission on Behalf of the Carry the Kettle First Nation, August 24, 2007, p. 45.

⁸⁷ Written Submission on Behalf of the Carry the Kettle First Nation, August 24, 2007, p. 53.

⁸⁸ Frank Oliver, Superintendent General of Indian Affairs, to the Governor General in Council, May 11, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 654).

⁸⁹ Order in Council P.C. 940, May 23, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 658).

⁹⁰ J.K. McLean, Surveyor, to Frank Pedley, Deputy Superintendent General of Indian Affairs, September 11, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 693-99).

⁹¹ J.K. McLean, Surveyor, to Frank Pedley, Deputy Superintendent General of Indian Affairs, September 11, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 697-98).

were reviewed and approved by both Samuel Bray and W.A. Orr, and the latter recommended the land be sold at auction at Indian Head on November 2, 1905.⁹² The Notice of Public Auction was prepared in December 1905, and the sale was scheduled to be held on February 14, 1906.⁹³ Terms of the sale required cash in full or one-fifth cash to be paid at the time of sale and the balance in four equal, annual installments with five per cent interest.⁹⁴

The auction took place on February 14th, 1906, at Sintaluta. In accordance with instructions issued by the Deputy Superintendent General of Indian Affairs, Inspector Graham took charge of the sale and Peter Smith, of Wolseley, Saskatchewan, acted as auctioneer.⁹⁵

On February 20, 1906, Graham forwarded to Ottawa the pass book, (in which the particulars of each sale were recorded), and two bank drafts totalling \$7,069.09, (being one-fifth of the purchase price), along with his report on the sale.⁹⁶ Six men purchased a total of 34 quarter-sections of the surrendered IR 76 lands at the 1906 auction. According to the terms of sale, consideration for all purchases was to have been paid in full by February 14, 1910. By that time, however, only six sales had been completed.

Immediately following the 1906 auction, \$6,680.34 was deposited to the Capital Account of Carry the Kettle Band's trust fund and \$388.75 to its Interest Account, the sum of those amounts equalling the auction proceeds forwarded by Inspector Graham.⁹⁷ In total, \$47,965.16 was collected by the department from the sale of the surrendered IR 76 lands; however, only \$42,428.13 was

⁹² S. Bray, Chief Surveyor, Department of Indian Affairs, to Deputy Superintendent General of Indian Affairs, September 18, 1905 (ICC Exhibit 1a, p. 705), and W.A. Orr, In Charge Land and Timber Branch, to Deputy Minister, September 25, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 706-07).

⁹³ J.D. McLean, Secretary, Department of Indian Affairs, to The King's Printer, December 28, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 748-49).

⁹⁴ J.D. McLean, Secretary, Department of Indian Affairs, December 28, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 748-49).

⁹⁵ Frank Pedley, Deputy Superintendent General of Indian Affairs, to W.M. Graham, Inspector of Indian Agencies, February 2, 1906, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 758).

⁹⁶ W.A. Orr, In Charge Lands and Timber Branch, to Deputy Minister, March 10, 1906, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 775).

⁹⁷ Carry the Kettle First Nation Trust Fund #145 (ICC Exhibit 9c, p. 2).

credited to the First Nation's Trust Account. The \$5,537.03 difference represents the January 1920 payment made by Samuel Clarke, which does not appear to have been credited to the First Nation's Trust Account.⁹⁸

The proceeds from the sale of the surrendered IR 76 lands were to be spent according to the terms of the 1905 surrender. A debt of approximately \$1,200.00 arising from the purchase of a thresher was to be paid off as early as possible, as well as the remaining debt incurred by the Band for fencing wire. The Surrender Document also stipulated that the money received was to be used to purchase materials to build a shed and to purchase a new engine. A review of Carry the Kettle Band Trust Account #145 ledger for 1905-1906 reveals that, on March 2, 1906, \$1,632.03 was debited from the Capital Account for the purchase of a new engine and shed material.⁹⁹ The Auditor General's report for the same year shows that \$1,500.00 was spent on a Sawyer-Massie engine, \$76.73 for material to construct a lean-to shed and \$64.00 was debited for freight on a thresher.¹⁰⁰ No further details of the First Nation's debts are known and there is no indication whether the fencing debt was paid off.

Compensation for Improvements

The final condition of the surrender required the compensation of three band members for their improvements. At the time of the 1905 surrender, Daniel Kennedy, Joseph Jack, and The Saulteaux, were farming on section 28-15-11-W2M. A few weeks after the surrender, Indian Agent Aspdin wrote to the Secretary of the Department of Indian Affairs regarding their compensation. In particular, Daniel Kennedy requested an advance so that he might purchase feed grain to help see him through the task of breaking land elsewhere on the reserve.¹⁰¹ Kennedy farmed between 40 and

⁹⁸ Public History Inc., "Carry the Kettle First Nation Land Sale Claim, Historical Report," April 30, 2006, (ICC Exhibit 9a, p. 55).

⁹⁹ DIAND, Carry the Kettle First Nation Trust Fund, #145 (ICC Exhibit 9c, p. 2).

¹⁰⁰ Auditor General, June 30, 1906, Canada. *Auditor General's Report, 1905-1906*, 6-7 Edward VII., A. 1907, vol. 1, J-114-J-155 (ICC Exhibit 1a, pp. 790-98), and DIAND, Carry the Kettle First Nation Trust Fund #145 (ICC Exhibit 9c, p. 2).

¹⁰¹ Thos. W. Aspdin, Indian Agent, to Secretary, Department of Indian Affairs, May 19, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 657).

50 acres of land in section 28 for which he was promised compensation. On May 25, 1905 the department approved an advance of \$25.00 from the amount payable to Kennedy for his improvements.¹⁰² The value of the improvements in section 28-15-11-W2M was established by Surveyor J.K. McLean at the time of the subdivision and valuation of surrendered lands in September 1905. McLean documented the improvements made by Daniel Kennedy, Joseph Jack and The Saulteaux in his report to the Deputy Superintendent General of Indian Affairs, Frank Pedley. Surveyor McLean wrote that the land was “in a good state of cultivation, in fact in equally as good condition as that of any white settler.”¹⁰³ McLean explained that Daniel Kennedy had 46 and one-fifth acres under cultivation, Joseph Jack cultivated 16 and one-quarter acres, and The Saulteaux 14 and a half acres. He recommended they be compensated at the rate of \$5.00 per acre for their improvements.¹⁰⁴ With his report, McLean forwarded three statements signed by Kennedy, Jack, and The Saulteaux agreeing to \$5.00 per acre compensation, and asking for payment by December 15, 1905.¹⁰⁵ The department forwarded compensation cheques to W.M. Graham on March 3, 1906, for distribution. Joseph Jack received a cheque for \$82.10, The Saulteaux a cheque for \$73.25, and Daniel Kennedy a cheque for \$208.40, which was the amount due plus five percent interest.¹⁰⁶ The total compensation received by Daniel Kennedy for his improvements was \$233.40.¹⁰⁷ Graham

¹⁰² Secretary to T.W. Aspdin, Indian Agent, May 25, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 659).

¹⁰³ J.K. McLean to Frank Pedley, Deputy Superintendent General of Indian Affairs, September 11, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 700).

¹⁰⁴ J.K. McLean to Frank Pedley, Deputy Superintendent General of Indian Affairs, September 11, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 700).

¹⁰⁵ J.K. McLean to Frank Pedley, Deputy Superintendent General of Indian Affairs, September 11, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 702-04).

¹⁰⁶ J.D. McLean, Secretary, to W.M. Graham, Inspector of Indian Agencies, March 3, 1906, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 772).

¹⁰⁷ J.D. McLean, Secretary, to W.M. Graham, Inspector of Indian Agencies, March 3, 1906, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 772).

acknowledged the distribution of the cheques and forwarded receipts to the department on March 23, 1906.¹⁰⁸

Requests for the Distribution of Trust Fund Money

Between 1907 and 1917, Carry the Kettle band members sent five petitions to the Department of Indian Affairs requesting annual, per capita payments from the Band's Trust Account. Their requests were based on their understanding of the 1905 surrender conditions and the economic conditions on the reserve.

First Nation's Position

As noted above, it is the First Nation's position that the Crown breached its fiduciary duty by exceeding the scope of its discretion¹⁰⁹; by consenting to and implementing the terms and conditions of the surrender which provided for proceeds from the sale of the surrendered lands to be used to purchase machinery and repay the Band's debts to the Crown. As well, the First Nation asserts that the Indian Agent made representations to band members to induce them to surrender their reserve lands and Canada later ignored these representations. Finally, it is argued that Canada failed to meet its obligations of loyalty, good faith, full disclosure and acting with ordinary prudence with a view to the band's best interests with regard to the surrender.¹¹⁰

Canada's Position

It is Canada's position that the Crown fulfilled its pre-surrender fiduciary duty to the First Nation in relation to the 1905 surrender and fully complied with its obligations.¹¹¹ In the pre-surrender context, argues Canada, the Crown's fiduciary duty to a Band is limited to preventing an exploitative

¹⁰⁸ W.M. Graham, Inspector of Indian Agencies, to Secretary, Department of Indian Affairs, March 23, 1906, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 776).

¹⁰⁹ Written Submission on Behalf of the Carry the Kettle First Nation, August 24, 2007, p. 53.

¹¹⁰ *Weywaykum Indian Band v. Canada*, [2002] 4 S.C.R. 245

¹¹¹ Written Submission on Behalf of the Government of Canada, October 26, 2007, para. 181.

bargain.¹¹² An examination of the circumstances leading up to, at the time of, and subsequent to the 1905 surrender supports the conclusion that Canada did not breach its fiduciary duty.¹¹³ Specifically, Canada maintains that the Crown fully complied with all the requirements of the *Indian Act* as well as the Band's usual practices to ensure a surrender meeting was properly called and the surrender vote properly conducted.¹¹⁴ Canada also maintains that there was no self-interest on the part of any member of the Crown in any of the proceedings prior to, during, and after the sale, that could give rise to a finding of undue influence or exploitation.¹¹⁵

The Test for Pre-Surrender Fiduciary Duty

In the pre-surrender context, the nature and scope of Canada's fiduciary obligation to First Nations is set out in *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)* [hereinafter *Apsassin*].¹¹⁶ The test enumerated in *Wewaykum* and establishing a threshold of fiduciary duty of loyalty, good faith, full disclosure and prudence applies to a pre-reserve creation context, and as such, cannot apply to a situation of surrender of reserve lands. In *Apsassin*, Justice Gonthier, writing for the majority, held that a First Nation's consent to surrender should not be given effect if the band's understanding of the surrender terms is found to be inadequate, or if the Crown's conduct tainted the dealings in a manner which made it unsafe to rely on the band's understanding and intention.¹¹⁷ Justice McLachlin, took a somewhat different approach to the question of fiduciary duty: focusing upon a situation where a vulnerable party may be said to have ceded their decision-making power to the fiduciary, she observed that "[g]enerally speaking,

¹¹² Written Submission on Behalf of the Government of Canada, October 26, 2007, para. 181.

¹¹³ Written Submission on Behalf of the Government of Canada, October 26, 2007, para. 153.

¹¹⁴ Written Submission on Behalf of the Government of Canada, October 26, 2007, para. 172.

¹¹⁵ Written Submission on Behalf of the Government of Canada, October 26, 2007, para. 176.

¹¹⁶ *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 S.C.R. 344 (sub nom. *Apsassin*).

¹¹⁷ *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 S.C.R. 344, at para. 14 (sub nom. *Apsassin*).

a fiduciary obligation arises where one person possesses unilateral power or discretion on a matter affecting a second ‘peculiarly vulnerable’ person ...”¹¹⁸ McLachlin further stated that:

The vulnerable party is in the power of the party possessing the power or discretion, who is in turn obligated to exercise that power or discretion solely for the benefit of the vulnerable party. ...The person who has ceded power *trusts* the person to whom power is ceded to exercise the power with loyalty and care. This is the notion at the heart of the fiduciary obligation.¹¹⁹

In a situation in which the First Nation is the decision-maker, such as when consenting to a surrender, Justice McLachlin confirmed the Crown’s “duty to prevent an exploitative bargain” by refusing to approve the surrender if it was exploitative of the band:

My view is that the *Indian Act*’s provisions for surrender of band reserves strikes a balance between the two extremes of autonomy and protection. The band’s consent was required to surrender its reserve. Without that consent the reserve could not be sold. But the Crown, through the Governor in Council, was also required to consent to the surrender. The purpose of the requirement of Crown consent was not to substitute the Crown’s decision for that of the band, but to prevent exploitation. ...

It follows that under the *Indian Act*, the Band had the right to decide whether to surrender the reserve, and its decision was to be respected. At the same time, if the Band’s decision was foolish or improvident - a decision that constituted exploitation - the Crown could refuse to consent. In short, the Crown’s obligation was limited to preventing exploitative bargains.¹²⁰

McLachlin J. also noted that the *Indian Act* recognises First Nations as autonomous actors capable of making decisions concerning their interest in reserve property and ensures that the true

¹¹⁸ *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 S.C.R. 344, at para. 38 (sub nom. *Apsassin*).

¹¹⁹ *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 S.C.R. 344, at para. 38 (sub nom. *Apsassin*).

¹²⁰ *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 S.C.R. 344 at paras. 35-36 (sub nom. *Apsassin*).

intent of the First Nation is respected.¹²¹ However, a First Nation's decision to surrender a portion of its reserve can be called into question if the First Nation's understanding of the terms was inadequate or the Crown engaged in "tainted dealings" to the extent that it was unsafe to rely on the First Nation's understanding and intention.

Findings

Was the Band's Understanding Adequate?

Several of the Elders who provided oral testimony during the community session stated that the band members at the time understood that the land would be leased and not sold. Elder Maurice Grey related that:

I used to sit in on - - when I was a youngster, in some of the meetings they had, and I heard them talk about the surrender, what we're talking today. And at that time they were talking that it - - the land was to be leased. They were getting pressure from the Indian Agent to lease it.¹²²

Elder Grey also stated that many of the band members were surprised when they heard that the lands had been sold.¹²³ However, the historical documents following the surrender do not contain any complaints from the Band or statements that the Band misunderstood the purpose of the surrender. There is no evidence that the Band at any time questioned the validity of the surrender. In fact in 1916, the Chief and Councillors of the Carry the Kettle Band petitioned to the Department of Indian Affairs to request annual per capita payments from the Band's Trust Account. The Chief and Councillors wrote, "We are quite familiar with the agreement made at the time we surrendered that portion of our land which was sold, but we now feel that the said agreement was not made for

¹²¹ *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)* [1995] 4 S.C.R. 344 at para. 91 (sub nom. *Apsassin*).

