

Ontario Professional Surveyor



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Professional
Surveying**

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More Students Entering
the Profession?**

**The Story of Tiny Island:
The Importance of Research
Correcting Errors in Registered
Reference Plans**

**Surveys and Surveyors along the
Scugog Carrying Place**

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ON THE COVER ...

The images on the front cover depict some of the various activities associated with professional surveying. They are taken from the *Land Surveying Careers* video which was produced in partnership with the Association of Ontario Land Surveyors and the Association of Canada Lands Surveyors. The video can be viewed at <http://www.youtube.com/user/AOLSTUBE>.

*Professional
Surveying
in
Ontario*

*encompasses
the
Disciplines of*

*Cadastral,
Geodetic,
Hydrographic,
Photogrammetric
Surveying
&
Geographic
Information
Management*





President's Page

By Eric L. Ansell, O.L.S., O.L.I.P.



Is our Association in a crisis? What about the surveying industry and the surveying profession across Canada? Are they also at a crisis point?

I was recently at a conference where the presenter spoke about our tendency to be overly dramatic. We say things like; "Oh there is a crisis today that I have to tend to" or "I seem to be moving from one crisis to the next". But do we really have all these crises in our daily lives? I think not. A crisis means that death is imminent. But what about our regulated profession, is death imminent? According to many, that is exactly what they believe. They see us as being at the brink of disaster and the surveying profession becoming less viable in a rapidly changing technical world. Are we at the brink or simply at a cross roads?

What are the road signs at the cross roads that point towards the crisis? Well there are a few.

1. There has been talk, especially at the federal level of perhaps considering deregulation of the profession.
2. Our demographics show that we are an aging profession.
3. We have difficulty in attracting and retaining younger people to the profession.
4. We see more and more sole practitioners or small survey firms being bought up by larger firms, and
5. We also have a move towards coordinate-based surveys wherein it might be suggested that the coordinates of the corner are the highest priority of evidence rather than the physical evidence.

Deregulation

I have not read anything definite on the possibility of the deregulation of the surveying profession but I have heard numerous comments or rumours in this regard. I think that perhaps it might simply be a case of someone reporting on or offering "what if" scenarios. In Ontario we have a strong mandate to serve and protect the public and I believe that we can only do that as a self-regulated profession.

As a regulated profession we instil professionalism within our members. But professionalism is earned, rather than granted. I came across an article by Ashwin U. Kini, who describes a professional as one who holds high personal standards, competes with oneself, is constantly learning, is dedicated, and committed to excellence. He also says that a professional needs to have additional knowledge that involves business ethics, a positive attitude, a willingness to learn and to teach, and various other aspects.

Our Surveyors Act and Regulations don't create profes-

sionalism but they do set out the requirements for obtaining and continuing that professionalism to serve and protect the public. The result of deregulation would be to create technically-abled surveying practitioners with little or no requirement for professionalism.

I will admit however that there are many members out there who don't see themselves, or at the very least, don't promote themselves as professionals but merely as trades people and this will lead us to deregulation faster than any outside forces. With that said, unless we as an association become unable to regulate ourselves, I don't believe that deregulation is imminent.

Demographics

Our demographics show an ever aging membership with 72% of us being over the age of 50 and a staggering 33% of us over 60. Does this mean we are unable to fulfil our mandate to serve and protect the public interest? I think not but we certainly have to look at how to attract and retain younger professionals. Our membership has been steadily declining by approximately 2.5% over the past four years. From 2010 to April of 2013 our number of members dropped by 40. However, 70 members left the under age 50 group while the over age 50 group increased by 30. So, not only are we losing members but the average age of our membership is increasing. As of May 2013 we have 595 members. But as noted above, with our aging membership the percentage of decline is expected to increase.

These numbers should not be a deterrent to students and young folks just now deciding on a career path but rather the numbers should be encouraging. It seems to me that now would be a great time to enter our profession. As the 72% get ready to retire, or a least spend a little less time at work and more time at play, the younger members should realize more opportunities and advancements. Those opportunities are here now and will be here for some time.

Coordinate-Based Surveys

Technology has come a long way in the last 25 years especially in the public's use of handheld, car and cell phone GPS. A lot of people think they know how to "accurately" get to their property corners whether urban or remote. This means that many believe that perhaps surveyors are no longer required. Why should someone hire a surveyor when they can use their own \$250 piece of equipment to tell them where the corners are? And of course that \$250 unit tells them within a centimetre or so it would seem from what the display says.

Of course as surveyors we know that the inexpensive GPS equipment can't deliver coordinates within acceptable accuracies to locate property corners, however the public does not.

cont'd on page 8

Why Aren't There More Students Entering the Profession?

By Sunil Bisnath, Ph.D., P.Eng.

INTRODUCTION

I was recently in to see my doctor for a regular check-up. He mentioned that one of his daughters is finishing high school this coming year and she is trying to decide on universities and programs. Knowing that I'm an Engineering professor at York University, he asked about my program – Geomatics Engineering. That is, in parents speak: What are the job prospects like for our graduates? I said that as far as I know, all of our students find jobs in their field upon graduation. If anything, we don't have enough students in our program to meet the workplace demand. His response was a simple and direct "Why?!"

The purpose of this article is to explore some of the facets of the following question: Why in these difficult economic times, when students, parents, politicians and society are demanding more marketable skills from their universities, when there are jobs for all of our Geomatics graduates, are we not enrolling a flood of students and, consequently, why are there not a pile of new articling land surveyors' files on the desks of the AOLS? I do not believe the answer is a simple one.

DEFINITION OF THE PROBLEM

In Ontario, we currently have two Geomatics university programs: the fourth year Geomatics Engineering option in the Department of Civil Engineering at Ryerson University and the four year Geomatics Engineering program in the Department of Earth and Space Science and Engineering at York University. Each of these programs is sustained by a small number of undergraduate students; and, for the York program, with which I am familiar, there is actually a similar number of students carrying out graduate research in Geomatics Engineering as there are undergraduate students studying to be, amongst other things, land surveyors.

At the AOLS, work is on-going to maintain membership levels. Innovative approaches are being introduced, including competency-based rather than course-based assessment of potential candidates. As has been well-documented, the situation is similar in other jurisdictions in Canada, the U.S. and other developed countries; as well as in other professions, such as engineering in general, as baby boomers head into retirement.

So why aren't young people enrolling in Surveying / Geomatics programs? Well, the answer may lie in Biology, Psychology and Kinesiology. Every year, somewhere in the neighbourhood of one thousand young people enrol in these, and similar (not to pick on these fields), science and health programs just at York. We have known for many years that very few of these students will become practicing biol-

ogists, psychologists and kinesiologists. Yet they enrol none the less. My unsophisticated and concise view of the situation is that young adults (and to some extent, their parents) follow the crowd towards what they *think* they understand. There is nothing at all wrong with this behaviour – it's human nature – and to a large extent mirrors how many other important decisions are made – such as trading stocks.

COMPLICATIONS TO THE PROBLEM

As with most problems (or "challenges") there are complications. The following come to mind: university, Geomatics and culture.

The surveying profession has always been one of apprenticeship; and, there has always existed a close link between the survey technician and the surveyor – some might say that the distinction is very blurry. After World War II, rapid technological advances and changes in North American culture, led to the formalization of many fields, including what was to become known as Surveying and Mapping or Surveying Engineering, set distinct from Civil Engineering. But the relationship between the profession and the university has not always been as strong as it might (or should) be, perhaps partially due to the apprenticeship tradition and the discontinuity brought by university formalism. Does the university train land surveyors, or does it provide for higher learning as a derivative of research? And how does the survey professional receive the requisite training in the art and science of the craft in a reasonable period of time?

Regardless of one's opinion on the use of the term Geomatics (and we all have one), or in some countries Geoinformatics or Geospatial, the genesis of such words is in the broadening of what was Surveying and Mapping by technology – mostly computers and sensors. Such an expansion would be the envy of many disciplines. While surveying still invokes tripods, Geomatics is still relatively unknown to many high school students (though that is slowly changing in Ontario) and mostly unknown to most parents. And, as I've come to know, the most difficult issues in "selling" Geomatics Engineering are two words: "Geomatics" and "Engineering" – the first because people aren't sure what it is, and the second because (young) people think that it's hard. What's somewhat funny here is that most people don't actually know what Biology, Psychology and even Kinesiology are, but they *think* they do.

And perhaps most importantly, students and student culture has changed, and continues to change. When I went to the Erindale program at the University of Toronto in the 1990s, nearly all of the students were involved with the surveying

industry in some way, except for a handful of us. Most people enjoyed the mix of technology and the great outdoors. And there were only a few women and visible minorities. A typical Geomatics class at York or Ryerson is now the polar opposite on all of these fronts – the students’ backgrounds and their interests are now very different. They are very technology-focused. Women and particularly visible minorities populate the classroom. And very few students have surveying experience. There hasn’t been some big change, but rather a steady transformation of the student body over the past two decades from a homogeneous to a heterogeneous one.

POTENTIAL SOLUTIONS

The build it and they will come approach will not work in today’s competitive world. We must build it, advertise it to diverse markets, and keep updating it – much more work. In professional parlance, it’s like having a measurement problem with systematic errors; we are trying to treat these systematic errors as if they are outliers – one off solutions might work, but just once in a while. Or similarly, it’s like running a structural deficit – the result is long-term problems. This realization is part of the solution.

We need to talk with the students in their language, not only in our language. Dare I say, as I am not savvy with such things, we should embrace social media, Internet video, etc. And we need to work to attract students to the profession and to all of our programs. York has just formed the Lassonde School of Engineering, which houses the Geomatics Engineering program within the Department of Earth and Space Science and Engineering. The plan is to advertise this new school for “Renaissance Engineering” – a developing combination of skills in engineering, science, and entrepreneurship, supplied through the lens of experiential learning, with a global outlook. (How did education get so complicated?!) This is one attempt at speaking to young adults in an appealing fashion, while providing them with the skills we believe they need for their future careers.

But the solutions are not all related to communication with potential students/members – there is much that we can do. I recently wrote a short comment for the *Professional Surveyor Magazine* referring to the past when the surveyor was known as the master of the measurement. I was told 20 years ago that the technology would change the profession. I’m still waiting. From my perspective as an academic, the profession needs to be the master of these “new” technologies and not just a user of them. The current generation of students thinks big; and, as a result, they gravitate toward all of the technology that can make our businesses more successful and grow into wider profit-generating activities. Related to embracing the technology, I would be remiss not to mention continuing education. For example, the integrated surveys experience is telling: we should know all this




York University Geomatics Engineering students working in the computer lab.

“stuff” about GPS, geodesy and least-squares, but we need to apply this knowledge. If not, how would we know if our GPS measurements have reached the required accuracy for a particular survey? So three cheers for the AOLS’ continuing education initiatives – at least from this academic.

Finally, this whole discussion cannot just be about how to attract the future professional land surveyor. But also what do our current generation of surveyors want from their future employees? I believe you, the readers, are in a better position than me to answer this question. From conversations that I have had with some of you, you need people who are hardworking, responsible, and have a sound fundamental background with which to work. Many of you have worked very hard for a long time, and you are looking for people with these abilities to train, in order for them to take over your business. Perhaps none of this article’s ruminations enter in your decision-making process; however, in my opinion, they are impacting the quality and quantity of people that you are making decisions about.

CONCLUSION

This article is by no means a complete treatise on causes and solutions of sustaining our programs and membership. Rather, it just touches upon a number of subjects, and is meant to further the discussion and place renewed emphasis on some of the actions that are being taken or ought to be taken. Thankfully we haven’t tried everything yet, so as the man said, “Don’t panic.” I always welcome comments, constructive criticism, and corrections. 

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Rhapsody in pink: Jurisdictional boundaries of Henvey Inlet Indian Reserve

By Dr. Brian Ballantyne
Surveyor General Branch, Natural Resources Canada¹

Abstract:

Henvey Inlet Indian Reserve does not include Henvey Inlet. The ambiguous pink line on CLSR Plan T-781B should be discounted in light of other documentary (e.g. instruction, field note, plan and description) evidence.

Context:

As a First Nation (“FN”) assumes responsibility for managing lands within its Indian Reserve (“IR”) through the *First Nation Lands Management Act*, it needs to know the spatial extent of its IR. Such is the case for Henvey Inlet FN on the east shore of Georgian Bay. In rendering an opinion as to the jurisdictional boundaries of its IR, we were confronted with CLSR Plan T-781B which appears to show the IR as including Henvey Inlet, by virtue of a pink line that crosses the inlet in a SE-NW direction (Figure 1). The east and south-east rectilinear boundaries, the north riparian boundary (along The Key) and the west riparian boundary (along Lake Huron) are all highlighted in pink; everything within those bounds is IR. Using that principle – and accepting the pink line across the inlet (through some islands) as valid – the inlet is also part of the IR.

This was my first conclusion, bolstered by the Supreme

Court of Canada injunction to minimally impair IR lands in the context of ambiguous descriptions.² However, this conclusion was based on superficial research.³

Further research:

We know that the surveyors, in establishing IR pursuant to the 1850 Robinson-Huron treaty, were specifically instructed not to survey the shore of Lake Huron. This



Figure 2 - Extract of Bayfield's Admiralty Chart of Lake Huron (1828). LAC (MIKAN 3783322)

prohibition was issued, despite most IR fronting on Lake Huron, for two reasons:

- to save the time and thus the financial cost of a shore traverse for all riparian IR; and
- Bayfield's 1828 survey of the shore of Lake Huron was considered accurate enough to be relied upon in establishing the IR.⁴

Given this prohibition, it struck me as odd that the inlet would be included as part of the IR. That is, Bayfield showed the inlet as part of Lake Huron (Figure 2). If surveyor Dennis was instructed to rely on Bayfield's work, then the pink line was inexplicable. The pink line was made more troubling because – to my knowledge – no IR along Lake Huron included such inlets.

The pink line was made even more troubling because it was inconsistently applied along the inlet. It is shown running along the north shore of the inlet, but is absent along the south shore east of the “Indian Village” (Figure 3).

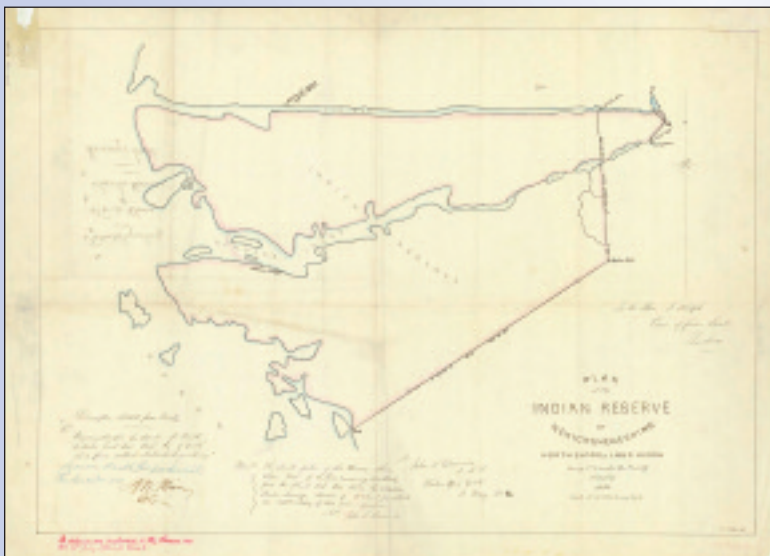


Figure 1 – CLSR Plan T-781B

¹ This article does not necessarily reflect the view of NRCAN, nor of the Government of Canada.

² *Osoyoos Indian Band v. Oliver (Town)*, 2001 SCC 85.

³ In conjunction with a draft Land Description Report.

⁴ Other research for Garden River IR corroborates the accuracy of Bayfield's survey.

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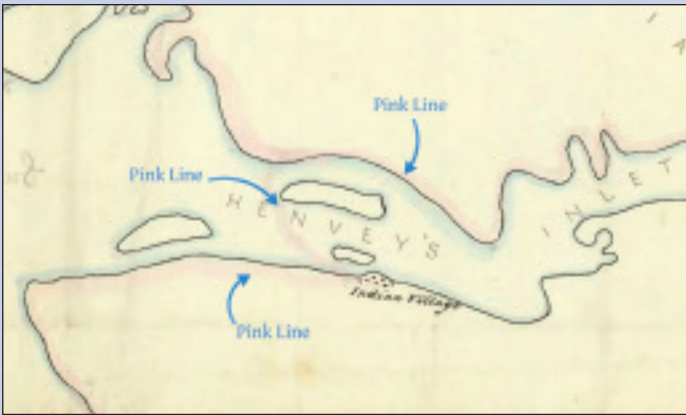


Figure 3 – CLSR Plan T-781B (annotated excerpt)

Field notes:

The first stop was Dennis' field notes, more particularly his diary of his 1851 survey of Henvey Inlet IR.⁵ The diary reveals that Dennis and his crew were on-site from November 1 to 12, and had much discussion with Chief Wagamake about the size and shape of the IR. Rather than an IR with dimensions of three by six miles "as mentioned in the Treaty", the Chief wanted the IR to have dimensions of twelve by six miles. Indeed, "the Chief made a diagram which enabled him clearly to illustrate how he wished the Tract as to size and position." Negotiations ensued between Dennis and the Chief, and a compromise was reached "which differed but little from the treaty."

⁵ CLSR FB 30723.

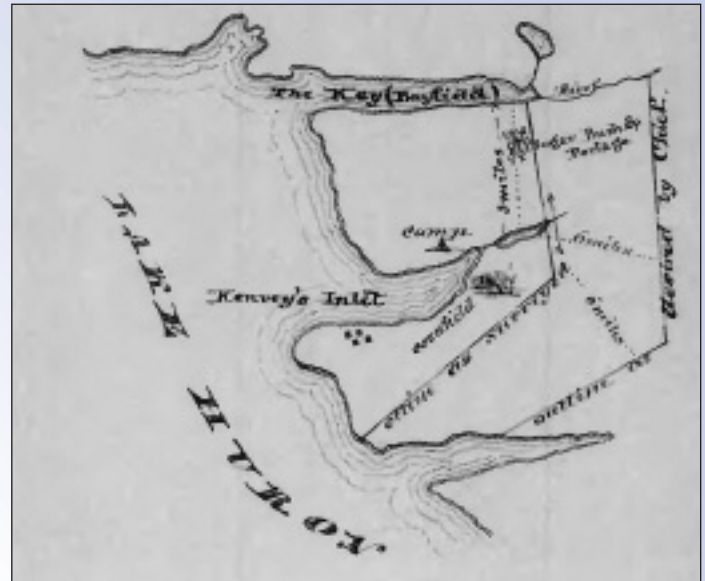


Figure 4 - FB 30723 CLSR (excerpt)

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It is up to us to instruct the public on the misuse of coordinates and GPS equipment. Just because we now have geo-referenced surveys showing coordinates of reference points it doesn't mean this is a new issue. For years people having been extracting coordinates from OBM sheets or other maps and uploading the coordinates into their GPS units in order to locate their corners. We must be able to properly, coherently and clearly explain to our clients why we are a necessary asset in defining the extent of title.

The public's use of GPS is not the only issue when discussing or contemplating coordinate surveys. Do we envision moving to a solely coordinate-based survey system? If coordinates of a corner become the primary piece of evidence, anyone who is proficient in mathematics and is able to operate the appropriate equipment can establish property corners. But does this serve and protect the public? How will clients really know where their property limits are if they are only numbers on a plan? It is we, the professional surveyors, who are properly trained in statute and case law and understand the priority of evidence that can perform proper legal surveys that both serve and protect the public.

Perhaps eventually we will move to a coordinate-based survey system but won't our clients still want to see the physical evidence of their property limits? Won't surveys still be

required to mark out limits and to retrace limits already established and lived up to? I would suggest that we as land surveyors will always be necessary to keep peace between neighbours.

Neil Edwards, past president of the Association of Newfoundland Surveyors summarized it very well when he said;

"This, my fellow land surveyors, is what sets us apart from other geomatics professionals, from those who operate in a perfect geometric world were each and every polygon has a perfect closure. We as land surveyors have to use all our training in mathematics and real property law to transition the spatial inaccuracies of a historic profession into the modern era, while at the same time respecting the rights of a trusting society impacted by our decisions."

Is our profession in a crisis? No, not right now, but we have to be ever diligent in promoting the value and importance of surveying. We have to protect not only a new coordinate-based cadastre but also the long established extent of title. We need to encourage new, young professionals to see what a great career surveying is now and will continue to be in the future. We just need to do a little first aid within our profession to eliminate a potential "crisis". We may be injured but we are definitely not close to death.



Dennis returned to the IR the following year, on October 31, 1852 “for the purpose of making a small addition to the Reserve ... to satisfy the band.”⁶ The addition was at the NE angle of the IR, between the easterly rectilinear boundary and the river running into The Key. His diary contains much discussion about this terrestrial addition, as reflected in Dennis’ sketch. There is no mention made of the inlet – neither dissatisfaction by the Chief that it was excluded nor intention by Dennis to include it (by amending the plan).

Plans:

The second step was other plans of the survey of the IR. Sadly, Dennis’ original plan - that he created and signed on May 12, 1852 and that he amended in 1853 – is not available.⁷ There is no extant plan with his original signature, a signature similar to that in his field notes. Certainly, the pink-line plan is not an original plan, given that it was not signed by Dennis. Rather, “John S Dennis” is prefaced twice by “(Sd).” It was the convention at the time when Person X affixed the name of Person Y to a copy of a plan to preface the name with “Sd” or “Signed.” That is, had Dennis created Plan T781A, then:

- his signature would be present; and
- the (Signed) preface would be absent.

Rather, the pink-line plan was copied by the Crown Lands Department in Québec in November 1853 by Morin, whose original cursive signature does appear.

CLSR Plan T-781A (Figure 5) is also not an original plan, given that John Stoughton Dennis’ name is in printed (not cursive) font and is prefaced twice by “(Signed).” However, this plan is certainly the most detailed (i.e. accurate) copy of Dennis’ original (lost) plan, because it:

- was certified as “a true copy” by Aubrey White, Assistant Commissioner in March 1888. The certification is original because Whites’ signature is in cursive font and the “signed” (or “sd”) preface is absent; and
- the detail on the plan could only have come from Dennis’ survey and field notes. For example, this plan has an annotation at the head of the inlet – “Rock called Nekickshegeshing or ‘Place for Otters.’” This echoes Dennis’ diary entry for Sunday November 2, 1851: “... the bay is called in Indian ‘Nekickshegeshing’ or ‘place for otters’.”

Having established the reliability of Plan T-781A, one looks in vain on the plan for a pink line across the inlet. Rather, the pink line runs along the north and south shores of the inlet, from Lake Huron proper in the west to the head of the inlet at the Nekickshegeshing rock in the east. The plan clearly excludes the inlet from the IR, consistent with



Figure 5 – CLSR Plan T-781A

surveys of other IR along Lake Huron of that era.

Other plans and maps of Henvey Inlet IR of that era are consistent in excluding the inlet from the IR. To wit, CLSR Plan T-781, albeit a copy of Dennis’ lost plan,⁸ shows detail that reflects Dennis’ field notes and excludes the inlet. CLSR Plan T-764, which is a map of the French River and Lake Nipissing region showing the IR created under the 1850 treaty, excludes the inlet (Figure 6).

Proclamation:

The third step was the 1854 Proclamation that set aside as



Figure 6 – CLSR Plan T-764 (excerpt)

Indian Reserves the various parcels of land that had been surveyed pursuant to the 1850 Treaty. The Henvey Inlet IR was described using metes and bounds, with references to distances and directions measured and to monuments established in Dennis’ 1851 and 1852 surveys, and as “containing about twenty six thousand acres.”

⁶ CLSR FB 30700.

⁷ The Surveyor General will pay a \$20 cash-money reward to the person who finds such plan

⁸ It appears to have been copied by Samuel Bray, Chief Surveyor of the Department of Indian Affairs.