¹²² ICC Transcript, November 29, 2006 (ICC Exhibit 5c, pp. 103-04, Maurice Grey).

¹²³ ICC Transcript, November 29, 2006 (ICC Exhibit 5c, p. 112, Maurice Grey).

the best immediate interest of the Band...”¹²⁴ Based on this evidence, we must conclude that the Band adequately understood the terms of the surrender.

Did the Crown’s Conduct Taint the Dealings?

The First Nation argues that Indian Agent Aspdin exerted pressure and undue influence on the Band to agree to the surrender. They assert that Aspdin was either inexperienced or negligent in his duties, as both Indian Agent and Farming Instructor, and points to records which, it argues, illustrate Aspdin’s incompetence. In particular, the First Nation refers to a 1904 letter from Graham in which he allegedly reproached Aspdin for poor crops and suggested that a “practical farming instructor” be brought in to manage the Band’s farming endeavours. This plan, the First Nation asserts, was frustrated by Aspdin’s inability to purchase a suitable thresher. Aspdin, it is argued, was concerned for his own well-being and exerted pressure on the Band to agree to surrender conditions which favoured both the Crown and himself.

With respect, we cannot accept this argument. There is no evidence on record to suggest that Aspdin was under any serious threat of sanctions such as being removed as Indian Agent, and there is no evidence that he exerted any pressure or undue influence on the Band to agree to the surrender. The record shows that it was the Chief and Headman who approached Aspdin about the surrender and even proposed the terms of the surrender themselves. This suggests that the decision to surrender the southern portion of the reserve was made by the Band alone. We find that the Crown did not engage in pressure tactics or tainted dealings that would call into question the validity of the surrender.

Did the Surrender Constitute an Exploitative Bargain?

We turn to the question of whether the 1905 surrender constituted an exploitative bargain. In *Apsassin*, the Court held that if a Band’s decision to surrender were deemed foolish, improvident or exploitative, the Crown could refuse its consent. In assessing whether a surrender is exploitative, a

¹²⁴ Chief and Councillors of the Carry the Kettle Band to Secretary, Department of Indian Affairs, February, 1916, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 1338-39).

number of factors may be considered. These factors may include: the quantity and quality of the remaining land in light of the Band's interests and perceived needs; the Band's existing and contemplated ways of life; its use of the land prior to the surrender; the terms of the surrender; and the potential benefits associated with the surrender. The First Nation argues that rather than selling the nine sections of the reserve, which were used to grow hay, provide summer pasture and grow crops, the Band had other options open to it.¹²⁵ They also argue that the Band's overall interests in preserving the land as part of its reserve were substantial in 1901, and even greater by 1904-1905.¹²⁶ The surrender, the First Nation asserts, largely served the interests of the government, Agent Aspdin, and a small group of farmers, and the Crown placed itself in a conflict of interest when it approved the terms of surrender, which for the most part involved repayment of a debt owed to Canada.

We agree with Canada's position that the 1905 surrender did not constitute an exploitative bargain. The portion of the reserve proposed by the Band to be surrendered was relatively small, consisting of 5,760 acres from a reserve totalling over 46,000 acres.¹²⁷ Furthermore, the surrendered lands were for the most part unused.¹²⁸ It therefore would have been reasonable for the Indian Agent to conclude that the surrender would not impair the Band's ability to be self-sufficient. The Band's use of the southern portion of the reserve was limited. Elder testimony gathered during the community session indicates that the majority of Band members lived and farmed at the north end of the reserve and that only a few individuals kept farms at the south end. At the time, it would have been reasonable for the Band to sell this portion of the reserve and use the proceeds to refurbish the farming equipment, which in turn would help it become more self-sufficient. We therefore conclude that the 1905 surrender was not foolish, improvident or exploitative and as a result there was no duty upon the Crown to refuse its consent.

¹²⁵ Written Submission on Behalf of the Carry the Kettle First Nation, August 24, 2007, p. 49.

¹²⁶ Written Submission on Behalf of the Carry the Kettle First Nation, August 24, 2007, p. 51.

¹²⁷ Written Submission on Behalf of the Government of Canada, October 26, 2007, para. 165.

¹²⁸ Written Submission on Behalf of the Government of Canada, October 26, 2007, para. 165.

Had the Band Ceded its Decision-Making Powers?

The final part of the *Apsassin* pre-surrender fiduciary duty analysis requires us to determine whether the Crown took extra caution if the Band had ceded or abnegated its powers to decide whether to surrender the land. In the present case, however, there was no such cession or abnegation by the Band of its powers to decide whether or on what terms the lands would be surrendered. It is clear that the Band not only requested the surrender but also proposed the conditions for the surrender. It does not appear that undue influence was applied to the Band, such that the Crown effectively became the decision-maker. We therefore conclude that the Band did not cede or abnegate its decision-making powers to the Crown.

Throughout the surrender process the Crown acted as a prudent and reasonable fiduciary. As a result, we find no breach of the Crown's pre-surrender fiduciary obligation to the First Nation.

ISSUE 4 OUTSTANDING LAWFUL OBLIGATION**4 As a result of the answers to questions 1 to 3 above, does Canada have an outstanding lawful obligation to the First Nation?**

Having found that Canada did not exceed its jurisdiction or breach any statutory or fiduciary obligations to the Carry the Kettle First Nation with respect to the 1905 surrender, we find that Canada does not owe an outstanding lawful obligation to the First Nation.

PART V

CONCLUSIONS AND RECOMMENDATION

The Commission has been asked to inquire into and report upon whether the Government of Canada owes an outstanding lawful obligation to the Carry the Kettle First Nation. The panel in this inquiry finds that, based on the documentary evidence before it and having examined the relevant law, the Government of Canada does not owe an outstanding lawful obligation to the Carry the Kettle First Nation.

On the first issue, the panel was asked to make a finding of whether the Governor in Council exceeded its jurisdiction under the 1886 *Indian Act* when it consented to the 1905 surrender, sold the surrendered lands and used the proceeds of the sale to repay a debt owed to the Crown and other farming purchases. The First Nation claims that the 1886 *Indian Act* granted the Governor in Council limited powers to expend monies derived from the sale of surrendered lands and that those powers were exceeded. Canada argues that the Governor in Council exercised its powers reasonably and acted within the limits of the 1886 *Indian Act*. Having reviewed the relevant sections of the 1886 *Indian Act* pertaining to surrenders and the appropriate uses of proceeds therefrom, as well as the relevant law, the panel concludes that Governor in Council did not exceed its jurisdiction when it consented to the surrender, sold the lands subject thereto and used the proceeds of the sale for the purposes directed therein.

The panel was also asked to determine whether the 1905 surrender was taken in accordance with the provisions of the 1886 *Indian Act*, most notably those sections pertaining to the holding of a meeting for purposes of surrender as well as attendance and voting at that meeting. The panel finds that, based on the documentary and oral evidence before it and having examined the relevant law, notice of the surrender meeting was given in accordance with the rules of the Band, a surrender meeting was held, a majority of male band members were in attendance, and a majority of those voted in favour of the surrender.

The third issue required the panel to determine whether Canada breached any fiduciary duty owed to the First Nation when it assented to the 1905 surrender. Having reviewed the documentary record, oral evidence, and the relevant law, the panel finds that Canada acted as a prudent and

reasonable fiduciary throughout the surrender process. As a result, there has been no breach of the Crown's pre-surrender fiduciary obligation to the First Nation.

As a result of the answers to the three issues outlined above, the panel finds that Canada did not exceed its jurisdiction or breach any statutory or fiduciary obligations to the Carry the Kettle First Nation with respect to the 1905 surrender, and thus Canada does not owe an outstanding lawful obligation to the First Nation.

We therefore recommend to the parties:

That the claim of the Carry the Kettle First Nation regarding the 1905 surrender of a portion of Indian Reserve 76 not be accepted for negotiation under Canada's Specific Claims Policy.

FOR THE INDIAN CLAIMS COMMISSION



Sheila G. Purdy
Commissioner (Chair)



Jane Dickson-Gilmore
Commissioner



Alan C. Holman
Commissioner

Dated this 1st day of December, 2008.

APPENDIX A

HISTORICAL BACKGROUND

CARRY THE KETTLE FIRST NATION

1905 SURRENDER INQUIRY

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INTRODUCTION

In 1905, Carry the Kettle First Nation surrendered approximately 5,760 acres of land along the southern portion of its 46,854-acre reserve, Assiniboine Indian Reserve (IR) 76. The reserve is located near Indian Head, 80 kilometres east of Regina, in southern Saskatchewan. The First Nation has since challenged the validity of the 1905 surrender through the federal Specific Claims process. The Government of Canada, however, affirms that the surrender was properly obtained and that, consequently, there is no outstanding lawful obligation to the First Nation.

Origins of Carry the Kettle First Nation

In the 1870s, Carry the Kettle First Nation was one of a number of Assiniboine Bands who inhabited the Cypress Hills in the southern Prairies. Prior to 1885, the collective group was referred to by Department of Indian Affairs (DIA) officials as the “Assiniboine Bands.” Current Carry the Kettle First Nation members consider themselves direct descendants of two Assiniboine Chiefs, The Man Who Took the Coat and Long Lodge, whose respective Bands were amalgamated in 1885 under Chief The Man Who Took the Coat.¹²⁹ After this amalgamation the Band was referred to by DIA officials as the “Assiniboine Band.” Carry the Kettle Band was led by Chief The Man Who Took the Coat until his death in 1891, at which time he was succeeded by his brother, Carry the Kettle.¹³⁰ The name Carry the Kettle Band first appears in correspondence after the turn of the century, and was used by DIA officials interchangeably with Assiniboine Band. The capital and interest accounts for this Band, however, are identified as Assiniboine Band #145. Carry the Kettle Band members referred to themselves as the Assiniboine Band until at least 1916.¹³¹ For the purposes of this report, Carry the Kettle First Nation is identified as Carry the Kettle Band, except when appearing in a direct quotation.

¹²⁹ ICC, *Carry the Kettle First Nation: Cypress Hills Inquiry* (Ottawa, July 2000), reported (2000) 13 ICCP 209 at 220–21.

¹³⁰ ICC, *Carry the Kettle First Nation: Cypress Hills Inquiry* (Ottawa, July 2000), 7, reported (2000) ICCP 209 at 221.

¹³¹ Chief and Councillors, Assiniboine Band, to Deputy Minister, Department of Indian Affairs (DIA), March 23, 1916, Library and Archives Canada (hereafter LAC), RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 1343).

Adhesion to Treaty 4, 1877

In addition to setting out the terms for the Confederation of the Provinces of Canada, Nova Scotia, and New Brunswick, the *Constitution Act, 1867*, by section 146, provided for the subsequent admission to the Union of Rupert's Land and the North-Western Territory.

Addresses of the Canadian House of Commons and Senate, dated December 16 and 17, 1867, respectively, requested the Queen to unite "Rupert's Land and the North-Western Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government."¹³² Furthermore, those addresses stated:

upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.¹³³

In response, the British government passed the *Rupert's Land Act, 1868*, which enabled the surrender by the Hudson's Bay Company (then the owner of Rupert's Land) "of all or any of the Lands, Territories, Rights, Privileges, Liberties, Franchises, Powers, and Authorities whatsoever granted or purported to be granted ... to the said Governor and Company within Rupert's Land" to the Queen.¹³⁴ To facilitate the construction of a transcontinental railway and the settlement of the Prairies (two pillars of the governing Conservative Party's National Policy) the dominion government sought to secure title to the North-West Territories by signing treaties with the Aboriginal inhabitants of the area. First Nations also sought to negotiate treaties in an attempt to preserve their way of life in the face of Euro-Canadian settlement on their traditional lands. In return

¹³² Address to Her Majesty the Queen from the Senate and House of Commons of the Dominion of Canada, December 17 & 16, 1867, attached as Schedule (A) to *Rupert's Land and North-Western Territory Order*, June 23, 1870, reprinted in RSC 1985, App. II, No. 9.

¹³³ Address to Her Majesty the Queen from the Senate and House of Commons of the Dominion of Canada, December 17 & 16, 1867, attached as Schedule (A) to *Rupert's Land and North-Western Territory Order*, June 23, 1870, reprinted in RSC 1985, App. II, No. 9.

¹³⁴ *Rupert's Land Act, 1868*, 31-32 Vict., c. 105 (UK), s. 3, reprinted in RSC 1985, App. II, No. 6.

for certain rights, privileges, and provisions promised in those treaties, including annuities and reserves, the signatory bands ceded their Aboriginal title to the subject lands.

In 1874, the dominion government, represented by Alexander Morris, Lieutenant Governor of the North-West Territories, signed Treaty 4 with the Cree and Saulteaux Tribes of Indians at Qu'Appelle and Fort Ellice. The Assiniboine bands resident in this area, however, were not present at these negotiations. It was not until September 1877 that the Assiniboine Tribe, led by Chief Long Lodge Tepee Hoska, Chief The Man Who Took the Coat,¹³⁵ Chief Poor Man, and Chief Wich-a-wos-taka, met with J.M. Walsh, the North-West Mounted Police Commander of Fort Walsh in the Cypress Hills, and signed an adhesion to Treaty 4.¹³⁶

Treaty 4 provided reserves of “one square mile for each family of five, or in that proportion for larger or smaller families.”¹³⁷ It further stipulated:

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, but in no wise shall the said Indians or any of them, be entitled to sell or otherwise alienate any of the lands allotted to them as reserves.¹³⁸

The treaty also provided for an annuity, maintenance of schools on reserves, triennial clothing for the chiefs and headmen, ammunition, and twine. Signatories were also promised that:

¹³⁵ Chief The Man Who Took the Coat is also referred to as Jack, The One Who Took the Coat, The One That Fetched the Coat, and The One Who Stole the Coat. For the purposes of this paper, we will refer to the Chief as The Man Who Took the Coat unless his name appears in a direct quotation.

¹³⁶ Canada, *Treaty No. 4 Between Her Majesty and the Cree and Saulteaux Tribes of Indians, 1874* (Ottawa: Queen's Printer and Controller of Stationery, 1966) (ICC Exhibit 1a, pp. 1-14).

¹³⁷ Canada, *Treaty No. 4 Between Her Majesty and the Cree and Saulteaux Tribes of Indians, 1874* (Ottawa: Queen's Printer and Controller of Stationery, 1966) (ICC Exhibit 1a, pp. 1-14).

¹³⁸ Canada, *Treaty No. 4 Between Her Majesty and the Cree and Saulteaux Tribes of Indians, 1874* (Ottawa: Queen's Printer and Controller of Stationery, 1966) (ICC Exhibit 1a, pp. 1-14).

the following articles shall be supplied to any band thereof who are now actually cultivating the soil, or who shall hereafter settle on their reserves and commence to break up the land, that is to say: two hoes, one spade, one scythe and one axe for every family so actually cultivating, and enough seed wheat, barley, oats and potatoes to plant such land as they have broken up; also one plough and two harrows for every ten families so cultivating as aforesaid, and also to each Chief for the use of his band as aforesaid, one yoke of oxen, one bull, four cows, a chest of ordinary carpenter's tools, five hand saws, five augers, one cross-cut saw, one pit-saw, the necessary files and one grindstone, all the aforesaid articles to be given, once for all, for the encouragement of the practice of agriculture among the Indians.¹³⁹

The Assiniboine and the Cypress Hills, 1874–83

Historically, the Assiniboine Tribe was comprised of approximately 33 bands.¹⁴⁰ Those bands traditionally inhabited an area around the Mississippi headwaters and at “the peak of their power their territory ranged from the Saskatchewan and Assiniboine river valleys in Canada to the region north of the Milk and Missouri rivers in the U.S.”¹⁴¹ At the time of its adhesion to Treaty 4, the Assiniboine Tribe was one of several groups occupying the Cypress Hills, an area of 2,500 square kilometres in what is now southeastern Alberta and southwestern Saskatchewan.¹⁴² During treaty negotiations, the Assiniboine made it known to Treaty Commissioner J.M. Walsh that the Cypress Hills was part of its territory:

The country claimed by the Assiniboines, admitted in treaty this year by me as the country of their forefathers, extends from the west end of Cypress Mountain to Wood Mountain on the east, north to the South Saskatchewan and south to Milk River.

¹³⁹ Canada, *Treaty No. 4 Between Her Majesty and the Cree and Saulteaux Tribes of Indians, 1874* (Ottawa: Queen's Printer and Controller of Stationery, 1966) (ICC Exhibit 1a, p. 1-14).

¹⁴⁰ Dr. Kenneth E. Ryan, “Assiniboine Policy – Traditional Assiniboine Government,” October 1995, p. 8 (ICC Exhibit 5a, p. 45).

¹⁴¹ Ian A.L. Getty, “Assiniboine,” *The Canadian Encyclopedia*, Historical Foundation of Canada, 2006 online: www.thecanadianencyclopedia.com (consulted February 2006) (ICC Exhibit 8f, p. 1).

¹⁴² Ian A. Campbell, “Cypress Hills,” *The Canadian Encyclopedia*, Historical Foundation of Canada, 2006 online: www.thecanadianencyclopedia.com (consulted February 2006) (ICC Exhibit 8e, p. 1).

Since my arrival in this country they have not gone further east than forty (40) miles east of the east end of Cypress Mountain, this is owing to the large number of Sioux in that locality whom the Assiniboines do not care about intermingling with. The other sections of the country mentioned have been occupied by them for the last two (2) years, one-half have wintered on the Canadian side of the line on Milk River, the other half at the west end of the mountain.¹⁴³

The Assiniboine Bands did not select their reserves until 1879. In his annual report for that year, Indian Commissioner Edgar Dewdney informed the Superintendent General of Indian Affairs in his annual report that “[t]he Assiniboines have not, as yet, settled on their reservations. One band whose chief’s name is ‘The Man that Stole the Coat,’ expressed a wish last spring to settle, and picked out land at the west of Cypress Mountain for his reservation.”¹⁴⁴ Dewdney visited the site in October 1879 and described the area as:

situated on the north-west end of Cypress Mountains, and is well located for farming, provided early summer frosts are not prevalent.

As no crop of any kind has ever been put in this locality, it is difficult to say how it may turn out.

It has been a favorite wintering-place for Half-breeds for several years, and there are a number of abandoned houses, which will be made use of by the Indian instructor sent there, as well as by the Indians themselves.¹⁴⁵

In the spring of 1880, Allan P. Patrick surveyed an area north of the Cypress Hills, containing 340 square miles, for the Assiniboines.¹⁴⁶

¹⁴³ J.M. Walsh, Inspector, to Deputy of the Minister of the Interior, E.A. Meredith, October 28, 1877, Canada, Parliament, *Sessional Papers*, 1879, No. 10, xxxi-xxxiv (ICC Exhibit 1a, p. 15-18).

¹⁴⁴ Edgar Dewdney, Indian Commissioner, to Superintendent General of Indian Affairs (SGIA), January 2, 1880, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1879*, 76–103 (ICC Exhibit 1a, p. 40).

¹⁴⁵ Edgar Dewdney, Indian Commissioner, to SGIA, January 2, 1880, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1880*, 95 (ICC Exhibit 1a, p. 38).

¹⁴⁶ Allan Patrick, Dominion Topographical Surveyor, to E. Dewdney, Commissioner, December 16, 1880, LAC, RG 10, vol. 3730, file 26219 (ICC Exhibit 1a, p. 48).

The Assiniboine did not remain long at Cypress Hills. Between 1880 and 1882, the living conditions of Indians residing in the southern Prairies deteriorated quickly. In December 1882, the Superintendent at Fort Walsh reported that the buffalo had completely disappeared and the Indians in the area were starving and reliant on rations.¹⁴⁷ Chief Dan Kennedy later recalled that “[t]he Buffalo were wiped out in 1879, and in consequence we had to eat our horses in the winter of 1880–81 at Cypress Hills.”¹⁴⁸ As early as December 1880, DIA officials recommended the removal of bands from the Cypress Hills area, considering it prudent to move them north of the Canadian Pacific Railway line near Qu’Appelle.¹⁴⁹ The Assiniboine, however, were reluctant to leave. Colonel A.G. Irvine, Commissioner of the North-West Mounted Police (NWMP), met with the Assiniboine bands in the spring of 1882 and induced them to move to the Qu’Appelle area. Irvine reported: “‘The-man-that-took-the-coat,’ or ‘Jack,’ was the first Assinaboine Chief who consented to proceed to the reservation allotted him by the Government.”¹⁵⁰ Chief Dan Kennedy explained the Assiniboine’s reasons for moving:

The destruction of the buffalo was a mortal blow. We had no alternative but to comply with the provisions of our reserve, where we would receive rations of flour, bacon and tea.

Consequently, in the spring of 1882 we left Cypress Hills, our favourite hunting territory – the land of the evergreens, chinook winds and running brooks – and moved to our reserve, the Skull Mountainettes – the land of the dead – where two epidemics of smallpox wiped out two large tribes of Crees in the forties of the last century.”¹⁵¹

¹⁴⁷ J.H. McIlree, Superintendent, Commanding Post, to Commissioner, Department of Indian Affairs, December 2, 1882, LAC, RG 10, vol. 3744, file 29506-3 (ICC Exhibit 1a, p. 83).

¹⁴⁸ Dan Kennedy, *Recollections of an Assiniboine Chief*, (Toronto: McClelland and Stewart, 1972), 66 (ICC Exhibit 8h, p. 3).

¹⁴⁹ E. Dewdney, Indian Commissioner, to SGIA, December 31, 1880, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1880, 94* (ICC Exhibit 1a, p. 78).

¹⁵⁰ A.G. Irvine, Commissioner, NWMP, to Minister of the Interior, January 1, 1883, Canada, *Annual Report of the Department of the Interior for the Year 1882, 3* (ICC Exhibit 1a, p. 120).

¹⁵¹ Dan Kennedy, *Recollections of an Assiniboine Chief*, ed. James R. Stevens (Toronto: McClelland and Stewart, 1972), 66 (ICC Exhibit 8h, p. 3).

The lodges under Chiefs Long Lodge and The Man Who Took the Coat reached Qu'Appelle on June 1st.¹⁵²

First Survey of the Indian Head Reserve, 1882

The survey of a reserve at Indian Head for the Assiniboine began in May 1882, while the Bands were en route from the south.¹⁵³ At that time, John C. Nelson surveyed 220 square miles for the Bands of The Man Who Took the Coat, Long Lodge, and Piapot, describing the land as “an attractive place for these unsettled Plain Indians. The soil is of the choicest quality; there is a good proportion of hay grounds, wood and plenty of water, and the Canadian Pacific Railway is only a few miles to the north.”¹⁵⁴

When the lodges of The Man Who Took the Coat and Long Lodge arrived at Indian Head in June 1882, they settled on their selected reserves and briefly commenced farming. Two months later, Chief Long Lodge and his followers, dissatisfied with their situation, departed for Wood Mountain and eventually the United States. The Man Who Took the Coat and his followers left soon after. Agent McDonald reported:

The Assiniboines were induced to take a reserve at the Indian Head. They at first appeared fully contented but towards payment time became unsettled and restless, they stated they could not live on bacon, and had always been accustomed to live on fresh beef. In order that they should have no excuse in that respect, I ordered beef three times a week; this satisfied them for a time, but after the payments they returned everything they had received from the Government in the way of tools, &c. and said they must go south. The chief, The man-that-took-the-Coat, came to me with his men and said that he would not leave, as his brother chief, Long Lodge, had done without telling me why he did not like to stop north; he said he was pleased with the way he

¹⁵² A.G. Irvine, Commissioner, NWMP, to Minister of the Interior, January 1, 1883, Canada, *Annual Report of the Department of the Interior for the Year 1882*, 3 (ICC Exhibit 1a, pp. 118-30).

¹⁵³ John C. Nelson, D.L.S., Indian Reserve Survey, to SGIA, December 29, 1882, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1882*, 214-24 (ICC Exhibit 1a, p. 108).

¹⁵⁴ John C. Nelson, D.L.S., Indian Reserve Survey, to SGIA, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1882*, 214-24 (ICC Exhibit 1a, p. 108).

had been treated, but his people did not like the place, that their friends all lived south, and that their old people were buried there, they begged for a reserve in the south.¹⁵⁵

The Assiniboine did not return to Indian Head until the spring of 1883, having spent the fall and winter of 1882–83 in the vicinity of Fort Walsh.¹⁵⁶ After relocating the bands to Qu'Appelle over the summer of 1882, the department removed its representative from Fort Walsh, leaving only a detachment of the North-West Mounted Police, which was poorly equipped to handle the demands of the large numbers of Indians who returned to the fort.¹⁵⁷ After a difficult winter, the Assiniboine Bands returned to Indian Head and, by July 1883, farming operations were once again under way.¹⁵⁸

Band Amalgamation and the Second Reserve Survey, 1885

In January 1885, Indian Commissioner Dewdney reported that Chief Long Lodge had died on Christmas Eve, 1884. In the same letter, Dewdney expressed his desire to amalgamate the two Assiniboine Bands under Chief The Man Who Took the Coat.¹⁵⁹ Indian Agent McDonald reported in early March 1885 that he had met with Chief The Man Who Took The Coat and the principal men of both Bands and that “Little Mountain, the Principal Head Man of Band No. 77, said that he and the followers of their late Chief had decided to recognize ‘The Man Who Took the Coat’ as their

¹⁵⁵ Edgar Dewdney, Indian Commissioner, to SGIA, December 15, 1882, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1883*, 193-200 (ICC Exhibit 1a, p. 98).

¹⁵⁶ A. McDonald, Indian Agent, to SGIA, July 6, 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1883*, 69-75 (ICC Exhibit 1a, p. 136).

¹⁵⁷ Edgar Dewdney, Indian Commissioner, to SGIA, December 6, 1882, LAC, RG 10, vol. 3744, file 29506-3 (ICC Exhibit 1a, p. 96), and Frederick White, Comptroller, Department of the Interior, NWMP Branch, to [recipient unknown], December 19, 1882, LAC, RG 10, vol. 3744, file 29506-3 (ICC Exhibit 1a, pp.105-6).

¹⁵⁸ A. McDonald, Indian Agent, to SGIA, July 6, 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1883*, 69-75 (ICC Exhibit 1a, p. 136).

¹⁵⁹ Edgar Dewdney, Commissioner, to SGIA, January 10, 1885, LAC, RG 10, vol. 3704, file 17825 (ICC Exhibit 1a, p. 139).

Chief.”¹⁶⁰ The amalgamation of the two Bands was approved by the department on March 28, 1885.¹⁶¹ The Band was led by Chief The Man Who Took The Coat until his death in 1891, at which time he was succeeded by his brother, Carry the Kettle.¹⁶²

The final survey of the reserve at Indian Head took place in June 1885. Surveyor John C. Nelson reported that Chief The Man Who Took the Coat “had carefully examined the block of land set apart for the Assiniboine Indians, and would like to obtain that part of it which had been abandoned by Pie-a-Pot [Piapot having returned to the Qu’Appelle Valley], for he found both land and timber good, and preferred it to any farther west.”¹⁶³ The survey of the reserve was completed on June 16, 1885. The reserve was laid out nine miles from east to west, eight miles from north to south, and was situated seven miles south of the village of Sintaluta.¹⁶⁴ Surveyor Nelson described the physical features of the reserve as follows:

The north-eastern half of this reserve is partially wooded with poplar and willows, much of which, however, has been killed by fire. The soil is a black sandy loam, with some gravel and a few boulders on the surface. The south-western half is principally a high open undulating prairie, with some shallow ponds, and a soil of

¹⁶⁰ A. McDonald, Indian Agent, to Indian Commissioner, March 4, 1885, LAC, RG 10, vol. 3704, file 17825 (ICC Exhibit 1a, pp. 140-42).

¹⁶¹ Edgar Dewdney, Indian Commissioner, to SGIA, March 9, 1885, LAC, RG 10, vol. 3704, file 17825 (ICC Exhibit 1a, p. 143), and unknown author to Dewdney, March 28, 1885, LAC, RG 10, vol. 3704, file 17825 (ICC Exhibit 1a, p. 144).

¹⁶² ICC, *Carry the Kettle First Nation: Cypress Hills Inquiry* (Ottawa, July 2000), 7, reported 13 ICCP 209 at 221.

¹⁶³ John C. Nelson, D.L.S., In Charge of Indian Reserve Surveys, to E. Dewdney, Indian Commissioner, December 5, 1885, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1885*, 146-51 (ICC Exhibit 1a, p. 145).