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The area appears to be inconclusive in including the inlet within the IR. Indeed “about” captures both scenarios (included and excluded). The area of the inlet from the various copies of Dennis’ plans is constant at 1,100 acres. If included, then the area of the IR is 2.9% larger than 26,000 acres; if excluded, the area of the IR is 1.3% smaller than 26,000 acres. More to the point, the Proclamation description does not include the inlet in the IR. The description of the westerly boundary of the IR is rather vague: “Following the said shore of the said Lake Northward crossing said Henry’s inlet to the Channel or deep bay called the Key.”

Conclusion:

A truncated series of events puts the “crossing said Henry’s inlet” clause from the Proclamation in context. In 1850, the Treaty area was ambiguous; the inlet was not included. In late 1851, surveyor Dennis negotiated with the Chief; the inlet was not included. In mid-1852, Dennis drafted a plan of survey; the inlet was not included. In late-1852, Dennis negotiated with the Chief; the inlet was not included. In mid-1853, Dennis amended his plan of survey; the inlet was not included.

So, there is no evidence of intention by either party to

include the inlet, and much evidence of intention to exclude the inlet. Indeed, the Chief argued that the IR should extend six miles east from the head of the inlet. The cat was put amongst the pigeons in November 1853, when some bozo⁹ in the Crown Lands Department drew pink lines on the plan - one crossing the inlet and another running along the north shore of the inlet.

In 1854, the metes and bounds description used in the Proclamation was ambiguous (crossing the inlet where?). Given the ambiguity we are forced to look to all relevant extrinsic evidence to ascertain the intention of the parties. This includes all survey evidence. There is one piece of extrinsic evidence (Plan T-781B) that suggests that part of the inlet is included, and it is - itself - ambiguous (given the inconsistent pink lines along the inlet). There is much extrinsic evidence to suggest that the inlet was not included.¹⁰



Dr. Brian Ballantyne advises on land tenure and boundaries for the Surveyor General Branch of Natural Resources Canada. He can be reached by email at Brian.Ballantyne@NRCan-RNCan.gc.ca for further discussion.

⁹ Bozo is a legal term. See: *Dupuis v. Edmonton Cellular Sales Ltd.*, 2005 ABQB 445; *A.A v. S.N.A.*, 2007 BCSC 594; *R v. Menard*, 2010 BCSC 1416.

¹⁰ This was also the conclusion of Assistant Commissioner White, who suggested on July 29, 1901 that the pink line on the plan might have crossed the inlet “by rapidity in drawing.”

The Story of Tiny Island: The Importance of Research

(Or, The Nuisance of Miscommunication)

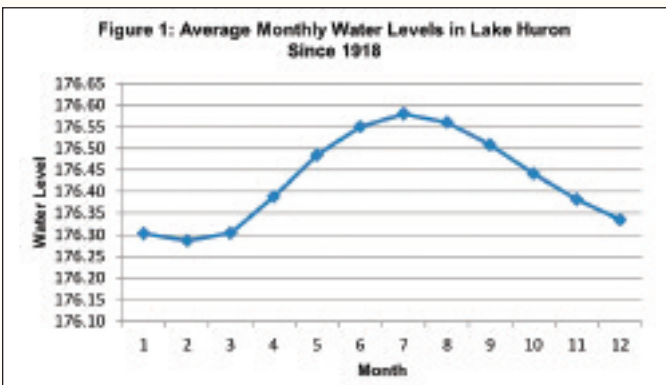
By R.J. Stewart, B.Sc., O.L.S., C.L.S.

The varying water levels of the Great Lakes have posed many interesting problems for surveyors and all those with an interest in shoreline properties.

Monthly Mean water levels, as determined by the Canadian Hydrographic Service, vary regularly from month to month, but irregularly over periods of years.¹ There are, basically, three types of water level fluctuation; short-term, seasonal, and long-term.

The most common short-term fluctuations generally result from storm surge. These occurrences are relatively local experiences where a strong weather event will cause wind set-up, raising the water on a shore for the duration of the storm—sometimes less than an hour. The extent of the surge will depend on the size of the storm. Less common is the seiche effect, also considered to be short-term fluctuation, which is caused by larger weather patterns. For example, high and low pressure zones over a lake will push water up on shore, or draw water away from a shore, moving in and out as standing waves work back to a state of equilibrium. The seiche effect, sometimes triggered by large storms, will last as long as the weather pattern sustains the effect, which can be days to over a week.

Seasonal changes are due to the amount of water experienced in the annual hydrologic cycle, and are therefore usually regular, as illustrated in Figure 1. The highest levels every year occur in summer (usually July), while the lowest levels are always experienced in winter (usually February); the range of monthly means in any one year aver-



¹ Great Lakes historical monthly mean water level data are available from the Canadian Hydrographic Service at http://www.waterlevels.gc.ca/C&A/network_means.html.

² The annual ranges recorded by the CHS since 1918 ranged between 0.13 metre to 0.67 metre, with an average range of 0.38 metre.

³ Copies of the text of the treaty dated 15 November 1815 and an accompanying sketch are at <http://www.putpic.com/image/31492/8560269>.

⁴ The original plan of Tiny Township is at the Office of the Surveyor General, Ontario Ministry of Natural Resources, filed as SR 2212. Surveyor Goessman's field notes are filed as FNB 665; the diary is filed as FNB 418. The diary is a very interesting read.

ages about 0.4 metre.²

Long-term changes, which occur over periods of years, are irregular and demonstrate the largest fluctuation ranges. In Lake Michigan/Huron, for example, the range between the lowest (January 2013) and highest (October 1986) recorded monthly means (since 1918) is 1.93 metres (6.3 feet). As a result, some lands that are part of the mainland when water levels are low become islands when water levels are high. Tiny Island is a prime example.

The effect of variance in water levels is not commonly understood. The potential for resulting confusion, compounded by lack of accurate information—and miscommunication—is well illustrated by *The Story of Tiny Island*.

The Beginning

In 1815, the Chippewas of Lake Huron and Lake Simcoe surrendered to the Crown all of the mainland portion of Tiny Township as part of a large tract north of Lake Simcoe comprising about 250,000 acres.³ The islands in Georgian Bay were not included in that surrender. The surrendered lands were subsequently subdivided into geographic town-

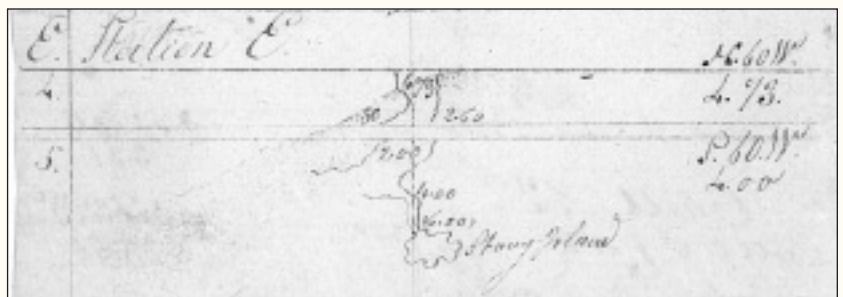


Figure 2. Portion of page 93 of Goessman's 1821 field notes

ships, including the Township of Tiny.

The original survey of the Township of Tiny was made in 1821-22 by John Goessman, Deputy Surveyor.⁴ A shore traverse, done as part of the original survey, identified a peninsula forming part of Lot 21, Concession 13, that Mr. Goessman labelled "Stony Island" in his field notes (Figure 2). The peninsula, comprised of a narrow isthmus (a tombolo) leading to a wider promontory, was drawn on the original plan of Tiny Township at the south end of Lot 21, Concession 13 (Figure 3).

Lot 21 in Concession 13 of Tiny Township was granted to

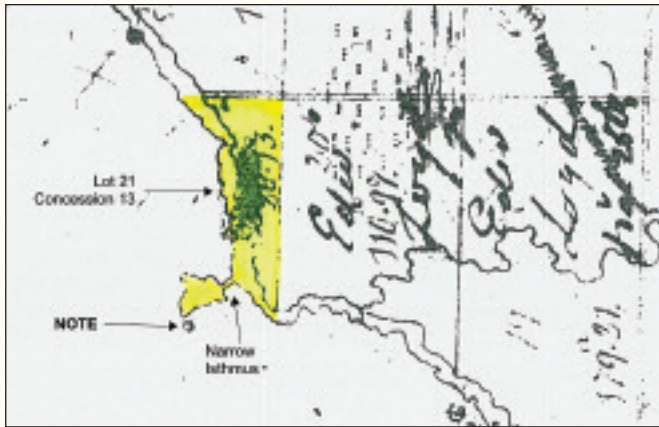


Figure 3. Portion of original plan of Tiny Township

the Canada Company on November 12th, 1846, and has been in private hands ever since.

In 1856, the Chippewas of Lake Huron and Lake Simcoe surrendered all the islands in the same vicinity of Georgian Bay except the three islands forming the Christian Island group. The surrendered islands were to be sold by the Department of Indian Affairs for the benefit of the Band.

The Elusive "Island"⁵

In 1912, through Member of Parliament Mr. Bennett, Alexander⁶ Brunelle requested an Indian Land Grant for Tiny Island as unsold surrendered land; the request included a sketch showing "Tiny Island" separated from the mainland (Figure 4). Having no record of the island, the Department of Indian Affairs (DIA) sent Mr. Picotte, the Indian Agent at Christian Island, to inspect the island. Mr. Picotte reported that an island "known as Tiny Island, containing about 2 acres" was situated "opposite Concession XII". The "2 acres" later became an important estimated figure.

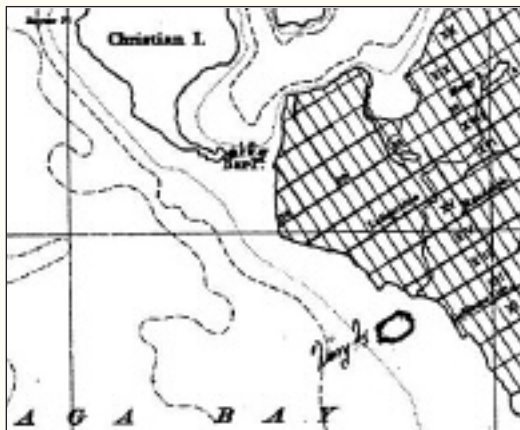


Figure 4. Portion of sketch accompanying 1912 correspondence

Having noted (from viewing a copy of the original Tiny Township plan) that the island "apparently has been taken in as a part of the main land", the DIA asked the Ontario Department of Lands and Forests (DLF) for information on the matter. The DLF replied that there was no record of "Tiny Island", the peninsula being joined to the mainland on

the original plan of the Township of Tiny.

The DIA advised M.P. Bennett that Tiny Island formed part of the mainland Lot 21, Concession 13, and was therefore not available for sale by the DIA. Consequently, Mr. Emery⁷ Brunelle, a relative of Alexander Brunelle, then bought the southerly 200 feet of Lot 21, Concession 13, for the sole purpose of acquiring title to Tiny Island. Almost immediately he sold the land he bought, except for the parcel "detached from the Main land, known locally as Tiny Island" that he observed was separated from the mainland (Figure 5) by a channel of water.

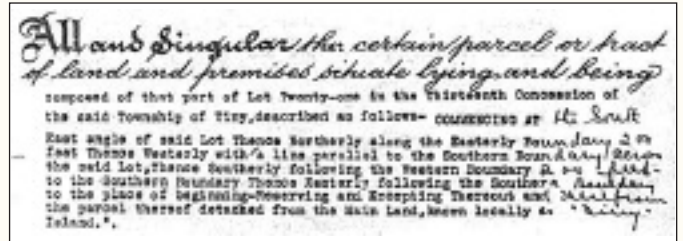


Figure 5. Portion of 1913 Instrument 9264 (the transfer from Brunelle)

The Commercial Fisherman

In 1914, another application was made to the DIA for a grant of Tiny Island. This time the applicant was a Captain Bowie of Owen Sound, a fisherman represented by his Member of Parliament, Mr. Currie. Captain Bowie had, apparently, constructed some sheds and a wharf on the island as part of his commercial operations. The DIA responded that the DLF had earlier advised that the "island" was a "peninsula", and was already patented and therefore not available from the DIA.