¹⁶⁴ John C. Nelson, D.L.S., In Charge of Indian Reserve Surveys, to E. Dewdney, Indian Commissioner, December 5, 1885, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1885* (ICC Exhibit 1a, p. 145); and Thos. W. Aspden, Indian Agent, to SGIA, August 2, 1901, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1901, 116-18* (ICC Exhibit 1a, p. 364).

sandy clay loam, mixed with considerable gravel towards the south-west corner. The pasturage throughout is excellent.¹⁶⁵

On May 17, 1889, Order in Council 1151 confirmed Nelson's survey of IR 76, which encompassed 73.2 square miles (46,854 acres) and was described as:

bounded by a line beginning at the post and mound on the fifth base line, at the north-east corner of section thirty-six, township sixteen, range eleven, west of the second initial meridian, and running west along said base line, seven hundred and twenty-eight chains, more or less, to the north-west corner of section thirty-four, township sixteen, range twelve; thence south six hundred and forty three chains, more or less, to a post in mound; thence east seven hundred and twenty-eight chains, more or less, to a post and mound on the eastern boundary of section twenty-five, township fifteen, range eleven, and thence north six hundred and forty-three chains, more or less, to the point of beginning; containing an area of seventy-three and two-tenths square miles, more or less.¹⁶⁶

The lands within IR 76 were withdrawn from the operation of the *Dominion Lands Act* by Order in Council 1694, dated June 12, 1893.¹⁶⁷

Euro-Canadian Settlement of the Indian Head District

The settlement of the area surrounding IR 76 coincided with the first survey of the reserve in 1882. Dominion Lands in the Indian Head district were surveyed by the Department of the Interior in 1882 and, later that year, the Canadian Pacific Railway completed construction of the main line through the area.¹⁶⁸ That same year, the municipality of Indian Head was established, incorporating townships

¹⁶⁵ Order in Council PC 1151, May 17, 1889, LAC, RG 2, vol. 419 (ICC Exhibit 1a, p. 181).

¹⁶⁶ Order in Council PC 1151, May 17, 1889, LAC, RG 2, vol. 419 (ICC Exhibit 1a, p. 181).

¹⁶⁷ Order in Council PC 1694, June 12, 1893, LAC, RG 2-1, vol. 373 (ICC Exhibit 1a, pp. 241-43).

¹⁶⁸ Bob Hart, "Indian Head History and Agricultural Background," in *Indian Head: History of Indian Head and District* (Indian Head, SK, 1984), 1-2 (ICC Exhibit 8g, p. 3).

14, 15, 16, 17, 18, 19A, and 19, within ranges 11, 12, and 13, W of 2nd meridian (W2M).¹⁶⁹ The town of Indian Head became the site of an experimental farm and the grain transportation centre for farms within a 20-mile radius.¹⁷⁰

Although Indian Head, situated north of IR 76, was the economic centre for the immediate area, members of Carry the Kettle Band had more frequent contact with the smaller settlement of Montmartre. This settlement was founded by the Foncier Society of Canada, a Paris-based colonization company.¹⁷¹ The society obtained lands south and west of IR 76 to be near Wolseley, an area of French-Canadian settlement.¹⁷² The first settlers arrived at Montmartre in May 1893, but it was not until the turn of the century that the colony became firmly entrenched.¹⁷³ The arrival of the Canadian Northern Railway's Brandon-Regina branch line in 1907 spurred the development of the town as local farmers no longer had to transport goods to Indian Head.¹⁷⁴

Agricultural Development of IR 76, 1895–1905

Between 1895 and 1905, reports of the Indian Agent and Inspector of Indian Agencies praised Carry the Kettle Band for its progress. In August 1895, Indian Agent W.S. Grant wrote to the Superintendent General of Indian Affairs, declaring:

I have much pleasure in being able to report that these Indians are making rapid progress towards civilization, having given up some of their old customs. ...

¹⁶⁹ Bob Hart, "Indian Head History and Agricultural Background," in *Indian Head: History of Indian Head and District* (Indian Head, SK, 1984), 8 (ICC Exhibit 8g, p. 5).

¹⁷⁰ Bob Hart, "Indian Head History and Agricultural Background," in *Indian Head: History of Indian Head and District* (Indian Head, SK, 1984), 2 (ICC Exhibit 8g, p. 4).

¹⁷¹ Romeo Bedard, *History of Montmartre, Saskatchewan, 1893-1953* [Saskatchewan, 1953], 2 (ICC Exhibit 8c, p. 3).

¹⁷² Romeo Bedard, *History of Montmartre, Saskatchewan, 1893-1953* [Saskatchewan, 1953], 2 (ICC Exhibit 8c, p. 3).

¹⁷³ Romeo Bedard, *History of Montmartre, Saskatchewan, 1893-1953* [Saskatchewan, 1953], 6 (ICC Exhibit 8c, p. 4).

¹⁷⁴ Romeo Bedard, *History of Montmartre, Saskatchewan, 1893-1953* [Saskatchewan, 1953], 52-53 (ICC Exhibit 8c, pp. 6-7).

These Indian worked hard last fall. They put up six hundred and fifty tons of hay for their cattle, cut, bound and stacked one hundred and forty-one acres of wheat. All this binding was done by hand. Some of the grain was cut with sickles and some of the hay with scythes. This kind of hard work will show what Indians can do when encouraged by pointing out to them the benefit they will have during winter of a good supply of both beef and flour of their own raising.¹⁷⁵

The Band was encouraged by Indian Agent Grant, and Farming Instructor Thomas Aspdin, to take up mixed farming. In addition to cultivating wheat, oats, potatoes, turnips, onions, and carrots, they raised cattle, sheep, pigs, and chickens.¹⁷⁶ Reports reveal that band members were slow to engage in the raising of cattle due to the difficulty of obtaining water and the attraction of quick money from the sale of hay and wood.¹⁷⁷ By 1903, however, Aspdin, now the Indian Agent, reported that the size of the cattle herd had doubled to 200 head over the previous few years.¹⁷⁸ In June 1905, Aspdin reported that ambitious young men enjoyed mixed farming while older members preferred to sell hay.¹⁷⁹ Wood and hay became a major source of income for band members as settlement increased and the supply of wild hay and wood was depleted.

On various occasions it was reported that the Band was able to provide all the meat, grain, and hay its members required. Surplus was sold to nearby settlers, providing individual band members with a source of income. The nearby railway towns of Wolseley and Indian Head, as well as smaller settlements like Montmartre and Sintaluta, provided a ready market for the hay and wood

¹⁷⁵ W.S. Grant, Indian Agent, to SGIA, August 7, 1895, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1895*, 45-47 (ICC Exhibit 1a, p. 244).

¹⁷⁶ W.S. Grant, Indian Agent, to SGIA, August 7, 1885, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1895*, 45-47 (ICC Exhibit 1a, p. 245); W.S. Grant, Indian Agent, to SGIA, July 21, 1896, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1896*, 138-40 (ICC Exhibit 1a, pp. 248-50).

¹⁷⁷ Thos. W. Aspdin, Farmer in Charge, to SGIA, August 12, 1898, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1898*, 111-13 (ICC Exhibit 1a, p. 256).

¹⁷⁸ Thos. W. Aspdin, Indian Agent, to SGIA, August 15, 1903 Canada, *Annual Report of the Department of Indian Affairs for the Year Ending June 30, 1903*, 134-38 (ICC Exhibit 1a, p. 517).

¹⁷⁹ Thos. W. Aspdin, Indian Agent, to Frank Pedley, Deputy Superintendent General of Indian Affairs (DSGIA), June 30, 1905, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1905*, 101-2 (ICC Exhibit 1a, p. 668).

grown on the reserve.¹⁸⁰ Band members also laboured for local settlers.¹⁸¹ Reports indicate that band members earned \$788.82 in 1895 and \$1,139.06 in 1896 from various activities.¹⁸²

The most successful farmers on the reserve were often identified by departmental officials in their reports. In 1895, Indian Agent W.S. Grant named 22 families who were able to provide their own flour, eight of whom also provided their own beef.¹⁸³ Subsequent reports remark on the purchases and improvements made by specific band members from their own moneys. For example, Charles Rider was able to purchase a wagon and workhorse in 1901. The Inspector of Indian Agencies also commented on the condition of Rider's house and farm, among others.¹⁸⁴ In a 1903 report, Indian Agent Aspdin commented favourably on individuals such as Daniel Kennedy and Charles Rider:

The progress of the Indians on this reserve has been most encouraging and more particularly in the case of several of the young men. The following are distinguished for progress during the year: Daniel Kennedy has fifty-six acres of wheat and eight of oats, also ten head of cattle; Chas. Rider has thirty-seven acres of wheat and eight of oats; Oaksheppy has twenty acres of wheat and five of oats; Medicine Rope has twenty-seven acres of wheat and three of oats; Frank Risingsun has twenty-four acres of wheat; Wesecan has twenty-three acres of wheat.¹⁸⁵

¹⁸⁰ W.S. Grant, Indian Agent, to SGIA, August 7, 1895, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1895, 61-64* (ICC Exhibit 1a, pp. 240-47); Thos. W. Aspdin, Farmer in Charge, to SGIA, August 12, 1898, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1898, 111-13* (ICC Exhibit 1a, p. 256).

¹⁸¹ W.S. Grant, Indian Agent, to SGIA, July 21, 1896, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1896, 138-40* (ICC Exhibit 1a, pp. 248-50).

¹⁸² W.S. Grant, Indian Agent, to SGIA, August 7, 1895, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1895, 61-64* (ICC Exhibit 1a, p. 247); W.S. Grant, Indian Agent, to SGIA, July 21, 1896, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1896, 138-40* (ICC Exhibit 1a, p. 250).

¹⁸³ W.S. Grant, Indian Agent, to SGIA, August 7, 1895, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1895* (ICC Exhibit 1a, p. 245).

¹⁸⁴ Alex McGibbon, Inspector of Indian Agencies and Reserves, to SGIA, October 11, 1902, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1902* (ICC Exhibit 1a, p. 448).

¹⁸⁵ Thos. W. Aspdin, Indian Agent, to SGIA, August 15, 1903, Canada, *Annual Report of the Department of Indian Affairs for the Year Ending June 30, 1903, 134-35* (ICC Exhibit 1a, p. 518).

The reports of the Indian Agent and Inspector of Indian Agencies often provided a list of implements purchased by band members during the previous year. In 1896, Indian Agent W.S. Grant reported:

They are gradually becoming better off each year and are making steady progress in farming by increasing their fields and herds of stock; some of the more industrious have been purchasing implements, such as mowers, hay-rakes, wagons and bob-sleighs.¹⁸⁶

Between 1896 and 1905, it was reported that band members had purchased lumber, shingles, bedsteads, wagons, wire, seeders, harnesses, pumps, mowers, tools, and clothing.¹⁸⁷

The Band as a whole also purchased various implements for the use of members and to make improvements to its reserve. In 1899, Alex McGibbon, Inspector of Indian Agencies, reported that the Band purchased agricultural implements and was in a good financial state:

The band purchased a new binder, half paid this year and half next, cash price and no interest. These Indians are practically out of debt.

...

The whole reserve was in a prosperous condition, and Mr. Aspdin was sparing no pains in helping his Indians in their work.¹⁸⁸

¹⁸⁶ W.S. Grant, Indian Agent, to SGIA, July 21, 1896, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1896, 138-40* (ICC Exhibit 1a, p. 249).

¹⁸⁷ W.S. Grant, Indian Agent, to SGIA, July 21, 1896, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1896, 138-40* (ICC Exhibit 1a, p. 249); Thos. W. Aspdin, Farmer in Charge, to SGIA, August 12, 1898, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1898, 113-14* (ICC Exhibit 1a, p. 256); Alex McGibbon, Inspector of Indian Agencies, to SGIA, August 18, 1899, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1899, 194-96* (ICC Exhibit 1a, pp. 258-59); Thos. W. Aspdin, Indian Agent, to SGIA, August 4, 1902, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1902, 113-14* (ICC Exhibit 1a, p. 443); David Laird, Indian Commissioner, to SGIA, October 15, 1902, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1902, 185-92* (ICC Exhibit 1a, p. 459); Thos. W. Aspdin, Indian Agent, to SGIA, August 15, 1903, Canada, *Annual Report of the Department of Indian Affairs for the Year Ending June 30, 1903, 134-35* (ICC Exhibit 1a, pp. 517-18); Thos. W. Aspdin, Indian Agent to SGIA, August 15, 1904, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1904, 125-27* (ICC Exhibit 1a, p. 595).

¹⁸⁸ Alex McGibbon, Inspector of Indian Agencies, to SGIA, August 18, 1899, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1899, 194-96, 205* (ICC Exhibit 1a, pp. 258-61).

Upon his return in 1900, Inspector McGibbon reported that the Band was free of debt.¹⁸⁹

The Department of Indian Affairs also assisted the Band in its agricultural endeavours through monetary loans which facilitated the purchase of implements and supplies. In 1903, the Band, “through the kindness of the department,” was able to purchase a threshing outfit of its own which, according to the Indian Agent, was “a great encouragement for further efforts. In the past the threshing was very discouraging, as we had to wait till every one else was done.”¹⁹⁰

The request for a thresher had been presented to the department in the fall of 1902.¹⁹¹ An October 11, 1902, letter from the department to the Indian Agent instructed the Agent to purchase a thresher as cheaply as possible on the understanding that it could not be paid for until July 1, 1903. As well, the department instructed that the Band was to refund the cost of the thresher in the manner suggested by the Indian Agent in previous correspondence.¹⁹² (This piece of correspondence has not been located). The Indian Agent purchased the equipment from Massey Harris for \$820.00.¹⁹³

As early as January 1903, money had already been collected from band members for the thresher. In addition, it appears that around the same time the Indian Agent had erroneously forwarded a payment of \$15.70 to the Massey Harris Company. The department requested that money not be deposited on this account and instructed the Indian Agent that, if the company returned the money to him, it should be directed to the department.¹⁹⁴

¹⁸⁹ Alex McGibbon, Inspector of Indian Agencies and Reserves, to SGIA, August 7, 1900, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1900, 210-14, 221* (ICC Exhibit 1a, p. 280).

¹⁹⁰ Thos. W. Aspdin, Indian Agent, to SGIA, August 15, 1903, Canada, *Annual Report of the Department of Indian Affairs for the Year Ending June 30, 1903, 134-35* (ICC Exhibit 1a, p. 518).

¹⁹¹ J.D. McLean, Secretary, to D. Laird, Indian Commissioner, October 2, 1902, LAC, RG 10, vol. 4998 (ICC Exhibit 1a, p. 444).

¹⁹² S. Stewart, Asst. Secretary, to T.W. Aspdin, Indian Agent, October 11, 1902, LAC, RG 10, vol. 4998 (ICC Exhibit 1a, pp. 456-57).