Both Captain Bowie and M.P. Currie pressed the matter, with Mr. Currie's correspondence enclosing a "rough sketch" (Figure 6) showing the island to be south of the peninsula that was shown on the original plan of Tiny Township. In fact, there never was an island at that location. While there is something that looks like an island on the original plan, the Goessman field notes do not show an island in that location; and, in fact, the water is quite deep at that spot.



Figure 6. Portion of sketch accompanying 1914 correspondence (compare with Figure 3)

Island or Not?

On the basis of the sketch supplied by M.P. Currie, the

cont'd on page 14

⁵ The following various referred-to maps and correspondence are found at Library and Archives Canada, RG10, Records Relating to Indian Affairs, Vol. 3168, File 397,664, Penetanguishene, Correspondence Regarding Sale of Tiny Island..., 1912-1935.

⁶ Sometimes spelled "Alexandre".

⁷ Sometimes spelled "Emerie".

DIA asked Mr. Picotte, the Indian Agent, to attend the site again and confirm whether or not there was in fact an island at that location. At the same time, M.P. Currie asked the DLF to supply a copy of the Township Plan. In the meantime, Mr. Bennett (Mr. Brunelle's M.P.) had heard that the DIA was investigating the matter again and asked that Mr. Brunelle be given first consideration.

The resulting DLF copy (tracing) of the original plan prepared by L.V. Rorke⁸ (Figure 7) and accompanying letter confirmed the "rough sketch" by Currie, indicating that a small island was located just south of the peninsula that was part of Lot 21, Concession 13.



Figure 7. Portion of 1914 tracing of original township plan by L.V. Rorke

Without knowledge of the sketches, Mr. Picotte (the Indian Agent at Christian Island) reported that the water was 3 to 4 feet deep in the channel between Tiny Island and the mainland, and that he was certain that it was always an island. Of course, Mr. Picotte did not know that another "Tiny Island" had been identified by Mr. Rorke (Figure 7).

A survey to determine the location and size of the island was not done. Officers of both the federal Crown and provincial Crown relied entirely on the sketch prepared by Mr. Rorke (Figure 7) for location of the island, and relied on the Indian Agent's first report for the 2-acre size.

From that point on, except for Mr. Picotte, Mr. Brunelle and Captain Bowie, all of the parties involved in the correspondence believed that Tiny Island was the small island shown on the original plan as the spot that was located immediately south of the peninsula—an "island" that in fact never existed.

Mr. Picotte, Mr. Brunelle and Captain Bowie were the only parties that actually attended at the site—but none of them saw the Rorke tracing. Water levels in Lake Huron were sufficiently high through that period of time for the isthmus of the peninsula to be continually inundated. Accordingly, Mr. Picotte, Mr. Brunelle and Captain Bowie all believed that the subject of the correspondence was the portion of the peninsula west of the inundated isthmus—the actual "Tiny Island".

The contest continued, with both Mr. Brunelle and Captain Bowie pursuing a grant from the DIA.

The Outcome

The matter was finally settled by a call for tenders, to which only Mr. Brunelle responded (Figure 8). Note that Mr. Brunelle's tender was submitted "without prejudice to [his] rights as owner" of the island.

In the end, Mr. Brunelle paid \$100.00 to the DIA, and

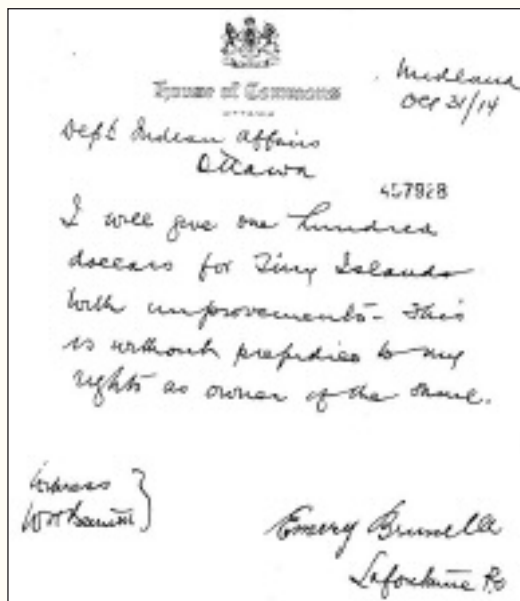


Figure 8. 1914 Tender Letter from Emery Brunelle

\$5.00 to Captain Bowie (for "improvements"), for land that he already owned by virtue of his earlier acquisition of the southerly 200 feet of Lot 21, Concession 13.

Letters Patent were then issued by the DIA for a parcel "Containing about Two Acres ... Composed of Tiny Island situate to the south of a peninsular [sic] in the Southerly part of Lot Twenty-one, in Concession Thirteen (13)", following the tracing by Mr. Rorke (Figure 7).

Lessons

The *Story of Tiny Island* is a perfect example of the need for accurate mapping in any type of land administration, not just unalienated Crown land. Of course, available technology makes this scenario seem almost impossible today. But the story also illustrates the need for precise communication—no matter how good the underlying technology.

The story also demonstrates the importance of thorough research. Specifically for surveyors, it is necessary to consult more than just a plan, especially when questions arise. For example, Surveyors' Instructions, field notes, diaries, contemporary correspondence, and sometimes even Orders in Council authorizing survey work will paint a much more detailed picture of events surrounding historical surveys. Nothing should be left to assumption.

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⁸ L.V. Rorke was to become the Director of Surveys for the Department of Lands and Forests in 1918, and Surveyor General in 1928.

Complex Research, Simple Answers: Puzzling out Mineral Ownership on the Mnjikaning (Rama) Indian Reserve

By Steve Rogers, MSc, CLS

Surveyor General Branch, Natural Resources Canada¹

Abstract:

An analysis of Crown reservations of gold and silver in patented lands, of re-purchases and reconsolidation of patented land by the Crown, of establishing Reserves in the absence of formal documents and of three case studies suggests that the Rama Indian Reserve includes minerals. The Reserve parcel, therefore, has three-dimensions. Further research would not, however, go amiss.

Introduction:

Determining mineral ownership is a tricky endeavor. The starting point since at least the 13th century has been the *cujus est solum, ejus est usque ad coelum et ad inferos* doctrine, or as it is more popularly known, the carrot or snow-cone doctrine (property extends below to the centre of the earth, and above to the heavens). As ancient (and overly Latin) as the *cuius est solum* doctrine is, it is still accepted today. In 2009, the Supreme Court of Canada observed that the doctrine defined trespassing and informed privacy;² in 2010, the UK Supreme Court affirmed that the doctrine “still has value in English law as encapsulating, in simple language, a proposition of law which has commanded general acceptance”.³

While our proverbial carrot doctrine is our starting point, it is by no means the ending point. The doctrine has been discredited for being “imprecise and...mainly serviceable as dispensing with analysis”⁴ and “a colourful and fanciful phrase of limited validity.”⁵ As but three examples: 1) air space rights stretching to the heavens were regarded as absurd beginning with the first hot-air balloon flight in 1783⁶; 2) precious minerals (gold and silver) have always been considered reserved to the Crown unless specifically granted;⁷ and 3) in 2010 the Province of Alberta passed the *Carbon Capture and Storage Statutes Amendment Act* which declared that the pore space⁸ “is vested in and is the property of the Crown”.

Indeed, mineral rights can be alienated from surface land owners in a variety of ways. Such alienations are common in Canada. All of this points to the need for specific research to determine mineral ownership. The Mnjikaning (Rama) Reserve of the Chippewas of the Rama First Nation provides an excellent case study of the complexities and value of mineral ownership research, demonstrating that a parcel is not necessarily merely a two-dimensional polygon, bereft of depth.

Chippewas of Rama – a very brief early history

In the late 1700s to early 1800s, the three Ojibwa bands occupied the lands on the shores of Lake Simcoe and Huron. In particular:

- 1) Yellowhead Band – “lived mainly near the Narrows between Lakes Simcoe and Couchiching”
- 2) Snake Band – “resided mainly at Holland Landing and on Snake Island”



Figure 1 – Map of the 1798 Treaty (Penetanguishene Bay purchase) that surrendered part of the traditional hunting territories of the three Ojibwa bands

¹ This paper does not necessarily reflect the views of the Government of Canada

² *R v. Patrick*, 2009 SCC 17.

³ *Star Energy Weald Basin Limited v. Bocardo SA* [2010] UKSC 35

⁴ *Commissioner for Railways v Valuer-General* [1974] AC 325.

⁵ Ziff, quoted in *R v. Patrick*, 2009 SCC 17, at para 44.

⁶ Banner. 2008. *Who owns the sky? The struggle to control airspace from the Wright brothers on*. Harvard University Press

⁷ Rogers. 2010. *Subsurface south of 60* in Ballantyne (ed), *Surveys Parcels and Tenure on Canada Lands*. Government of Canada

⁸ Pore space is the tiny fissures between rocks in the subsurface. Apparently such fissures have the potential to hold massive amounts of CO₂

3) Aisance Band– “were settled at Coldwater, near Penetanguishene”⁹

The traditional hunting territories of all three bands ranged from “the Georgian Bay Islands, the Muskokas, the Haliburton Highlands, and south of Lake Simcoe seasonally”¹⁰. Much of this land was ceded in the Upper Canada treaties. Most notably in 1798, 1805 and 1818.¹¹

In 1830, the Lieutenant Governor of Upper Canada (Sir John Colborne) attempted to create a farming community for all three bands and established the 10,000 acre Coldwater Narrows Reserve. The Yellowhead and Snake bands settled in a village near the Narrows on Lake Simcoe, while the Aisance Band settled at Coldwater near Lake Huron. All three bands constructed a road between the two settlements (today this road is Ontario Highway 12). The road and the population explosion in Ontario at the time brought a lot of settler interest in the Coldwater Narrows area. In 1836, under very dubious circumstances, the Coldwater Narrows Reserve was surrendered.¹²

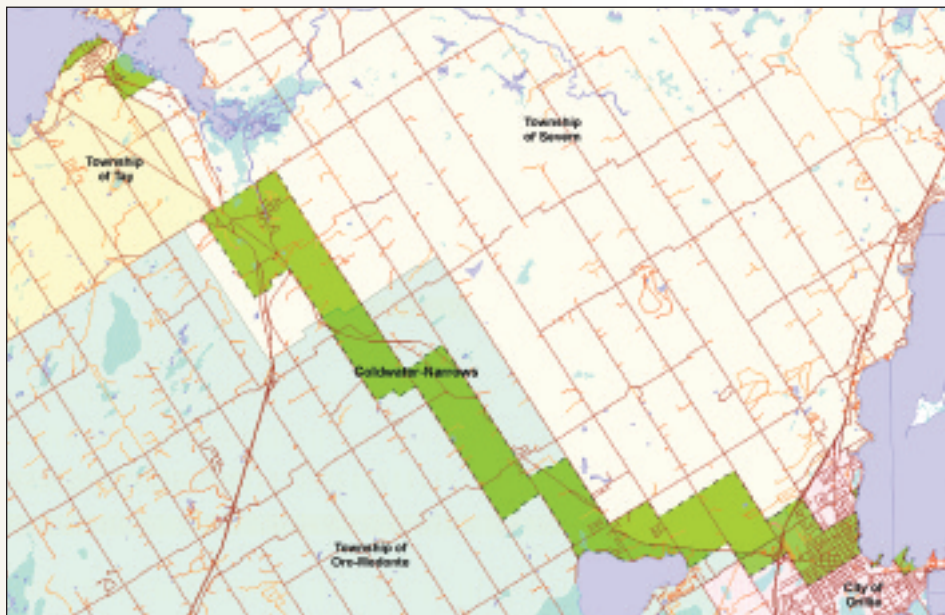


Figure 2 – Map of the Coldwater Narrows Reserve (green)

Now absent of land, the Yellowhead band proposed the purchase of 1000 acres of land on the east side of Lake Simcoe in the Rama Township. Permission to purchase was approved by Order-in-Council in 1838.