¹⁹³ [J.D. McLean], Secretary, to T.W. Aspdin, Indian Agent, December 22, 1902, LAC, RG 10, vol. 5004 (ICC Exhibit 1a, p. 475). See also Frank Pedley, DSGIA, to the Massey Harris Co., August 8, 1903, LAC, RG 10, vol. 5034, p. 287 (ICC Exhibit 1a, p. 516).

¹⁹⁴ J.D. McLean, Secretary, to T.W. Aspdin, Indian Agent, January 22, 1903, LAC, RG 10, vol. 5008 (ICC Exhibit 1a, p. 477).

By October 1903, a report had reached the Deputy Superintendent General of Indian Affairs that the engine purchased from Massey Harris was unsatisfactory. Pedley wrote to Aspdin reminding him that:

the authority for this purchase ... was given with the proviso that the Company would guarantee the engine to give satisfaction. It is assumed that you acted upon the instructions which you received, and therefore it remains for the Company to now make good their guarantee. You should therefore insist upon the Massey Harris Company replacing the faulty engine by one thoroughly satisfactory. The Department I may inform you has no funds with which to purchase another engine.¹⁹⁵

The department secretary, J.D. McLean, reported in April 1904 that the Indian Agent had had the engine repaired, but that a “large up-to-date engine and separator with all improvements” was required.¹⁹⁶ It is not known if the Indian Agent had acquired a guarantee on the engine and whether it was used to repair the engine.

It was reported in April 1904 that the Indian Agent had expressed concern that poor crops might prevent the Indians from keeping up with regular payments on the engine and had asked if livestock could be sold to pay for it; the record of this inquiry does not indicate whether this requested was granted. The same correspondence indicates that the department had paid \$220.00 in 1903–1904, and \$300.00 in 1902–1903 toward the engine and separator.¹⁹⁷

In April 1905, the department approved the sale of the old engine with the moneys being applied to the purchase of a new one. In correspondence dated June 28, 1905, the department explained that a new engine could not be purchased until the surrendered sections of land had been

¹⁹⁵ Frank Pedley, DSGIA, to T.W. Aspdin, Indian Agent, October 29, 1903, LAC, RG 10, vol. 5040, reel C-8577 (ICC Exhibit 1a, p. 530).

¹⁹⁶ J.D. McLean, Secretary, to W.M. Graham, April 11, 1904, LAC, RG 10, vol. 5057, reel C-8583 (ICC Exhibit 1a, pp. 564-65).

¹⁹⁷ J.D. McLean, Secretary, to W.M. Graham, April 11, 1904, LAC, RG 10, vol. 5057 (ICC Exhibit 1a, pp. 564-65).

sold and paid for. The Agent was instructed to obtain prices on engines.¹⁹⁸ No further information is known about this transaction.

In 1904, the department loaned the Band money for the fencing of a pasture, which permitted the cattle to roam and feed overnight. The department advanced \$500.00, which the Indian Agent proposed could be repaid at a rate of \$100.00 a year. The department disagreed with this payment schedule and argued that the loan should be repaid in two years at 3 per cent interest.¹⁹⁹ The Indian Agent reported in his Annual Report that the Band had been able to make a “substantial repayment of the money advanced” by August 1904.²⁰⁰

REQUESTS FOR IR 76 LAND

1901 Request for Land

The first documented request for IR 76 lands came from A.H. Tremandan, a resident of Montmartre, Saskatchewan, in January 1901. In a letter to Dr J. Douglas, Member of Parliament, Mr. De Trem Andan asked the Crown to consider a surrender of land from the Assiniboine Reserve, stating:

It seems to us that the government should be anxious to help white settlers before Indians, chiefly that in our mind there is nothing but the wood that the Indians must find convenient in this particular Reserve.²⁰¹

The availability of hay and wood in the southern quarter sections of IR 76 was especially attractive to settlers. According to de Trem Andan, farmers in the area used to cut willow on a section of land they believed to be Dominion Lands, but they had learned that it was reserve land when a complaint

¹⁹⁸ J.D. McLean, Secretary, to T.W. Aspdin, Indian Agent, June 28, 1905, LAC, RG 10, vol. 5100 (ICC Exhibit 1a, pp. 666-67).

¹⁹⁹ J.D. McLean, Secretary, to D. Laird, Indian Commissioner, February 17, 1904, LAC, RG 10, vol. 5051 (ICC Exhibit 1a, pp. 560-61).

²⁰⁰ Thos. W. Aspdin, Indian Agent, to SGIA, August 15, 1904, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1904* (ICC Exhibit 1a, p. 595).

²⁰¹ A.H. de Trem Andan, to Dr J. Douglas, MP, January 1, 1901, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 322-25).

of trespass was made by the Carry the Kettle Band. He complained that settlers were now forced to travel eight miles for wood. De Trem Andan was also critical of the amount of hay that spoiled every year because the cost of a permit to cut it (50 cents per ton) was too high.²⁰² Tremandan and others had been convicted and fined for trespassing on the reserve in December 1900.²⁰³

Douglas forwarded de Trem Andan's letter to the Deputy Superintendent General of Indian Affairs, James A. Smart.²⁰⁴ Smart was of the opinion that the Band would "decidedly object" to a surrender of any portion of its reserve.²⁰⁵ In a letter to Douglas dated February 5, 1901, Smart suggested that the recent trespass might lead the Band to reject any requests for timber privileges, but promised to have the Agent look into the matter.²⁰⁶ One week later, the Secretary of the Department of Indian Affairs, J.D. McLean, requested the Farmer in Charge of the Agency, Thomas Aspdin, to report on the availability of wood and the Band's willingness to either sell the timber or any part of its reserve. McLean concluded the letter stating:

The Department is not at all desirous to urge the Indians to sell either [the timber or a portion of the reserve], and it would be well to get quietly the opinion of the Chief and the more intelligent members of the Band on the subject before replying to this communication.²⁰⁷

²⁰² A.H. de Trem Andan, to Dr J. Douglas, MP, January 1, 1901, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 322-25).

²⁰³ Thos. Aspdin, [Statement], January 2, 1901, LAC, RG 10, vol. 7060, file 675/20-7-12-76 pt. 1 (ICC Exhibit 1a, p. 326).

²⁰⁴ James M. Douglas, MP, to Jas. A. Smart, Deputy Minister of the Interior, January 29, 1901, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 331).

²⁰⁵ James A. Smart, Deputy Superintendent General, to McLean, January 30, 1901, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 332).

²⁰⁶ [James A. Smart] to James M. Douglas, MP, February 5, 1901, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 334).

²⁰⁷ J.D. McLean, Secretary, to Thomas Aspdin, Farmer in Charge, February 12, 1901, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 336-37).

After consulting the Band, Aspdin reported:

I have had the Chief and Headman along with many of the Indians together and submitted the proposal that was made for their consideration as to selling part of their reserve. The matter was discussed on the whole much intelligently and the unanimous opinion expressed was that not one acre should be sold and they wish me to convey to the Department their resolution in respectful terms and ask for the protection of the Government against the white settlers who are trying to get their land.²⁰⁸

Having had the opportunity to review de Trem Aandan's letter, Aspdin challenged several of de Trem Andan's comments. Particularly, he disputed the claim that the settlers were too poor to pay for hay permits. Aspdin reported he had been overwhelmed by applicants and had to turn people away because they were cutting where the Indians made hay.²⁰⁹ He also rebutted de Trem Andan's claim that no one lived on the southern portion of the reserve, explaining that the Indians preferred to build their houses in the shelter of the bluffs, but that the land in question was used for haying and a summer cattle run. Aspdin added that the Band's farming and cattle operations were growing and the open prairie land would be required in the future.²¹⁰ Aspdin recommended against a surrender of IR 76 lands.

As predicted by Aspdin, the Band's settlement and farming operations did expand to the southern areas of the reserve. In a September 8, 1903, report on the Assiniboine Agency, Inspector of Indian Agencies L.J. Arthur Leveque reported "one hundred and ten acres were broken by four young married Indians who have commenced a colony of their own in the southern part of the reserve."²¹¹

²⁰⁸ Thos. W. Aspdin, In Charge, to Secretary, Department of Indian Affairs, February 25, 1901, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 340).

²⁰⁹ Thos. Aspdin, In Charge, to Secretary, Department of Indian Affairs, February 25, 1901, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 340-43).

²¹⁰ Thos. Aspdin, In Charge, to Secretary, Department of Indian Affairs, February 25, 1901, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 340-43).

²¹¹ L.J. Arthur Leveque, Inspector of Indian Agencies, to SGIA, September 8, 1903, Canada, *Annual Report for the Department of Indian Affairs for the Year Ending June 30, 1903*, 225 (ICC Exhibit 1a, p. 520).

During the November 2006 and May 2007 community sessions conducted by the Indian Claims Commission, Elders of Carry the Kettle First Nation spoke about the location of settlements on the reserve. Elder Maurice Grey heard through his grandfather and other Elders that “the majority of the people lived in the north end.”²¹² He also recalled hearing that Dan Kennedy lived in the south end.²¹³ Elder Nancy Eashappie heard from her grandfather, Medicine Rope, and her uncles that, at the time of the surrender, “[t]here’s about – well, 16, 18 houses” on the north side.²¹⁴ Elder Percy Ryder also related that most people lived in the north. He explained:

most of them lived – there was quite a few who lived in the north because of the bush, eh? They prefer protection from wind and snow, and – but there was – like, my dad, he – we lived right out in the prairie.

...

... there was only a couple of them, I guess, that – that lived on the southwest side of the reserve. Most of them lived in the north where there was shelter and there was lots of wood and hay and everything there.²¹⁵

Mr. Ryder also heard the names of the families that lived on the south side from Elders. He explained that his father, Charles Ryder Jr., had broken land for the farmers in the south:

Ms. McGregor: Who were some of the people he went to go break up the land for?

Elder Percy Ryder: Well, there was Haywahes, there was Hugh and John Haywahe and some other, you know, people, Frank Walking Sun and –

...

They – and some of the people there that – the Eashappies, Donald Medicine Rope, they broke up land for them too.

²¹² ICC Transcript, November 29, 2006 (ICC Exhibit 5c, p. 119, Maurice Grey).

²¹³ ICC Transcript, November 29, 2006 (ICC Exhibit 5c, p. 120, Maurice Grey).

²¹⁴ ICC Transcript, November 29, 2006 (ICC Exhibit 5c, p. 80, Nancy Eashappie).

²¹⁵ ICC Transcript, May 24, 2007 (ICC Exhibit 5d, p. 17, Percy Ryder).

Ms. McGregor: Okay. Where did they have their farms, was it in the north part of the reserve or the south?

Elder Percy Ryder: Most of them were in the south, but there was a few in the north. Like, my grandfather farmed in the north, Donald Rope – Donald Medicine Rope, he's from the north. There was a few, but most of them – like, in the – in the south side, southwest corner, it was all open prairie. There was no bush, and then they – that's where they – most of them had land, and during the – they farmed that community farm, sort of on the west – on the west side of the reserve. They broke up a bunch of land there.²¹⁶

1904 Request for Surrender

According to the documentary record, Chief Carry the Kettle and the headmen of the Band approached Indian Agent Aspdin in December 1904 to inquire about surrendering a portion of their land. Aspdin reported to the Secretary of the Department of Indian Affairs:

Their request is that the Dept. sell for them the nine most southern sections and that in view of this that the Dept. do not press them for the money owing for the threshing outfit and also for the pasture made last summer but that these liabilities be paid out of sale of these lands and that the Dept. advance them enough at interest to pay the difference between the threshing engine now on hand and a new modern engine.²¹⁷

Aspdin estimated the possible selling price:

I think it would sell for at least \$5.00 per acre. This I consider rather a low estimate more especially as a line of railway is projected coming from some point in Manitoba to Regina. This line is looked upon as a certainty in the near future and will probably come as near as 2 or 3 miles to these lands and further appreciate their value.²¹⁸

²¹⁶ ICC Transcript, May 24, 2007 (ICC Exhibit 5d, pp. 15-16, Percy Ryder).

²¹⁷ Thos. W. Aspdin, Indian Agent, to Secretary, Department of Indian Affairs, December 16, 1904, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 627-28).

²¹⁸ Thos. W. Aspdin, Indian Agent, to Secretary, Department of Indian Affairs, December 16, 1904, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 627-28).

He also determined that the remaining reserve lands were enough for the requirements of the Band.

Elders Maurice Grey, Percy Ryder, and Bertha O'Watch related stories of the Band wanting to lease its land to get money to pay for equipment and support itself. Elder Maurice Grey recalled that:

well, the stories I heard at those meetings, the Indian Agent wanted to lease it or the – I don't know if it was the Indian Agent, but I assumed that was what they were calling the fellow was the Indian Agent, to get money to buy farm equipment. And, in fact, more rations. And help farmers get going with machinery, cattle and whatever.²¹⁹

Elder Bertha O'Watch recounted that she heard about her Uncles Ted Kennedy and Joe Jack being unable to pay back a debt. She explained, “[t]hose two, they get a lot – (speaking Nakoda) plows, everything, horses (speaking Nakoda) and they can't pay it back. So that's why they sell that land (speaking Nakoda).”²²⁰

Elder Percy Ryder also recalled hearing about the Band's debt:

Well, I guess ... the Indian agent was our farm instructor. One of them was after them to – they owed money, and ... they had a community pasture, and they wanted supplies for the community pasture. And so they – the agent and them, they – the council, I guess – he was in the council at that time. They agreed to ... lease this land and get funding out of it to pay for some of these supplies because they didn't – like, a lot of them didn't really know the Treaties that good, so they figured well, if – if we have to pay for this, our supplies, and they wanted some money – funding to help the older people that were in – kind of destitute. They needed help. So ... they talked about when the agent mentioned that they could lease this land and ... get funding for it.²²¹

²¹⁹ ICC Transcript, November 29, 2006 (ICC Exhibit 5c, pp. 105–6, Maurice Grey).

²²⁰ ICC Transcript, November 29, 2006 (ICC Exhibit 5c, p. 141, Bertha O'Watch).

²²¹ ICC Transcript, May 24, 2007 (ICC Exhibit 5d, pp. 13-14, Percy Ryder).

The Band's request for a surrender was communicated to W.M. Graham, Inspector of Indian Agencies, who visited the reserve in March 1905. According to Graham, the Band seemed anxious to sell the land. The Band submitted six conditions of surrender to Graham for consideration:

That the present indebtedness [sic] on the threshing outfit of about \$1200.00 be paid off at the earliest possible date, out of the proceeds of the sale.

That the Department be paid for the money advanced to purchase wire for the pasture fence, from the proceeds of the sale.

That lumber etc. be purchased to build a suitable shed to house the threshing machine and engine, out of the proceeds of the sale of land.

That the present engine, which was a second-hand one when purchased, be exchanged on a new engine and the difference be paid out of the proceeds of the sale of the land.

That Daniel Kennedy and one or two other Indians be paid compensation for any ploughing that should happen to be on the strip of land that it is proposed to surrender, out of the proceeds of the sale.

That the balance of the money be funded and managed by the Department as it sees fit."²²²

As well, Graham supported an informal request from "[o]ne or two of the old people" who "expressed a desire that a portion of the money be spent at the beginning of each winter in the purchase of clothing and food for the very old who have no one to work for or look after them."²²³ He did not consider this request a term of the surrender.²²⁴ It is not known how Graham responded to band members at the time; he did, however, encourage the department to consider the request. The

²²² W.M. Graham, Inspector of Indian Agencies, to Secretary, Department of Indian Affairs, March 30, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 638-40).

²²³ W.M. Graham, Inspector of Indian Agencies, to Secretary, Department of Indian Affairs, March 30, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 638-40).

²²⁴ W.M. Graham, Inspector of Indian Agencies, to Secretary, Department of Indian Affairs, March 30, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 638-40).

department agreed with the terms and, on the advice of W.A. Orr of the Lands and Timber Branch, decided to proceed with the surrender.²²⁵

1905 SURRENDER

On April 12, 1905, the Deputy Superintendent General of Indian Affairs, Frank Pedley, forwarded surrender forms to W.M. Graham and authorized Indian Agent Aspdin to take the surrender in accordance with the provisions of the *Indian Act*.²²⁶ A surrender for sale of 5,760 acres, composed of sections 25, 26, 27, 28, 29, and 30 in township 15, range 11, and projected sections 25, 26, and 27 in township 15, range 12, all W 2nd meridian (including road allowances), was signed on April 26, 1905. Chief Carry the Kettle and Headmen Broken Arm, Chas. Rider, and Eah Sickan, also known as The Saulteaux or David Saulteaux, signed the surrender by making x's beside their names. The Surrender Document includes the six conditions set out in Graham's letter of March 30, 1905.²²⁷ The Affidavit to the surrender was signed by Indian Agent Aspdin and Chief Carry the Kettle (again as a marksman), on May 3, 1905, before Justice of the Peace A.[J.] Ferguson.²²⁸ To date, no voters list has been located.

The sole documentary record of the surrender meeting is a May 3, 1905, letter from Indian Agent Aspdin to Inspector Graham. Aspdin reported, "[a]t the meeting there was a most decided majority in favour of the sale and there are a number of absentees whom it is known are favourable."²²⁹ He also wrote that a new matter was raised with regards to the compensation of Carry the Kettle band members who were not involved in agriculture and claimed not to receive any

²²⁵ W.A. Orr to Deputy Minister, April 11, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 644)

²²⁶ Frank Pedley, DSGIA, to W.M. Graham, Inspector of Indian Agencies, April 12, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 645).

²²⁷ Surrender for Sale, April 26, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 648–50).

²²⁸ Affidavit of Surrender, May 3, 1905, DIAND, file 675/30-12-76, vol. 1 (ICC Exhibit 1a, p. 651).

²²⁹ Thos. Aspdin, Indian Agent, to W.M. Graham, Inspector of Indian Agencies, May 3, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 652).

benefits from the surrender. Aspdin explained, “[a]s they earn a living and support their families without any help from the Department they cannot be considered as destitutes. They ask for a pro rata payment of either money or useful articles to offset the money paid to the others (meaning the pasture and threshing outfit).”²³⁰ Aspdin recommended that the idea be given full consideration.

Inspector Graham disagreed with Aspdin on the matter of compensation for those who did not farm. Graham forwarded the surrender and Aspdin’s letter to the Secretary, DIA, on May 6, 1905. He explained:

I cannot see that Indians who are not farming or raising cattle should receive special compensation. These people have the option of using the pasture and threshing machine any time they have occasion to do so.

The very old can be provided for with a portion of the funds, at the discretion of the Department as per section 6 on the surrender.”²³¹

There was no further discussion regarding compensation for non-farming band members.

During an ICC community session on October 25, 1995, Elder Kay Thomson spoke of the pressure put on Carry the Kettle band members to surrender the land for sale. Elder Thomson explained:

It was told to us 95 years ago the European settlers wanted nine sections on the southern portion of the reserve. When Indian agent Aspdin ... approached the people, he told our people that they had to sell their land. During this time, the band members indicated that they did not want to sell their land.²³²

²³⁰ Thos. Aspdin, Indian Agent, to W.M. Graham, Inspector of Indian Agencies, May 3, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 652).

²³¹ W.M. Graham, Inspector of Indian Agencies, to Secretary, Department of Indian Affairs, May 6, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 653).

²³² ICC Transcript, October 25, 1995 (ICC Exhibit 5a, p. 30, Kay Thomson).

Elder Thomson also related that:

[t]he agent asked the people several times through the interpreter Dan Kennedy if they wanted to sell their land. When the people indicated to the interpreter that they were not interested, the agent took a different approach telling them that they were selling the – they were not selling the land, but leasing or lending the land to the settlers.²³³

Carry the Kettle Elders also recalled stories of Indian Agent Aspdin and Inspector Graham telling the Band that “there was a debt which had occurred from the band farmers for farming implements and fencing material” and “that this debt must be paid off and that rations were going to be cut off – that when this debt was paid off the rations which were cut off would be given again.”²³⁴ Elder Thomson also told of the many stories of Agent Aspdin’s and Inspector Graham’s promises:

For example, there was a promise to pay off the debt incurred through the purchase of agricultural equipment ...

As well [as] promises of more money to be made available to purchase more equipment, the tribe was promised that they would get money to buy equipment which was ploughs, disks, another thrashing machine, cattle, horses, buggies, housing material, and they received a promise of other money for the band, and that was yet another inducement.²³⁵

Another letter, sent by Aspdin to the Secretary of the Department of Indian Affairs, provides two more pieces of information on the taking of the 1905 surrender. The letter, dated May 15, 1905, requested payments of \$1.00 each to Carry the Kettle band members Daniel Kennedy and Archie Thomson. Aspdin reported that Archie Thomson had travelled around the reserve summoning band members to the surrender meeting, and that Daniel Kennedy acted as an interpreter at the same

²³³ ICC Transcript, October 25, 1995 (ICC Exhibit 5a, p. 31, Kay Thomson).

²³⁴ ICC Transcript, October 25, 1995 (ICC Exhibit 5a, p. 32, Kay Thomson).

²³⁵ ICC Transcript, October 25, 1995 (ICC Exhibit 5a, p. 35, Kay Thomson).

meeting.²³⁶ Aspdin justified the need for an interpreter, stating, “I thought it best to use a good interpreter although I do not do so on ordinary occasions. There was a good deal of explanations to make to to [sic] be sure that every Indian thoroughly understood the matter.”²³⁷

Further oral history of Carry the Kettle Elders gathered in November 2006 and May 2007 indicates there was no formal meeting held to discuss the surrender. Elder Percy Ryder explained:

a lot of them didn't know that they were going to surrender. Like – and they called for a meeting for – to discuss this land, but nobody – nobody went. Nobody didn't show up, so there was no meeting and no vote. It was – Mr. Aspdin went around from house to house taking names. I don't know how many names he got, but that was what my grandfather talked about, that he came from house to house talking about it.

Ms. McGregor: Why didn't the people go to the surrender meeting; do you know?

Percy Ryder: Well a lot of them didn't care. They didn't really – they couldn't understand too much anyway. You know, they – a lot of them spoke the Assiniboine language, and that's all they spoke.

...

Yeah, they – called for a meeting, but nobody showed up – nobody came to the meeting, and they didn't have a meeting, and ... there was no vote. They didn't vote on anything. There was – either to lease it or anything. There was no vote.²³⁸

Elder Percy Ryder continued:

the council ... had a meeting. There was five or six of them, but that was mostly the council with – they're the only ones that had the meeting with – but there was nothing – it turned into – around to nothing.

²³⁶ Thos. W. Aspdin, Indian Agent, to Secretary, Department of Indian Affairs, May 15, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 655).

²³⁷ Thos. W. Aspdin, Indian Agent, to Secretary, Department of Indian Affairs, May 15, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 655).

²³⁸ ICC Transcript, May 24, 2007 (ICC Exhibit 5d, pp. 25–28, Percy Ryder).

...

Where they met, it was at the Indian agent's office.²³⁹

Elder Andrew Ryder recalled hearing that Dan Kennedy acted as the interpreter for the Indian Agent and "told the people that this is going to be leased, this land is going to be leased by – well, I could say it in Indian, in my language, but you wouldn't understand."²⁴⁰ Mr. Ryder explained further:

When the people at that time, I've heard this, when there's something that they don't want and they don't like, they don't go. If you called a meeting of them people that long ago, the tribe, and they all talked Nakoda, if you don't – if you don't – if they don't like what they understood, they will not go.²⁴¹

Elder Maurice Grey related that:

I used to sit in on – when I was a youngster, in some of the meetings they had, and I heard them talk about the surrender, what we're talking today. And at that time they were talking that it – the land was to be leased. They were getting pressure from the Indian Agent to lease it. It was – it had lots to do with rations at that time. They were threatening to cut them off rations.²⁴²

Mr Grey also recalled:

I never heard them talk about a meeting. But I did hear from my other grandfather about a meeting, David Saulteaux. They tried to have a meeting and there wasn't enough Band members at the Indian office to have a meeting. There was people there

²³⁹ ICC Transcript, May 24, 2007 (ICC Exhibit 5d, pp. 29–30, Percy Ryder).

²⁴⁰ ICC Transcript, November 29, 2006 (ICC Exhibit 5c, p. 26, Andrew Ryder).

²⁴¹ ICC Transcript, November 29, 2006 (ICC Exhibit 5c, p. 26, Andrew Ryder).

²⁴² ICC Transcript, November 29, 2006 (ICC Exhibit 5c, pp. 103–4, Maurice Grey).

and the Indian Agent called them in and they thought they were going to get rations, but it wasn't it was supposed to be to a meeting, but there wasn't enough there.²⁴³

Elder Nancy Eashappie remembered hearing that:

Dan Kennedy and his men were to go from house to house and get names, get names asking – to ask them if they are in favour of leasing the land, but he never approached these other people on the north side. So these are the ones that don't know at all what was going on with the lease – the leasing of the land in 1905.²⁴⁴

The surrender of Carry the Kettle IR 76 land was submitted to the Governor General in Council on May 11, 1905.²⁴⁵ The surrender of nine sections of land, comprising an area of 5,760 acres, was approved by Order in Council PC 940, dated May 23, 1905.²⁴⁶

It appears the April surrender took place without the knowledge of key officials of the Department of Indian Affairs. On July 27, 1905, Assistant Indian Commissioner J.A.J. McKenna wrote to the Secretary of the Department of Indian Affairs, complaining that no one had informed the Indian Commissioner that a request for IR 76 land had been received, or that the Band had been asked to surrender land. McKenna wrote that he had only learned of the surrender during a visit to the Assiniboine Agency and stated:

It seems to me that the Commissioner should at least be kept advised of the taking of such surrenders, for it puts the Assistant Commissioner in rather an awkward position when he goes to an agency and learns for the first time of such important

²⁴³ ICC Transcript, November 29, 2006 (ICC Exhibit 5c, p. 107, Maurice Grey).

²⁴⁴ ICC Transcript, November 29, 2006 (ICC Exhibit 5c, p. 79, Nancy Eashappie).

²⁴⁵ Frank Oliver, SGIA, to the Governor General in Council, May 11, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 654).

²⁴⁶ Order in Council PC 940, May 23, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 658).

matters, and is given to understand that an Inspector has become the de facto administrator of a district.²⁴⁷

McKenna's letter also suggests that the Band was not kept informed of events after the surrender was taken in April 1905, stating "[t]he Agent informed me that the Indians were desirous of knowing what action had been taken thereon."²⁴⁸

SURVEY AND SALE OF SURRENDERED LAND, 1905–1906

Subdivision and Valuation of Land

J.K. McLean, Dominion Land Surveyor, carried out the subdivision of the surrendered portion of IR 76 in September 1905. He valued the lands at four to five dollars for third-class land, five to six dollars for second-class land, and seven to eight dollars for first-class land.²⁴⁹ Those lands under cultivation in section 28, township 15, range 11, W2M (28-15-11) received the highest upset prices, from seven to eight dollars.²⁵⁰ McLean suggested the land be sold by auction in November, writing:

The farmers have had a good crop this season. Many of them are looking for more land and I think some at least of them would be somewhat diffident about tendering while they would attend a sale.²⁵¹

²⁴⁷ J.A.J. McKenna, Assistant Indian Commissioner, to Secretary, Department of Indian Affairs, July 27, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 691).

²⁴⁸ J.A.J. McKenna, Assistant Indian Commissioner, to Secretary, Department of Indian Affairs, July 27, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 691).

²⁴⁹ J.K. McLean, DLS, to Frank Pedley, DSGIA, September 11, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 693-99).

²⁵⁰ J.K. McLean, Surveyor, to Frank Pedley, DSGIA, September 11, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 697-98).

²⁵¹ J.K. McLean, Surveyor, to Frank Pedley, DSGIA, September 11, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 694).

The surveyor's upset prices were reviewed and approved by both Samuel Bray and W.A. Orr, and the latter recommended the land be sold at auction in Indian Head on November 2, 1905.²⁵²

1906 Auction Sale

Despite Orr's recommendation, the Notice of Public Auction was not prepared until late December 1905, and the sale was scheduled to be held on February 14, 1906.²⁵³ Oral history provided by Elders Maurice Grey and Percy Ryder indicated that the band members were surprised by the sale. Elder Maurice Grey recalled:

They were all surprised that it was sold. And I heard them mention that the sale took place in Sintaluta, not on the reserve here. And the Indians didn't even know there was a sale in Sintaluta.²⁵⁴

Elder Percy Ryder heard that people were upset:

Well ... there was a notice came out that there was going to be an auction in Sintaluta ... to sell this land, and everybody was kind of upset about it. They didn't think that it – they didn't know it was being sold.²⁵⁵

Instructions were issued to the King's Printer that notices of the sale should be advertised in the *Manitoba Free Press* (Winnipeg), the *Leader* (Regina, SK), the *News* (Wolseley, SK), and the

²⁵² S. Bray, Chief Surveyor, Department of Indian Affairs, to DSGIA, September 18, 1905, LAC RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 705), and W.A. Orr, In Charge, Lands and Timber Branch, to Deputy Minister, September 25, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 706-7).