The Rama Purchase

Chief Yellowhead signed a requisition for money to be taken from the Chippewa Tri-Council annuity fund in late 1838 to enable the “Chief Superintendent of Indian Affairs

Date	Sterling	Cr. Halifax 4/4 per Doll. Currency.
1838 Dec. 22	By Cash	S. P. Jarvis, Ch.S.I.A. to pay part of the price of 1621 Acres, purchased for the Tribe.....666.13.4
		800.0.0.

Figure 3 – Extract of the Chippewa Tri-Council Annuity funds in 1838

(Samuel Jarvis) to pay for Certain Lands purchased in the Township of Rama”.¹³

Samuel Jarvis purchased various parcels of patented land from 1838-1848. All the patents purchased contained the reservation to the Crown of precious minerals (gold and silver) and white pine trees. The patents, however, were conveyed to “her majesty Queen Victoria”. By purchasing the patents, all the minerals were reconsolidated into a single estate. Or in other words, the Crown had full title to all minerals in the Rama purchase area.

Creating the Mnjikaning (Rama) Reserve

Indian Reserves can come into being through a variety of methods. By far the most common Reserve creation methods in Ontario are through Treaty or Executive Order (order in council). The Rama Reserve, however, has no clear document that sets aside the purchased lands as a Reserve. This omission was recognized by Aboriginal Affairs and Northern Development Canada (AANDC) in 1965, when a Ministerial Order was passed recommending that the Rama Reserve be formally recognized. There is no record of this recommendation ever being acted upon.

This leaves us in a bit of a quandary because, generally speaking, determining mineral ownership hinges on assessing the intent of the original documents.¹⁴ Lacking any original documents, the best alternative is an assessment of comparable documents of the same time period. To do this comparison, a reasonably accurate Reserve creation time period for Rama is required.

The *Ross River* case¹⁵ defines the criteria for how a Reserve can exist without any formal document setting the land aside. The relevant principles for Reserve creation are:

cont'd on page 18

⁹ Indian Claims Commission. *Chippewa Tri-Council Inquiry*. pg 7. March 2003.

¹⁰ Wesley-Equimaux. *The Coldwater-Narrows Reservation*. Report for the Chippewa Tri-Council. pg. vii. October 1991.

¹¹ Surtees. *Indian Land Surrenders in Ontario 1763-1867*. AANDC. 1984.

¹² The validity of the surrender was the subject of a Specific Land Claim. A settlement was reached in 2012 that included \$307 million in financial compensation.

¹³ Indian Claims Commission. *Chippewa Tri-Council Coldwater Narrows Claim*. Pg. 405. 1996

¹⁴ Bartlett. *Mineral Rights on Indian Reserves in Ontario*. *The Canadian Journal of Native Studies*. III, 2. pg. 245-275. 1983

¹⁵ *Ross River Dena Council Band v. Canada*, [2002] 2 S.C.R. 816, 2002 SCC 54



Figure 4 – Excerpt from Plan B495A, showing some of the purchased land in the Rama Township (1877)

- 1) Crown must have the intention to create a reserve;
- 2) That intention must be possessed by Crown agents holding sufficient authority to bind the Crown;
- 3) Steps must be taken in order to set land apart for the benefit of a band, i.e. Order in Council (OIC); and
- 4) The band itself must accept the setting apart and to begin to make use of those lands.¹⁶

The best available evidence for evaluating the Rama Reserve against the *Ross River* principles is as follows:

- 1) The Crown’s intent to create a reserve is reflected in the 1838 OIC which recommended purchasing 1000 acres of land in the Township of Rama for the “Principal Chief and his followers”.
- 2) The agent who did the purchasing was Samuel Jarvis, the Superintendent of Indian Affairs (or his delegate) - who had sufficient authority to bind the Crown.
- 3) The purchases of the patented land were made for “the express use and enjoyment of the Tribe of Chippewa Indians of Lakes Huron and Simcoe...”. This language suggests that steps were taken to set the land aside for the benefit of the band.
- 4) The funds that purchased the patents at Rama came out of the Tri-Chippewa Council’s own funds. They also settled the lands at Rama immediately after the purchase (having recently surrendered the land at Coldwater-Narrows). Both of these facts speak to the

Bands explicit acceptance of the lands being set apart as a Reserve.

Given all of this, it is reasonable to assume that the Rama Reserve was created sometime between the initial purchase and the first transactions being made in the Indian Lands Registry. This would place the Rama Reserve creation date sometime between 1838 (purchase) and 1873 (first transactions). With this Reserve creation date established, we can now attempt to establish what the intent of the Crown was during this same time period with regards to mineral rights.

Establishing the Mineral Link - Comparable Circumstances:

Three comparable situations are relevant for evaluating the extent of minerals at the Rama Reserve:

Mineral Comparison #1 - The Robinson-Huron and Robinson-Superior Treaties (1850)

- The Robinson treaties were established as a “consequence of the discovery of minerals on the shores of Lake Huron and Superior”.¹⁷
- Explicit reference to mineral rights was included: “Should the said Chiefs...at any time desire to dispose...of **any mineral or other valuable production thereon**, the same will be sold or leased at their request”¹⁸ (my emphasis).

Conclusion: Reserves created pursuant to the Robinson treaties contained all minerals (including gold and silver). Given the proximity, both geographically and chronologically, to the Rama Reserve this comparison should be considered a strong one.

Mineral Comparison #2 – Treaty 3 (1873)

- There is no explicit mention in Treaty 3 of mineral rights to Reserves;
- The minutes of the treaty negotiations, however, contained explicit promises: “if **any important minerals** are discovered on any of their reserves the minerals will be sold for their benefit with their consent”¹⁹ (my emphasis);
- The promises in the treaty negotiations have been found to be binding, even if they are omitted from the final written treaty;²⁰
- In 1873, however, Canada did not have possession of the lands or minerals to grant to Reserves in Treaty 3;²¹

cont'd on page 20

¹⁶ These principles were invoked in *Wewaykum Indian Band v. Canada*, 2002 SCC 79.

¹⁷ Morris. *The Treaties of Canada with Indians of Manitoba and the North-west Territories*. pg. 16. 1880

¹⁸ Robinson Treaty with the Ojibway Indians of Lake Huron. pg. 3. 1964 (copy).

¹⁹ Morris. *The Treaties of Canada with Indians of Manitoba and the North-west Territories*. pg. 70. 1880

²⁰ *R v. Taylor and Williams* (1981), 62 C.C.C. (2d) 228 (Ont C.A.)

²¹ *St. Catherines Milling and Lumber Co. v. The Queen* (1889) 14 A.C. 46 (JCPC)

- The ownership of minerals would have transferred to Ontario at Confederation pursuant to section 109 of the *British North America Act*: “All lands, mines, minerals, and royalties...shall belong to the several provinces of Ontario, Quebec...”;
- In 1894, Canada and Ontario came to agreement with regards to Treaty 3.²²

Conclusion: All Reserves created via Treaty 3 should include all minerals (including gold and silver). Further, the two other numbered Treaties that cover Ontario - Treaty 5 (1875) and Treaty 9 (1909) - are nearly verbatim to Treaty 3, so the same mineral analysis applies.

Although Treaty 3 is separated somewhat in time and space from the Rama Reserve it is still a valid comparison as it corroborates the intent of the Crown (from the Robinson Treaties) to include all minerals in Reserves, and establishes a pattern of what would likely be granted to the Rama Reserve.

Mineral Comparison #3 – Indian Act (1876) & numbered Treaties across the Prairies (1870-1930)

- The original Indian Act had a very explicit definition of a Reserve that included “all the trees, wood, timber, soil, stone, **minerals, metals, or other valuables** thereon or therein” (my emphasis).²³ This definition remained until 1951.
- The numbered treaties across the prairies make no reference to minerals despite the fact that the Robinson treaties “shaped the course” of the numbered treaties development.²⁴
- Canada retained full ownership of all lands and resources across the prairies (even after the Prairie Provinces entered confederation) until the Natural Resources Transfer Agreements in 1930.

Conclusion: Based on the explicit definition of a Reserve from the original *Indian Act* and that Canada had full ability to grant such rights until 1930, Reserves established pursuant to the numbered treaties across the Prairies (prior to 1930) have all minerals (including gold and silver).

Both the original *Indian Act* and the numbered treaties across the prairies are separated even further in time and

space from the Rama Reserve. The comparison, however, is still a valid one. As in Treaty 3, this example further corroborates the intent of the Crown (3 separate examples now) and establishes a concrete pattern for minerals being granted at the Rama Reserve.

Conclusions

This research leads to the conclusion that all mineral rights belong to the Rama Reserve. However, this is not to suggest that further research should be spurned. The following questions should guide such inquiry:

1. What did the negotiations around the 1923 Williams Treaty say about minerals? Although the Treaty appears to be silent as to gold and silver, the negotiations surrounding the Treaty might shed some light on the question of gold and silver intentions, either among the three parties, or between the two Crowns.
2. What is Canada’s position about minerals in the William Treaty area in general and at Rama IR in particular? Are AANDC research reports instructive as to Canada’s implicit or explicit policy?
3. What is Ontario’s position as to minerals in the Williams Treaty area in general and at Rama IR in particular? That is, has the province conceded – implicitly or explicitly – that minerals vest in the Reserve?
4. Are there principles or findings about minerals for other Reserves in the Williams Treaty area that are useful?



²² *Agreement with respect to lands encompassed by Treaty 3*. S.O. 1894, s. 4, Vic, c. 3

²³ *Indian Act*. S.C. 1876, c. 18

²⁴ Morris. 1880

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The Research Required to Survey the Bounds of Point Pelee National Park

By Hugh Beaumont Goebelle, O.L.S., C.L.S.

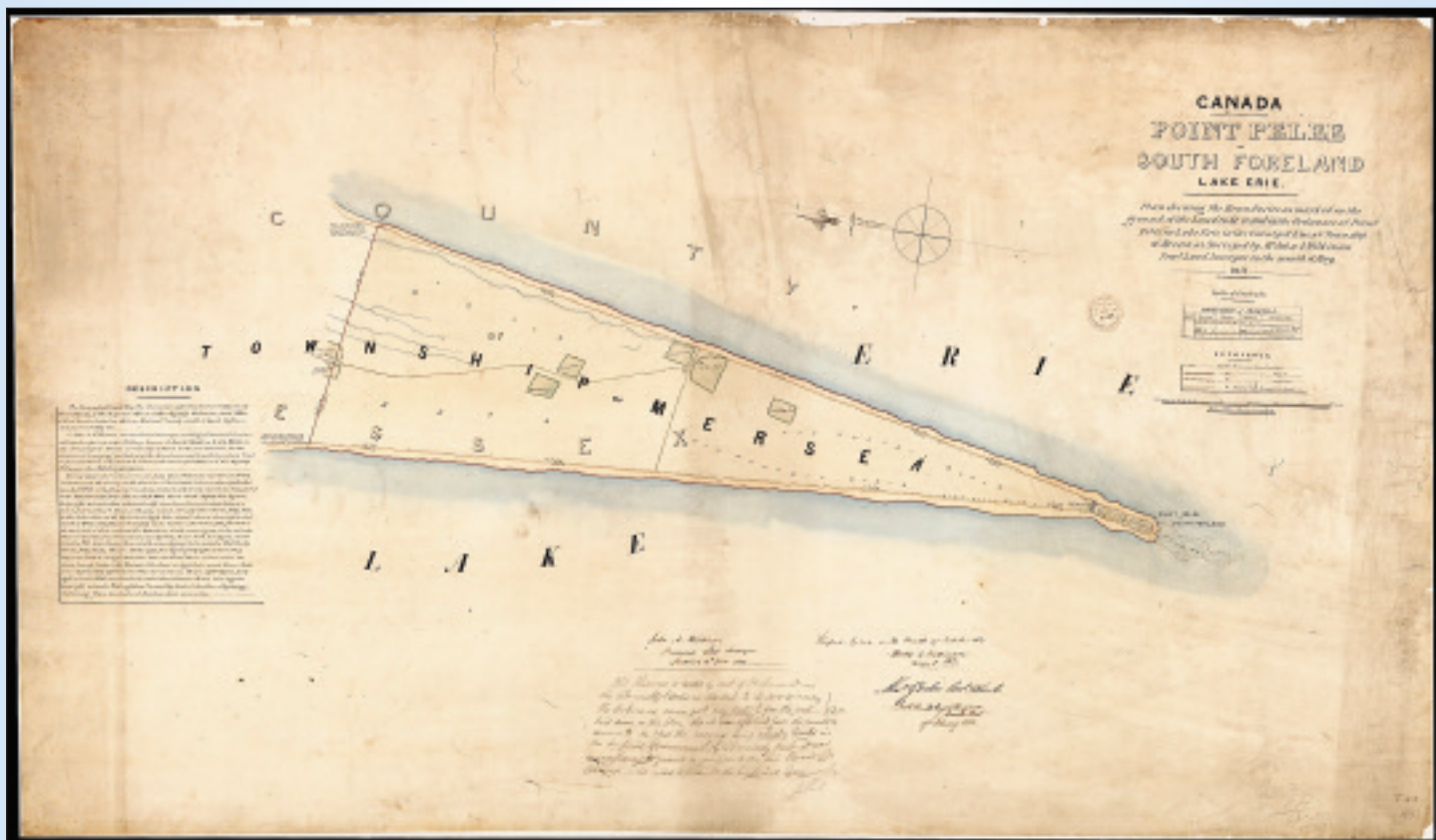
Background: To write this article, the author has drawn upon his experiences preparing a report for FKS Land Surveyors of London, Ontario, which was, in turn, submitted to the “Eastern Regional Operations Centre” of the “Surveyor General Branch” of “Natural Resources Canada”. In order to view this work in its entirety, please read the “Survey Report Regarding the Review of the Eastern Boundary of Point Pelee National Park in the County of Essex in the Province of Ontario” being Field Book (or F.B.) Number 38493 in the Canada Lands Survey Records Index. The author gratefully acknowledges the kind co-operation of Robert Stirling, O.L.S., of FKS Land Surveyors in the preparation of this article.