²⁵³ J.D. McLean, December 30, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 748-49).

²⁵⁴ ICC Transcript, November 29, 2006 (ICC Exhibit 5c, p. 112, Maurice Grey).

²⁵⁵ ICC Transcript, May 24, 2007 (ICC Exhibit 5d, p. 39, Percy Ryder).

Prairie Witness (Indian Head, SK).²⁵⁶ Terms of the sale required cash or one-fifth cash to be paid at the time of sale and the balance in four equal, annual installments with 5 per cent interest.²⁵⁷

The auction took place on February 14, 1906, at Sintaluta. In accordance with instructions issued by the Deputy Superintendent General of Indian Affairs, Inspector Graham took charge of the sale and Peter Smith, of Wolseley, acted as auctioneer.²⁵⁸

On February 20, 1906, Graham forwarded to Ottawa the pass book (in which the particulars of each sale were recorded), and two bank drafts totalling \$7,069.09 (being one-fifth of the purchase price), along with his report on the sale:

The attendance was very small indeed. Nearly all the land was bought by outsiders, one quarter being bought by a local man.

Two quarters viz. N.E. quarter of 27 and N.W. quarter of 27 would not bring the upset price and were of course not sold.²⁵⁹

W.A. Orr informed the Deputy Minister of the sale results in March:

Sale was made of 34 quarter sections, realizing \$35,345.45, one-fifth of which, was paid cash at time of sale, amounting to \$7069.09.

Of the 34 quarter sections sold, 25 realized the upset price, and nine, more than the upset price.

The average upset price is \$6.59 and the average price realized is \$6.74.

...

²⁵⁶ J.D. McLean to King's Printer, December 30, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 751).

²⁵⁷ J.D. McLean, Secretary, December 28, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 748-49).

²⁵⁸ Frank Pedley, DSGIA, to W.M. Graham, Inspector of Indian Agencies, February 2, 1906, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 758).

²⁵⁹ W.M. Graham, Inspector of Indian Agencies, to Secretary, Department of Indian Affairs, February 20, 1906, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 760).

The two quarter sections which were not sold were put up at an upset price of \$7.00 per acre, and Mr. Inspector Graham has submitted an offer of \$4.00 per acre therefor, but I would recommend that nothing less than the upset price be accepted.²⁶⁰

The proceeds from the sale of surrendered IR 76 lands were to be spent according to the terms of the 1905 surrender. A debt of approximately \$1,200.00 arising from the purchase of a thresher was to be paid off as early as possible, as well as the remaining debt incurred by the Band for fencing wire. The surrender also stipulated that the money received was to be used to purchase materials to build a shed and to purchase a new engine. A review of the ledger of Carry the Kettle Band trust account 145 for 1905–1906 reveals that, on March 2, 1906, \$1,623.03 was debited from the capital account for the purchase of a new engine and shed material.²⁶¹ The Auditor General's report for the same year shows that \$1,500.00 was spent on a Sawyer-Massie engine, \$76.73 for material to construct a lean-to shed and \$64.00 was debited for freight on a thresher.²⁶² No further details of the First Nation's debts are known, and there is no indication if the fencing debt was paid off.

Compensation for Improvements

The final stipulation of the surrender was the compensation of three band members for their improvements. At the time of the 1905 surrender, Daniel Kennedy, Joseph Jack, and The Saulteaux were farming on section 28-15-11-W2M. A few weeks after the surrender, Indian Agent Aspdin wrote to the Secretary of the Department of Indian Affairs regarding their compensation. In particular, Daniel Kennedy had requested an advance so that he might purchase feed grain to help

²⁶⁰ W.A. Orr, In Charge, Lands and Timber Branch, to Deputy Minister, March 10, 1906, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 775).

²⁶¹ DIAND, Carry the Kettle First Nation Trust Fund #145 (ICC Exhibit 9c, p. 2).

²⁶² Auditor General, June 30, 1906, Canada, Auditor General, June 30, 1906, Canada. *Auditor General's Report, 1905-1906*, 6-7 Edward VII., A. 1907, vol. 1, J-114-J-155 (ICC Exhibit 1a, pp. 790-98), and DIAND, Carry the Kettle First Nation Trust Fond #145 (ICC Exhibit 9c, p. 2).

see him through the task of breaking land elsewhere on the reserve.²⁶³ Kennedy farmed between 40 and 50 acres of land in section 28 for which he was promised compensation. The department approved an advance of \$25.00 from the amount payable to Kennedy for his improvements on May 25, 1905.²⁶⁴

The value of the improvements in section 28-15-11-W2M were established by Surveyor J.K. McLean at the time of the subdivision and valuation of surrendered lands in September 1905. McLean documented the improvements made by Daniel Kennedy, Joseph Jack, and The Saulteaux in his report to the Deputy Superintendent General of Indian Affairs, Frank Pedley. Surveyor McLean wrote that the land was “in a good state of cultivation, in fact in equally as good condition as that of any white settler.”²⁶⁵ McLean explained that Daniel Kennedy had 46 1/5 acres under cultivation, Joseph Jack cultivated 16 ¼ acres, and The Saulteaux cultivated 14 ½ acres. He recommended they be compensated at the rate of \$5.00 per acre for their improvements.²⁶⁶ McLean based his recommendation on the current cost of breaking new land in the same area. With his report, McLean forwarded three statements signed by Kennedy, Jack, and The Saulteaux, agreeing to \$5.00 per acre compensation and asking for payment by December 15, 1905.²⁶⁷

In November 1905, Inspector W.M. Graham requested an advance of funds so that compensation could be paid for the lands in section 28.²⁶⁸ Two weeks later, the Secretary of the Department of Indian Affairs, J.D. McLean, informed Graham “that the Department cannot at

²⁶³ Thos. W. Aspdin, Indian Agent, to Secretary, Department of Indian Affairs, May 19, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 657).

²⁶⁴ Secretary to T.W. Aspdin, Indian Agent, May 25, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 659).

²⁶⁵ J.K. McLean to Frank Pedley, DSGIA, September 11, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 700).

²⁶⁶ J.K. McLean to Frank Pedley, DSGIA, September 11, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 700).

²⁶⁷ J.K. McLean to Frank Pedley, DSGIA, September 11, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 702-4).

²⁶⁸ W.M. Graham, Inspector of Indian Agencies to Secretary, Department of Indian Affairs, November 30, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit, 1a, p. 725).

present advance amounts to any Indians on account of work done on the surrendered portion of the Assiniboine Reserve, there being no money available for the purpose until such time as the land is sold.”²⁶⁹

Daniel Kennedy followed up on the issue of compensation in January 1906. In a letter to the department, he acknowledged receipt of a telegram dated December 30, 1905, informing him that the department would not be in a position to pay compensation until after February 14, the date of the auction. Kennedy further reminded the department that it had promised to acknowledge its indebtedness to the three band members should it be unable to pay on time. Kennedy concluded his letter stating that

interest of 7% or 8% was also to be allowed us after 15th Dec.

We took the proceedings of your Representative in good faith and on the strength of the foregoing agreement we have incurred liabilities which we were to meet on the 15 of Dec. These are overdue and my telegram was the result.

I have placed the whole business candidly before you and we are not in a position to wait for another exchange of letters besides your answer to this.

We wish to have your final decision as our Creditors won't wait longer.²⁷⁰

Both the trust account ledgers and Auditor General's records show that \$388.75 was credited to the interest account in 1906 to pay compensation for improvements and was distributed to the three men.²⁷¹ The department forwarded compensation cheques to W.M. Graham on March 3, 1906, for distribution. Joseph Jack received a cheque for \$82.10; The Saulteaux a cheque for \$73.25; and,

²⁶⁹ J.D. McLean, Secretary, to W.M. Graham, Inspector of Indian Agencies, December 11, 1905, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 747).

²⁷⁰ Dan Kennedy to [unidentified recipient], January 8, 1906, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 753). Note that the telegram dated December 30, 1905, referred to in this letter is not on record.

²⁷¹ DIAND, Carry the Kettle trust account 145 (ICC Exhibit 9c, p. 2); Auditor General, June 30, 1906, Canada. *Auditor General's Report, 1905-1906*, 6-7 Edward VII., A. 1907, vol. 1, J-114-J-155 (ICC Exhibit 1a, pp. 790-98).

Daniel Kennedy a cheque for \$208.40; this being the amount due plus 5 per cent interest.²⁷² In the letter accompanying the cheques, McLean explained that “[i]n Kennedy’s case the amount paid represents the value of his improvements less \$25.00, which amount has been retained to pay for grain which was furnished to him.”²⁷³ The total compensation received by Kennedy for his improvements was \$233.40.²⁷⁴ Graham acknowledged the distribution of the cheques and forwarded receipts to the department on March 23, 1906.²⁷⁵

Requests for the Distribution of Trust Fund Money

Between 1907 and 1917, Carry the Kettle band members sent five petitions to the Department of Indian Affairs requesting annual, per capita payments from the Band’s trust account. Their requests were based on their understanding of the 1905 surrender conditions and the economic conditions on the reserve.

First Petition

On April 8, 1907, a petition signed by 26 members of Carry the Kettle First Nation was sent to the Department of Indian Affairs. In it, members inquired when they might receive the interest money from the sale of the surrendered land. The band members asserted: “[a]ccording to the agreement filed with the Department at the time of the surrender of the land, we got the understanding that the Government would allow us an annual interest of 3% on the Capital, which would be at our disposal annually to be used as we see fit.”²⁷⁶ They went on to request “an equal distribution in cash annually,

²⁷² J.D. McLean, Secretary, to W.M. Graham, Inspector of Indian Agencies, March 3, 1906, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 772).

²⁷³ J.D. McLean, Secretary, to W.M. Graham, Inspector of Indian Agencies, March 3, 1906, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 772).

²⁷⁴ J.D. McLean, Secretary, to W.M. Graham, Inspector of Indian Agencies, March 3, 1906, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 772).

²⁷⁵ W.M. Graham, Inspector of Indian Agencies, to Secretary, Department of Indian Affairs, March 23, 1906, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 776).

²⁷⁶ Assiniboine Band to [unidentified recipient], April 8, 1907, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 866).

on the same basis as our Treaty money.”²⁷⁷ This petition was forwarded to the Secretary of the Department of Indian Affairs by Indian Commissioner David Laird who, being unaware of the terms of the surrender, was unable to respond to the Band. Secretary J.D. McLean clarified the terms of the surrender in a letter to Laird dated April 23, 1907:

I beg to say that the terms of surrender did not stipulate that interest was to be paid to the Indians. The provision made was to the effect that the balance of the money be funded for the benefit of the band, and managed by the Department as deemed best in their interests.²⁷⁸

As well, Inspector W.M. Graham, who had been present at the March 1905 meeting where the conditions of surrender had been discussed, confirmed in a letter to Laird dated April 30, 1907, that there had been, “no condition that there was to be a distribution of the interest money, but there was an understanding that part of the Principal could be drawn on from time to time with the approval of the Supt. General for the relief of any special cases of destitution.”²⁷⁹ Graham recommended that the interest be allowed to accumulate until the fall, at which time it could be used to purchase clothing and rations for the old and destitute. Graham felt that the older band members who did not farm should get some benefit from the land sale.²⁸⁰ The department agreed with Graham and advised the Indian Agent accordingly.²⁸¹

²⁷⁷ Assiniboine Band to [unidentified recipient], April 8, 1907, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 866).

²⁷⁸ J.D. McLean, Secretary, to David Laird, Indian Commissioner, April 23, 1907, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 873).

²⁷⁹ W.M. Graham, Inspector of Indian Agencies, to David Laird, Indian Commissioner, April 30, 1907, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 874).

²⁸⁰ W.M. Graham, Inspector of Indian Agencies, to David Laird, Indian Commissioner, April 30, 1907, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 874).

²⁸¹ J.D. McLean, Secretary, to D. Laird, Indian Commissioner, May 10, 1907, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 882).

A year later, Indian Agent W.S. Grant informed the department that he was unable to answer questions posed by band members regarding their capital and interest account.²⁸² On April 28, 1908, Grant reported that band members had met for the purpose of inquiring about the moneys received from the land sale. Grant reported the members' belief that they were being treated unfairly and requested the following information on their behalf:

- 1) A statement of Trust-fund account more especially relating to the lands.
- 2) If the 10% for indebtness [sic] was all expended in the purchase of Thresher and the pasture.
- 3) How the Interest on the land up to the present has been expended.
- 4) What the gross sales of land amounted to?
- 5) Would it be possible for them to obtain the Interest on notes and other paper given by the purchasers of this land and are yet unredeemed?²⁸³

J.D. McLean replied to Grant on May 26, 1908, stating the gross revenue from the land sale amounted to \$35,345.26 and that “[t]he interest on unpaid balances is placed to the credit of the Capital Account and can only be extended for permanent improvements.”²⁸⁴ He also forwarded a copy of the Auditor General's report for 1906–1907 showing the capital and interest account transactions.

Nine months later, R.S. Lake, Member of Parliament, requested information on Carry the Kettle trust account. In his reply, dated February 19, 1909, the Deputy Superintendent General of Indian Affairs, Frank Pedley, explained that the surrender had not provided for a distribution of cash.²⁸⁵ Lake approached the department a second time asking “whether the Government will pay

²⁸² W. S. Grant, Indian Agent, to Secretary, Department of Indian Affairs, April 25, 1908, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 944).

²⁸³ W.S. Grant, Indian Agent, to Secretary, Department of Indian Affairs, April 28, 1908, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 945).

²⁸⁴ J.D. McLean, Secretary, to W.S. Grant, Indian Agent, May 26, 1908, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 951).

²⁸⁵ Frank Pedley, DSGIA, to R.S. Lake, MP, February 19, 1909, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 1021).

the Indians of the Reserve, the annual interest of 3%, which I understand to be the general rule, with other reserves, although such interest was not specifically referred to in this particular case.”²⁸⁶ Pedley replied to Lake that the department proposed to administer the interest funds in the best interests of the Band, but it was not a general rule to distribute the interest on capital in cash distributions.²⁸⁷

Second Petition

A second petition was sent to Frank Oliver, Minister of the Interior (and ex officio Superintendent General of Indian Affairs), in March 1909. This petition reaffirmed the Band’s understanding that it was to receive an annual distribution of interest money.²⁸⁸ The petitioners wrote:

Before surrendering our land we were lead to believe that not only would there come to us immediate benefit but that full interest for Feb. 1906 to Feb. 1907 would be distributed among us, and every year thereafter. No such benefit have we received.

If there was any immediate benefit it was for a few as stipulated in the agreement. About (\$3000.00) three thousand dollars was given for some 20 of our farmers for compensation for cultivated fields in portion of land surrendered, and for threshing outfit, and for wire fence ...²⁸⁹

This petition was forwarded to Senator William Ross by the Reverend E. Mackenzie of the Hurricane Hills Mission. In the accompanying letter, Mackenzie described the disappointment felt by band members. He wrote, “[e]very man on the reserve expected and does expect a direct and fair

²⁸⁶ R.S. Lake, MP, to Frank Pedley, Deputy Minister of Indian Affairs, February 22, 1909, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 1022).

²⁸⁷ Frank Pedley, DSGIA, to R.S. Lake, MP, March 2, 1909, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 1024).

²⁸⁸ Chief and Headmen, Assiniboine Band to Frank Oliver, Minister of the Interior, [March 16, 1909], LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 1025).

²⁸⁹ Chief and Headmen, Assiniboine Band to Frank Oliver, Minister of the Interior, [March 16, 1909], LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 1025).

share of the money accruing from the sale of the land.”²⁹⁰ Mackenzie also alluded to the living conditions on the reserve. He explained:

They aver that during the last 27 years more than half their numbers have died, and if they are cut away at that rate what is the use of money for future generations? The inference is that if they get money from their surrendered land they will be abler to provide better food and better houses. There is certainly an earnest desire in many of them to build more sanitary dwellings.

... some of the young men have made a brave attempt at farming. But great failure in crop for the last two years hasput a great strain upon them.²⁹¹

Ross forwarded Mackenzie’s letter to Frank Oliver on March 22, 1909.²⁹²

J.D. McLean replied to Senator Ross on April 3, 1909, explaining the department’s position on cash distributions and fund management:

It is not stipulated in the surrender document that the interest is to be distributed to the Indians in cash nor is it considered to be in the interest of the Indians to do so. Instead, supplies which they require are being purchased for them and both their Agent and Inspector are agreed that in this way they will derive more benefit from this money than if they were handed the cash.

Those Indians have a Doctor to look after their medical wants and the Agent is one of our oldest and worthiest officials and is ever mindful of the wants of those Indians and does not allow any of them to suffer for want of proper food and clothing. The sick are provided with medical comforts and sent to the Hospital when necessary and it is considered that in this way their wants are better relieved than if the cash were handed to them.²⁹³

²⁹⁰ R. Mackenzie to William Ross, Senator, March 16, 1909, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 1027).

²⁹¹ R. Mackenzie to William Ross, Senator, March 16, 1909, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 1026-07).

²⁹² W. Ross to Frank Oliver, Minister of the Interior, March 22, 1909, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 1028).

²⁹³ J.D. McLean, Secretary, to William Ross, Senator, April 3, 1909, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 1055-56).

Despite their experience with the 1905 surrender, some band members appear to have contemplated a further surrender of seven or eight sections of IR 76 land. In 1910, Charles and Tom Rider wrote to the department requesting information on surrender procedures, and inquiring about the possibility of a cash distribution from the proceeds of a land sale. The Riders wrote:

Owing to the rapid decrease of our numbers on this Reserve and the great amount of untilled lands now laying idle and drawing no revenue for us, we have been seriously considering to negotiate another surrender and sale of seven or eight sections of our Reserve. Five years ago we surrendered a portion of our reserve to the Department, but the dissatisfaction that followed the transaction owing to our misunderstanding, have made us careful and therefore, we wish to enquire beforehand all the rules and laws governing such transactions, before take the final step.²⁹⁴

There is no further information on record regarding this request.

The demand for a distribution of interest moneys was once again brought to the department's attention in March 1913, when the Reverend Mr Mackenzie wrote to Levi Thomson, Member of Parliament for Qu'Appelle, requesting information on the proceeds of the 1906 land sale. In response, Thomson wrote to the Deputy Superintendent General of Indian Affairs, requesting the account information.²⁹⁵ In order to prepare a response for Thomson, the Deputy Superintendent General of Indian Affairs requested further information from the department accountant, F.H. Paget, who reported that the Band had \$2,000.00 in its interest account and suggested that a \$5.00 per capita distribution could be made. Paget's notation placed the population of the band at 160 people. On that basis, Paget calculated that the distribution would amount to \$800.00, leaving \$1,200.00 for other requirements.²⁹⁶

²⁹⁴ Chas. and Tom Rider, Assiniboine Band, to Secretary, Department of Indian Affairs, February 14, 1910, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 1076-78).

²⁹⁵ Levi Thomson, MP, to DSGIA, March 31, 1913, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 1200-1).

²⁹⁶ Frank Pedley, DSGIA, to Accountant, April 3, 1913, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 1226).

On April 4, 1913, Deputy Superintendent General of Indian Affairs Pedley wrote to Thomson and agreed to send the financial information to Mackenzie. Despite Paget's suggestion, Pedley informed Thomson that there would be no cash distribution:

When Indians have funds from the sale of their lands, it is only proper that these funds should be used towards their support and to some extent relieve the Government of appropriating money for their benefit. Capital Funds can only be expended upon a resolution of the Band by authority of the Governor General-in-Council and then only by for permanent improvements, or in the purchase of live stock.²⁹⁷

Contrary to Pedley's comments of April 4, however, the department eventually decided to distribute a portion of the interest moneys. The trust account ledgers and interest distribution paylists for Carry the Kettle Band show that per capita interest distribution payments were made from 1913 until 1920 with a final distribution in 1923.²⁹⁸ There is no further information on record regarding the decision to make an interest distribution.

Third Petition

Another petition was sent to the department in October 1914. In it, the First Nation requested the equal distribution of the capital fund. The petition also highlighted a growing economic division between prosperous and poor band members. The petitioners wrote:

We would like the fund to be fairly divided like this: let every family living here at time of the surrender of the land get its share according to the number of persons in it, each person getting an equal share. Then if any persons have died since, let their heirs inherit their shares. This plan would put an end to inequality and any attempt at grabbing. Whatever a family gets from this fund will be taken from its own account. For example, three years ago, seed wheat came for distribution, some of the

²⁹⁷ Frank Pedley, DSGIA, to Levi Thomson, MP, April 4, 1913, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 1228).

²⁹⁸ Auditor General, June 30, 1906, Canada. *Auditor General's Report, 1905-1906*, 6-7 Edward VII., A. 1907, vol. 1, J-114-J-155 (ICC Exhibit 1a, pp. 790-98). Auditor General, Msrch 31, 1914, Canada. *Auditor General's Report, 1913-14*, Canada, Parliament, *Sessional Papers*, 1915, No. 27, H131-132 (ICC Exhibit 1a, pp. 1244-51).

farmers got more, some got less. One man got something like 200 bushels. That according to our proposal would be taken from his own account. But yet although considered a prosperous farmer, he has not paid a cent. During the last 30 years the training of the government and every other training has taught us to think like our White neighbours to a great extent, every man to do for himself to get prosperity for himself. Such a scheme [illegible] we propose will give a shew of justice to all, and take away any grievance any of the old people may have. These find the government allowance of rations very scant, an old man or old woman getting only what is enough for two days ... We are thankful for the interest money we have received the last two years, but we think our scheme would not interfere with it.²⁹⁹

On the same day, Chief Carry the Kettle wrote a letter to the department:

The ideas regarding the division of the land money that we suggest have gone through and through my mind and I understand them clearly.

I am an old man 86 years of age and have little to depend on for a living and I am interested in the matter of the land fund ...

I am sorry to say that there are so many of my band who cannot do much for themselves.³⁰⁰

The Deputy Superintendent General of Indian Affairs responded to the letter and petition on October 27, 1914, refusing to distribute the capital account funds.³⁰¹

On October 28, 1914, Accountant F.H. Paget commented on the demands made by Carry the Kettle Band. Paget stated that “[t]he Indians do not appear to understand that if they use their Capital funds they will receive less Interest money annually.”³⁰² He suggested that the Indian Agent explain to the band how the interest and capital accounts worked.

²⁹⁹ Chief and Headmen, Carry the Kettle Band, to Department of Indian Affairs, October 12, 1914, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 1278-79).

³⁰⁰ Chief Carry the Kettle, to [unidentified recipient], October 12, 1914, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 1280-81).

³⁰¹ Deputy Superintendent General of Indian Affairs to Chief Carry the Kettle, October 27, 1914, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 1282-84).

³⁰² F.A. Paget, Accountant, to Mr. Scott, October 28, 1914, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 1285-86).

In a December 1914 letter to the department, Indian Agent Thomas Donnelly reported that he had called a meeting of Carry the Kettle band members to explain the Deputy Superintendent General of Indian Affairs' letter of October 27. Donnelly was surprised to discover that a majority of the band members were not aware that a petition requesting an equal distribution of their capital funds had been sent to the department, and that some of those who had supposedly signed the petition were unaware of its contents.³⁰³ Donnelly attributed the petition to "the doings and thoughts of certain persons residing on this Reserve, but not in the employ of the Department. They are continually interfering with the Agent and staff, causing an agitation nearly all the time with the Band as a whole."³⁰⁴

Fourth Petition

Almost two years later, in February 1916, a fourth petition was sent to the department, in which the Chief and 25 band members wrote:

After discussing the matter fully we have arrived at the conclusion that it would be in the better interest of the Band, more especially the older people, if part of our Band Fund held in trust could be paid annually say for about five years together with the Interest money. We are quite familiar with the agreement made at the time we surrendered that portion of the land which was sold, but we now feel that the said agreement was not made for the best immediate interest of the Band.³⁰⁵

Indian Agent Donnelly explained in an accompanying letter that the band members were "continuously worrying me about their Band Fund. The older people are the most anxious claiming that they understood at the time the agreement was made for the surrender of the land that they were

³⁰³ Thos. A. Donnelly, Indian Agent, to DSGIA, December 2, 1914, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 1287).

³⁰⁴ Thos. A. Donnelly, Indian Agent, to DSGIA, December 2, 1914, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 1288).

³⁰⁵ Chief and Councillors, Carry the Kettle Band, to Secretary, Department of Indian Affairs, February 1916, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 1338).

to receive a yearly allowance together with the Interest.”³⁰⁶ J.D. McLean, Assistant Deputy and Secretary of the Department of Indian Affairs, replied to Agent Donnelly on February 26, 1916, drawing his attention to the letter sent on October 27, 1914, and reiterating the points made in that letter:

I beg to point out that the terms of the Surrender did not provide for a yearly allowance being paid to these Indians from Capital account ... it was pointed out that the conditions mentioned in clauses Nos. 1, 2, 3, 4, and 5 have been complied with, and that under the provisions of clause No. 6 the balance of the money was to be funded for the Indians’ benefit and managed by the Department, as it seems best in their interests. This has been done and interest money has been paid to the Indians in cash and will be paid in the future.

In the letter in question the Chief was also told that if there are any aged people on the reserve who are in want and without friends or relatives to care for them, the Indian Agent will attend to their needs and see that they do not suffer. The Department also stated that it could not accede to the Chief’s request to divide Capital funds and apportion to each family the amount it is entitled to, as apart from being contrary to the law, such a course would not result in any benefit to the Indians. It was also stated that the funds belong to the Band as a whole and must be administered so that not only the present but future generations will benefit therefrom. The main object is to keep the Capital intact so that there will always be interest available for use of the Band and if each Indians obtains his share of the interest, as arranged for, there can be no inequality.³⁰⁷

Fifth Petition

Soon after this exchange, a fifth petition was prepared by Carry the Kettle band members asking for individual cash payments from the trust fund. The petitioners described the difficult living conditions of band members:

The long protracted winter has exhausted our hay and feed for stock, with the result that we have already lost between 45 and 50 head of stock through starvation and

³⁰⁶ T.E. Donnelly, Indian Agent, to Secretary, Department of Indian Affairs, February 14, 1916, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 1340).

³⁰⁷ J.D. McLean, Assistant Deputy and Secretary, to T.E. Donnelly, Indian Agent, February 26, 1916, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 1341-42).

cold ... A number of treaty Indians on this reserve are now reduced to feeding themselves on carcasses of animals who have died from starvation, exposure and other such causes.³⁰⁸

The petitioners also complained about the lack of revenue from the sale of fuel wood, an embargo placed by the government on the sale of hay, and the withholding of interest payments from band members who were indebted for the purchase of seed grain in 1912. The petition concluded with the following request:

As the Indian Act contains a clause allowing the taking of a vote for the payment out of a set sum from the Indian Trust Fund for aid and relief to needy Indians, we humbly beg that you have such a vote taken at the earliest possible date and payment made without delay if such vote carry favorably. In view of the fact that only a few Indians have sufficient feed for their stock and themselves shows how widespread the suffering is at the present time.³⁰⁹

A month later, Indian Agent Donnelly provided Inspector W.M. Graham with more details about the petition sent to the department earlier that year. He attributed the situation to the visit of four Indians from the Blackfoot Reserve in January:

While here they created an agitation which had a bad effect on our people, by telling them that the whole of their Band were drawing rations from the storehouse at the agency, that wagons, horses and machinery were supplied to them when starting to farm and that they received an annual allowance from their Band Fund as well as their interest money.³¹⁰

According to Indian Agent Donnelly, disappointment generated by the department's response in February 1916, had led Carry the Kettle band members, whom he described as "ex-pupils who are

³⁰⁸ Chief and Councillors, Assiniboine Band, to Deputy Minister, Department of Indian Affairs, March 23, 1916, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 1343).

³⁰⁹ Chief and Councillors, Assiniboine Band, to Deputy Minister, Department of Indian Affairs, March 23, 1916, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, p. 1343).

³¹⁰ Thos. E. Donnelly, Indian Agent, to W.M. Graham, Inspector of Indian Agencies, April 10, 1916, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 1377-80).

agitators” to prepare this petition. Donnelly indicated he had been told that Dan Kennedy prepared the petition, and the Chief and others had not attended the meeting nor did they sign the petition. The Agent went on to detail the standard of living of some of those who signed the petition, describing eight men as prosperous farmers or otherwise employed. The Agent concluded his letter by outlining Carry the Kettle band members complaints:

The Indians here feel very much aggrieved for several reasons – (1) that their dancing has been stopped; (2) that they have been forced to pay for seed-grain and other indebtedness; (3) that the Department has refused to grant them an annual payment from their Band Fund including interest.³¹¹

³¹¹ Thos. E. Donnelly, Indian Agent, to W.M. Graham, Inspector of Indian Agencies, April 10, 1916, LAC, RG 10, vol. 4001, file 208590-1 (ICC Exhibit 1a, pp. 1377-80).

The report of the Commission and letter of transmittal to the parties will complete the formal record of this inquiry.