Article: How do you retrace boundaries which may have been in existence for some two hundred years? And how do you retrace boundaries which everyone may have taken for granted during that entire span of those two hundred years? The answer is always research, research, research. In this case, the boundary in question is the boundary between

Point Pelee National Park and Lake Erie – essentially the boundary between the holdings of the federal Crown and the provincial Crown respectively.

For those of us less familiar with National Parks in Ontario, and Point Pelee National Park in particular, Point Pelee National Park is a low and flat peninsula owing its existence to the effects of the last ice age. Point Pelee is a peninsula which is approximately four kilometres wide at its landward commencement and it tails off to a relatively pointed tip some nine kilometres to the south – somewhat like an elongated but inverted, isosceles triangle containing approximately one and a half thousand hectares. Point Pelee National Park is located deep in southwestern Ontario near the southeastern corner of Essex County and projects into Lake Erie to the south of Leamington. History has invented and re-invented Point Pelee National Park but today it remains one of the premier destinations for naturalists and recreationalists alike.

As federal Crown land, it is important to understand how



Point Pelee or South Foreland, Lake Erie by Mr. John A. Wilkinson, Provincial Land Surveyor, May, 1851. Library and Archives Canada, MIKAN no. 4137338.

it originated. By doing so, channels of research often become evident; therefore, at least a rudimentary understanding of Canada's governmental development is in order. To begin, the following passages constitute a general and brief outline of the governmental developments for southern Ontario. Although actual settlement was sparse and limited to a few notable enclaves which often continue to exist today, France claimed all the lands of southern Ontario as part of its colony of New France. France arrived at its claim by virtue of both its relatively extensive exploration and its relatively extensive commerce throughout the region which occurred during the seventeenth and eighteenth centuries. International treaties signed by the various colonial European powers of the day often recognized France's claims. By the mid-eighteenth century however, the conflict between France and Great Britain over North American Territories moved to the forefront of Europe's attentions. This conflict led to the conquest of New France by Great Britain in stages and culminated with the defeat of the last French forces at Quebec City in 1759.

The "Royal Proclamation" of 1763 became one of the most important actions taken by the new British administration for its possessions beyond the existing and perhaps better known Thirteen American Colonies. Amongst other notable establishments, the Royal Proclamation recognized Aboriginal Title to the lands of southern Ontario and declared, in effect, that the (now British) Crown must negotiate the surrender of Aboriginal Title before settlement by Europeans may proceed with title to such "wilderness" lands stemming solely from the British Crown through letters patent. In 1774, by the "Quebec Act", the British Crown re-defined the boundaries of its recently won possession of New France and created the colony of Quebec which included the lands of southern Ontario. The American War of Independence and its aftermath however forced the British Crown to amend its approach and, in 1791, the "Constitution Act" split the colony of Quebec into the colonies of Upper Canada (generally the equivalent of southern Ontario) and Lower Canada (generally the equivalent of southern Quebec). The new government for Upper Canada subsequently began to build colonial institutions upon an English model which included the introduction of the first "Registry Act".

Political tensions within the British North American colonies erupted into open rebellion in 1837. In the aftermath of this rebellion, Lord Durham made a series of recommendations many of which came to fruition within the "Act of Union" of 1840. By this legislation, the imperial parliament in London, England, unified the colonies of Upper Canada and Lower Canada into a single colonial government in 1841 known as the Province of Canada. Although unified, many institutions addressing matters of local concern to southern Ontario carried on functioning for this region then known as Canada West. Again driven by a series of political tensions, the colonies of Nova Scotia, New Brunswick and the Unified Province of Canada formed the country (or the Dominion) of Canada through Confederation in 1867 under

the "British North America Act" (now known as the "Constitution Act (1867)"). Of particular note, this Act, under sections ninety-one through ninety-five, divided legislative powers and responsibilities between the new federal government of Canada and the new provincial government of Ontario.

Against this backdrop of governmental development for southern Ontario, one may trace the history of Point Pelee through its completed land surveys. To begin, aboriginal peoples had certainly been present at Point Pelee for perhaps several centuries leading up to colonial times. Known as the *Caldwells* due to their connection to an historical figure from the American War of Independence, the *Caldwells* purportedly surrendered Point Pelee through (colonial) Treaty Number 2 in 1790 (not to be confused with the more famous "numbered treaties" negotiated by the federal government on the lands located generally between the Lakehead and the Rocky Mountains). As with many treaties however, the *Caldwells* and the federal government have been involved in subsequent land claim negotiations.

As far as identifiable land surveys are concerned, it appears that the colonial government of New France did not undertake any such projects with respect to Point Pelee. On the other hand, the colony of Quebec, near the end of its administrative regime, began to undertake projects related to the settlement of southern Ontario including the area near Point Pelee. As a result, and skipping ahead to 1790, Patrick McNiff, Deputy Surveyor, made an exploratory survey of the shore of Lake Erie in the vicinity of Point Pelee. (As an aside, please note that the records of this survey later became the property of the Office of the Surveyor General of Upper Canada.) In turn, the Surveyor General of Upper Canada issued instructions to Abraham Iredall, Deputy Surveyor, to survey the front or southern portion of the geographic Township of Mersea into concession lots suitable for the issuance of letters patent in 1798. The resultant Plan of Survey, from 1799, set aside the lands to the south of a "proposed line of reservation", being the northern limit of Point Pelee, as "Reserved for the Crown". Although it did illustrate all the boundaries of the Crown Reserve, Iredall's Plan of Survey did not however record the purpose or purposes for the land reserved to the Crown at Point Pelee at that time. Seven years later, also upon instructions of the Surveyor General of Upper Canada, Thomas Smith, Deputy Surveyor, expanded the survey of the geographic Township of Mersea in 1806. Although his field notes recorded that Smith traversed the shoreline of Point Pelee, the surviving Plan of Survey does not illustrate his fieldwork or survey results for the peninsula.

The survey records pick up again in 1851 in the form of a Plan of Survey prepared by John A. Wilkinson, Provincial Land Surveyor, prepared for the Royal Engineers. By this point in time, it appears that the "Crown Reserve" set aside in 1799 (above) had become a "Military Reserve" and was imminently to become a "Naval Reserve". Also known as

“Ordnance Lands”, it appears from the notes appended on the face of this Plan of Survey that the colonial government of the Unified Province of Canada intended to vest Point Pelee in the Imperial Admiralty. On the other hand, based upon an examination of statutes, regulations and orders-in-council, it also appears however that this vesting, in the end, did not occur and, therefore, Point Pelee remained vested in the colonial government of the Unified Province of Canada. In support of this proposed vesting, this Plan of Survey illustrated the general condition of the entire Point Pelee peninsula including topography and improvements by squatters in addition to the northern rectilinear-boundary and the eastern and western natural-boundaries of the military reserve along Lake Erie – probably the first full boundary survey of Point Pelee. In 1867, according to Paragraph 7 of Section 91 of the “British North America Act”, Point Pelee became vested in the newly created federal government for the country of Canada which became responsible for all matters of defence. As an aside, the author learned from the notes appended to the face of this plan that surveyors during that time period often placed broken glass and broken pottery underneath stone monuments to help distinguish planted stone monuments from other stones.

Over thirty years later, Alexander Baird, Provincial Land Surveyor, prepared another complete survey of the “Naval Reserve” at Point Pelee. Baird prepared this complete boundary survey in 1883 for the federal government’s Department of the Interior. Like his predecessor’s survey, Baird’s Plan illustrated the general condition of the entire Point Pelee peninsula including topography and improvements by squatters in addition to the northern rectilinear-boundary and the eastern and western natural-boundaries of the military reserve along Lake Erie. In 1889, the Department of the Interior commissioned G. McPhillips, Ontario Land Surveyor, to produce a similar survey but showing the improvements of squatters in sufficient detail to support the issuance of federal patents. In 1918, a federal order-in-council transformed the reserve at Point Pelee into a National Park using a metes and bounds description derived from the 1883 survey by Baird. This metes and bounds description survives to this day in Section 2 of Part 5 of Schedule I of the “Canada National Parks Act” which set out the limits of Canada’s national parks.

After nearly one hundred years of silence regarding the boundaries of Point Pelee National Park, modern surveyors begin to appear on the scene. In addition to a series of surveys prepared on the northern rectilinear-boundary of Point Pelee National Park for the federal government between 1956 and 1993, Richard W. Murray, Ontario Land Surveyor, established a series of control monuments along the entire perimeter of the Point Pelee peninsula in 1977. Furthermore, in 2002, a series of reference plans by Holstead and Redmond Limited appear adjacent to the Point Pelee peninsula in the bed of Lake Erie in order to support the issuance of oil and gas leases by the provincial government.

The paragraphs above outlined the surveys of Point Pelee National Park pertinent to its development and its various identities. Research can uncover such surveys, and surveys like them, at the Survey Records Office of the Surveyor General’s Office of the Ontario Ministry of Natural Resources (which, generally speaking, houses most of the original instructions and the original plans and the original field notes of surveys undertaken for the colonial and provincial Crowns since 1791), the Archives of Ontario (which, generally speaking, houses many maps and much of the original correspondence and/or diaries of surveys undertaken for the colonial and provincial Crowns since 1791), the Library and Archives of Canada (formerly known as the Public Archives of Canada and which, generally speaking, houses some of the original material related to surveys undertaken for the federal Crown since 1867 and often its related agencies prior to 1867 in addition to many maps and charts), the local Land Registry Office (which, generally speaking, houses all plans of survey registered or deposited on provincially administered lands), the Canada Lands Survey Records Index of Natural Resources Canada (which, generally speaking, includes most of the materials related to any and all surveys on Canada Lands including some fifty odd entries for Point Pelee), and the offices of local Land Surveyors (whose records are now often available through on-line indexing systems).

On the other hand, there are many other sources of information for surveys of this nature. These other sources include but are by no means limited to: records of works undertaken through the “Drainage Act”; the charts within the records of the Canadian Hydrographic Service; the decades of records kept by the National Air Photo Library; the statutes, regulations, orders-in-council, and case law reports housed in Law Libraries (most often relating to developments beginning in 1791 with the creation of Upper Canada); and, often most importantly, the local knowledge kept by local libraries and by local associations.

Regardless of whether the information collected from any of the sources named above speaks directly or indirectly to a problem under review, a surveyor may glean the necessary information to retrace or re-establish a particular boundary. Most importantly, it can prove pivotal to keep these sources and these timelines in mind when surveying lands whose vesting migrated from government to government by virtue of Canada’s and Ontario’s political development.



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Calendar of Events

August 25 to 30, 2013

26th International Cartographic Conference
2013 From Pole to Pole
Dresden, Germany
www.icc2013.org/

August 27 to 29, 2013

34th Canadian Symposium on Remote Sensing
Remote Sensing: From Inspiration to Application
Victoria, British Columbia
http://geog.uvic.ca/CSRS2013/CSRS_2013_En

September 16 to 19, 2013

GIS Pro 2013
Providence, Rhode Island
<http://www.urisa.org/gispro2013>

September 16 to 20, 2013

ION GNSS + 2013
Nashville Tennessee
www.ion.org

September 23 to 25, 2013

Geomatics Atlantic 2013
Saint John, New Brunswick
<http://geoatlantic.org/about/>

November 20, 2013

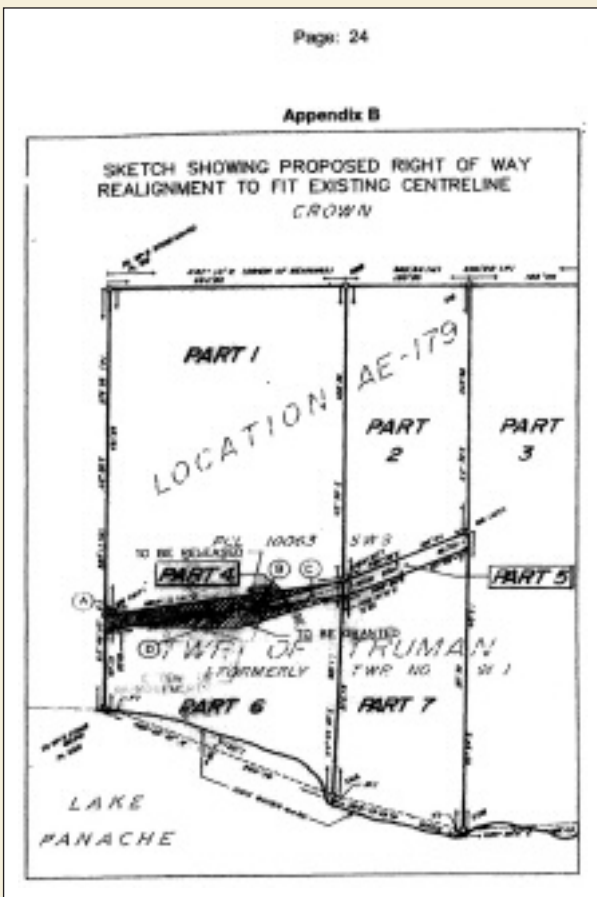
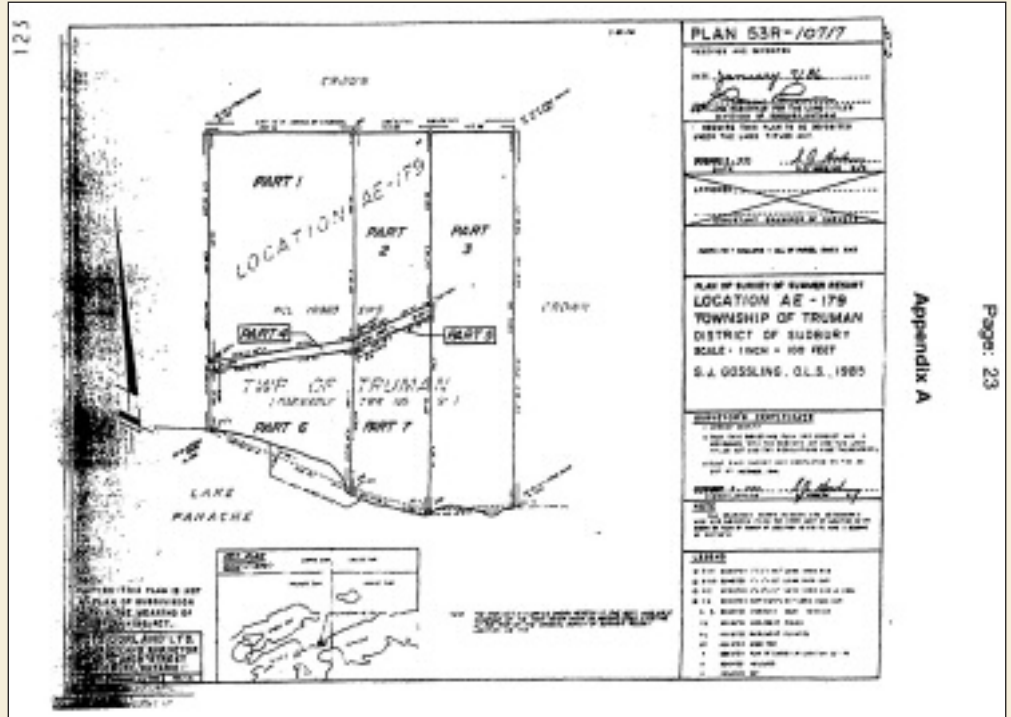
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Correcting Errors in Registered Reference Plans

By Frank E.P. Bowman and Christina Porretta, *Dentons Canada LLP*

The Ontario Court of Appeal recently released its decision in *MacIsaac v. Salo*, 2013 ONCA 98, which provides surveyors with a mechanism for correcting mistakes relating to boundaries in parcel registers. The Court provided guidance as to the definition of the term “boundary,” which it found is not limited to boundaries of separately owned parcels, but also to the boundaries of an easement, including a right of way.

The court concluded, among other things, that a parcel description of a property, such as a reference plan is not definitive of the boundaries or the extent of the land. Rather, the principle of indefeasibility of title does not preclude



the correction of a registered instrument containing a misdescription of the boundaries or the extent of the land.

Facts

Veikko Kivikangas was the owner of a property in Northern Ontario which he wanted to sever into three parcels. In 1985 he retained a surveyor to survey the property and prepare a reference plan showing the three parcels, designated from west to east as Parts 1, 4, and 6; Parts 2, 5, and 7 and lastly, Part 3. Parts 4 and 5 were created as 20 foot wide Parts across the two westerly parcels to enable the granting of rights-of-way for access to the two easterly parcels as required.

The Part 4 right-of-way was to follow an existing dirt/gravel path and Kivikangas claims that he told the surveyor to locate the right-of-way in the same location as the path. In setting out Part 4, the surveyor placed monuments at the northwest and northeast corners of the path where they met the western and eastern boundaries of the westerly parcel, joining them with a straight line to designate the northern limit of Part 4. The surveyor then drew a parallel line 20 feet to the south of the northern limit to designate the southern limit of Part 4. The Reference Plan was completed in December 1985 and recorded on January 7, 1986 (the “R Plan”).

The MacIsaacs purchased the middle parcel (comprising Parts 2, 5, and 7) in October 1990 and the Johansens purchased Part 3 (the easternmost parcel) in September 2000 (collectively, “the plaintiffs”). The Salos purchased the westernmost parcel (Parts 1, 4, and 6) in March 1992. For several years (15 in the case of the Salos) all of these parties assumed that the right-of-way over the Salo property was located within Part 4. The MacIsaacs and Johansens obtained the benefit of a right of way over the Salos’ parcel, while the Salos took their parcel subject to one. All of the parties acquired their properties with the belief that the registered easements crossing the Salo property reflected the location and dimensions of the actual roadway which crosses the properties.

Over the years, the Salos incurred significant expense in making improvements to the gravel road that ran across their property. Controversy ensued between the parties after the plaintiffs intensified their use of the improved road, including using it to transport commercial trucks and construction equipment. The MacIsaacs had a survey prepared in 2005, which revealed that the roadway which crosses the Salos’ property is not entirely within the confines of the right of way as depicted in the R-Plan. Unfortunately, the surveyor mistakenly depicted the right of way as two straight lines, even though the gravel road dipped to the south at one point to avoid a large rock outcrop. Thus, the right of way as shown on the R-Plan failed to show the dip in the road, so that the right of way essentially runs directly into the rock outcrop. The result is that if the plaintiffs wanted to access their properties in the manner originally intended, they would have to traverse the Salos’ private land where the road curves south outside of the right of way and where they have no registered right of way. In order to relocate the access roadway so that it would be entirely within Part 4 it would be necessary to undertake substantial blasting of the rock outcrop as well as removal of trees and brush and the installation of a suitable road base and surface material.

After learning that the roadway was not entirely within the right of way, the Salos barricaded the use of the part of the road that was outside the right of way and on their property. The plaintiffs responded with an action claiming damages from both the Salos and the surveyors. The appellant surveyors admitted that they had made a mistake, and that the R-Plan did not reflect the true boundaries as located on the ground.

The Motion Judge’s Decision

The surveyors brought a motion before a judge in Sudbury for rectification under the Ontario *Land Titles Act*, RSO 1990, c L.5, so that the R-Plan corresponded with the actual boundaries of the roadway on the ground. On the motion, the surveyors conceded that they had failed to show the right of way on Part 4 as instructed by Mr. Kivikangas.

The motion judge acknowledged that the court has the power to rectify the land titles register pursuant to sections 159 and 160 of the *Land Titles Act*. However, the motion judge dismissed the motion for rectification on the basis that the interests shown in the *Land Titles* register must prevail based upon indefeasibility of title – the basis of the Land Titles system. He ruled that since the Salos’ “title” would be impacted by rectifying the right of way, he did not have jurisdiction to grant rectification.

The Court of Appeal’s Decision

The surveyors appealed from the order dismissing their motion. The Court of Appeal overturned the motion judge’s decision, and found that he failed to distinguish between (i) a registered instrument in the land titles system, such as a transfer or a charge, and (ii) a reference plan that is deposited for record in the land registry office. The Court stated that the function of a reference plan is to provide a convenient graphic description of the property being transferred or subject to a charge. In contrast to a registered instrument, the deposit on title of a reference plan does not independently create an interest in land. According to the Court of Appeal, registering a reference plan under the *Land Titles Act* does not preclude the correction of a registered instrument containing a mis-description of the boundaries or the extent of land.

The unanimous decision of the Court of Appeal is an important reminder that the description of registered land in a reference plan, which is registered in a land registry office, is not conclusive as to the boundaries or the extent of land. Many people lose sight of this fact because they assume that everything is guaranteed under the land titles system. However, the Court of Appeal concluded that only an up-to-date survey can confirm the location of the boundaries of a parcel of land as they exist on the ground.

The Court did not discuss what limitations, if any, there may be as to when rectification under the *Land Titles Act* is available (e.g. if a land owner’s interests would be seriously prejudiced if the boundary correction is approved). Although the *Land Titles Act* confers jurisdiction on the court to rectify boundaries contained in reference plans, it is discretionary relief where the courts can make an order “in such manner as considered just.” As a result, there could be situations where rectification would not be contemplated or available under these sections, such as cases where rectification would cause the dominant properties to no longer have the right of way, or where it would defeat the intention of the right of way.

In this case, the Salos argued that they had a registered interest in the land over which the appellants were attempting to impose a right of way by rectification. In other words, because the R-Plan did not accurately reflect the location of the roadway as it existed on the ground when

they purchased property, the Salos would essentially be “losing land on paper” if the rectification was granted and would thus, suffer prejudice. However, the Court’s reasons imply that actual prejudice would need to be shown (which it was not in the case) and not simply prejudice on paper. Indeed, all of the parties, including the Salos, believed that the plaintiffs had the benefit of the right of way for purposes of accessing their respective properties. It was not until 15 years after purchasing the property that the Salos learned of the mistake contained in the R-Plan. In the Court’s view, the risk of injustice in this case would be if rectification was not ordered in these circumstances. The Salos would not suffer any prejudice. In this case, no parties were involved in the action who might suffer prejudice, so that was not a consideration.

Implications

The Court of Appeal’s decision is very helpful for surveyors in Ontario, as it allows for mistakes made in a reference plan to be rectified under the *Land Titles Act*. This decision now gives surveyors the opportunity to rectify a reference plan before or as part of a lawsuit with respect to a surveyor error. If the motion to rectify is successful, a lawsuit against the surveyor becomes unnecessary.

The Court of Appeal also provided guidance as to what a

reference plan is, and is not. The function of a reference plan is to simply provide a convenient graphic description of the property. The deposit on title of a reference plan does not independently create an interest in land.

Finally, the gist of the decision is that only an up-to-date survey can confirm the location of the boundaries of a parcel of land as they exist on the ground. The Court cautioned prospective purchasers of property in the land titles system that the parcel description of a property, which includes a reference plan, is not definitive of the boundaries or the extent of the land. Thus, prospective purchasers may be more inclined to obtain a survey where there are rights of ways and other forms of easements involved.

The Salos have sought leave to appeal to the Supreme Court of Canada.



Frank Bowman is a senior litigation partner at Dentons Canada LLP and has been representing surveyors in Ontario under their insurance program for over 30 years. **Christina Porretta** is a senior associate at Dentons Canada LLP where she provides assistance on complex legal issues related to many of the firm’s practice areas. They can be reached by email at frank.bowman@dentons.com and christina.porretta@dentons.com respectively.

Surveys and Surveyors along the Scugog Carrying Place

By Grant Karcich

Scugog Carrying Place: a frontier pathway is the story of the ancient aboriginal trails connecting Lake Ontario and Lakes Scugog and Simcoe and the Kawartha lakes. My research for the book began as a way to tell the story of how recent developments in the autumn of 2009 were affecting the search for our historical heritage. At that time there was tension between those in favour of building an ethanol plant at the southern terminus of Scugog Carrying Place and those who saw this development as destructive of the area and harmful to the environment. As my research progressed in the winter of 2010, my focus broadened into a story of the regional development of the watershed area of Lake Scugog and other neighbouring watersheds, such as the Beaver River that flows into Lake Simcoe, and the Oshawa and Harmony Creeks which flow into Lake Ontario. The story really is about how we as First Nations and as European settlers took a virgin frontier and changed it, for better or worse, into a place of resources which we harnessed for our own use.

My initial research had begun in the decade before, when I had discovered at the former location of the Archives of Ontario on Grenville Street in Toronto, the first survey map of Whitby Township “C31”, which was completed in 1795 by Augustus Jones. This map had the traditional lots and concessions, but in addition it had one unique feature not seen on other survey maps of the adjoining townships of Darlington and Pickering, that of a trail. This trail was depicted in a reddish brown colour on the map, different from the black ink of the concession boundaries. The trail proved to be that of a First Nations pathway.

This trail was referred to as the Scugog Carrying Place by former premier Leslie Frost. The trail linked Lake Scugog with Lake Ontario to the south and Lake Simcoe to the northwest. The native history of the Scugog Carrying Place is linked with the first surveys carried out in the former townships of Whitby, Reach, Brock, and Thorah, which constitute the modern Regional Municipality of Durham, and stretches from Oshawa in the south to Beaverton in the north. Besides the Scugog Carrying Place, other trails, such as the more famous Toronto Carrying Place, were important in the modern settlement of south-central Ontario.

In the late 18th century, the British ordered various surveys in the area to open up the land for settlement in the region between Toronto and the Bay of Quinte. Beginning with the 1791 baseline survey and followed by other surveys, the 1795 survey of Whitby Township, the Reach Township (today’s Scugog Township) survey of 1808–10, and the 1817 survey of Brock Township, the Scugog Carrying Place was mapped. A number of well known, and not so well known surveyors such

as Augustus Jones, Samuel Wilmot, John Stegmann, and John Edward White were employed on these surveys.

Augustus Jones was assigned to cut his 1791 baseline and mark townships along the north shore of Lake Ontario from the Trent to the Humber River. Through Whitby Township along today’s Bloor Street in Oshawa, he laid the baseline. Jones described as “a vigorous man with an iron constitution, as agile on snowshoes (with a pack on his back) as in



This Ontario County map developed in 1853, cartographer Thomas Devine, is taken from the Atlas containing Maps of Counties of Upper and Lower Canada laid before the legislature of the Province of Canada in the year 1853, produced by the Crown Lands Department.

a loaded birch barkcanoe”¹ trained as a surveyor in New York State where he was born before coming to Upper Canada. Jones had sufficient funds to hire ten chain bearers and axemen to work for seventy-nine days from July 1st to the 17th of September 1791. Jones’ crew constructed the baseline by traversing the shoreline from Toronto to the Trent on foot, while the survey party’s supplies came by bateaux along Lake Ontario.

On entering Whitby Township on August 28, 1791, in his field notes, Jones gives the name of the stream to the east of Wilson’s as *Min-ce-nan-quash* in the language of the Mississauga living in the region. The southern end of this stream marked the starting point of the Scugog Carrying Place. Augustus Jones also noted that a “Mr. St. John lives on the front of this lot [lot 4, Broken Front concession].”² “St. John” is the name Jones used for Jean Baptiste Rousseau, a fur trader who had been established on the south end of the Scugog Carrying Place in order to intercept the Mississauga when they came to Lake Ontario in the spring and autumn to fish and make camp.

After his survey of the baseline through Whitby and the adjoining townships, Augustus Jones returned in 1795 on orders from D.W. Smith, the Surveyor General of Upper Canada. On April 24, 1795, Smith stipulated that “the first Concession line of Township of Whitby (formerly Norwich or No. 8) on the north shore of Lake Ontario, having been already surveyed by you, I need only direct that you proceed there and complete the survey of that Township on the principals upon which it was begun.”³ A year later, on July 17, 1796, Augustus reported the completion of his survey. He and his crew surveyed 114 miles of territory in the township and blazed the corner trees for each concession and road allowance.

Little is known about the First Nations people who worked on the early surveys in Ontario. Augustus Jones while working on his 1791 baseline survey employed a native identified simply in the rolls as Billy a “Delaware Indian”. Jones took a Mississauga wife and his father-in-law, Wabenose or Morning Walker, assisted Jones on his surveys. He worked as a guide for Augustus Jones on the Yonge

Street and Grand River surveys in 1794. Another Mississauga named Ogetanicut is associated with a survey that was completed using the Scugog Carrying Place. In 1804 Ogetanicut was accused of the murder of John Sharp, an English fur trader at the Moody Farewell trading house on Washburn Island in Lake Scugog. On August 15 Chief Justice Henry Allcock ordered the Surveyor General to determine if the location of the Farewell house was in the District of Newcastle and if so to convene the trial of Ogetanicut there. The survey party under John Stegmann left York two days later and in three days’ time they traveled 38 miles and stopped at the northern boundary of Whitby Township, presumably going by way of the Scugog Carrying Place. During the following three days the survey party ran a line to the location of the Farewell trading post on Lake Scugog. The survey determined that the murder took place in Newcastle District and John Stegmann was able to report that, “in obedience to your request instructions bearing date of the 15th Inst: have the honor to report that the same is complied with, That the exact and position situation of the house of Moody Farewell is seven miles eastward of the division line between the Township of Whitby & Darlington”⁴

Stegmann’s original name was Johann Friedrich Stegmann and he was born about 1758 in Kassel, Hessen, which today is a part of Germany. He was part of a large contingent of Hessian troops that came over to Staten Island, New York in 1776 to fight for the British during the American Revolution. After that war, he moved to Canada and changed his name to John, got discharged from the army and married Marie-Ursule Choisy from L’Islet, Quebec in 1784. He started



The first image of Oshawa to be published was released in 1847, artist unknown, from *Smith’s Canadian Gazetteer* (1846-47). Reference: *Smith’s Fourth issue, 1847, Library and Archives Canada.*

¹ Donald B. Jones, “Augustus Jones,” *Dictionary of Canadian Bibliography*, Volume VII 1836 to 1850 (Toronto: University of Toronto Press, 1988), 450-52.

² Augustus Jones, Field Book No. 1, Survey Notes & Diary, 1791-2, Survey Records (L & F) Original Notebook No. 828, January 1791-September 17, 1791/September 7, 1792-October 25, 1792 (Ontario Ministry of Natural Resources). Copyright: 2011 Queens Printer, Ontario.

³ Archives of Ontario, Letter from Augustus Jones, Surveyor, to survey officials, dated Newark October 4, 1794, RG1 A-I-1 Vol. 32: 778.

⁴ Archives of Ontario, John Stegmann MS 1814, August 28, 1804.

surveying in Canada in 1783 working on a survey of the County of Dundas, west of the Ottawa River along the St. Lawrence and later at the Bay of Quinte. After 1790 he carries out survey work in the York area.


He was appointed as a Deputy Surveyor on October 18th, 1790 and went on to survey part of Woford and Montague Townships in 1796; the Townships of Beverly and Flamborough in 1797; Glanford, Burford, Oxford and Blenheim Townships; and the shore of Niagara River from Table Rock to Chippewa in 1798. He was engaged on the surveys of Lake Shore Road and Dundas Street, eastward from York, and he also surveyed the Township of King in 1799; the second, third and fourth concessions on the east side of Yonge Street in 1800 and he examined Markham Township in 1801; Whitchurch in 1802; and in 1803 he surveyed the Townships of Finch and Elmsley.

A trial was ordered at Presqu'île within the District of Newcastle, but the land route was in poor shape, since the only road, the Kingston Road had had heavy rains and the road was damaged and not passable in places. Therefore, the entire court embarked for Presqu'île traveling east from Toronto on the ship, the Speedy. Though the Speedy was considered unseaworthy by her captain, Lieutenant Governor Peter Hunter ordered that she put to sea and take the trial party to Presqu'île where the Speedy was lost with all on board. Surveyor John Stegmann and the accused Ogetanicut both went down with the ship. Stegmann's daughter married Major Wilmot, who six years later surveyed the Scugog Carrying Place in Reach Township. In 1990 the remains of the Speedy were located on the bottom of Lake Ontario.

The first survey map of Reach Township created by Samuel Wilmot (1774 – 1856), who surveyed Reach Township from November 20, 1809 to March 28, 1810, placed the Scugog Carrying Place north of the ridge, extending from Whitby Township down the slope to Lake Scugog. His map shows fur-trading posts at the mouth of the Nonquon River, which was labeled “Mistake River,” and at the mouth of Cawber's Creek, described as an “Indian Foot Path.” D.F. McOuat, the archivist of Ontario pointed out that Wilmot's field notes at the time make “four references to an existing Indian Foot Path as follows 3rd Concession 16th Post, 4th Concession 17th Post, 5th Concession 18th Post, and 6th Concession 19th Post”.⁵ The trail on the Whitby Township map clearly lines up with the survey map of Reach Township created by Samuel Wilmot a decade and a half later.

Samuel Wilmot began his surveying career by acting as a chain bearer for his father-in-law John Stegmann and later he was employed by the government to survey the route for the main road from Kingston to York. This road was cut four

rods wide and grubbed two rods by Captain Danforth. Sam Wilmot also surveyed Brock Township in March and May of 1817 and returned to complete the survey on November 12, 1817 and his notes describe how difficult such work was. He worked his way north along the Scugog Carrying Place from Whitby with a team and wagons. “Day after day he was forced to turn back to Reach Township, driven there by the rain, the snow and the impassable swamps.”⁶ He travelled as far north as Lake Simcoe twice, in May and November. Wilmot completed the survey by the end of 1817. He mapped out the townships of Reach (1809-1810) and Cartwright (1816) around Lake Scugog. He also surveyed Scugog Island which at the time of his surveys was not an island but a peninsula. Later in 1829-1830 a dam at Lindsay raised the level of Lake Scugog which separated the island from the rest of the area. Only a few years prior did the first European settlers arrive in Reach and Cartwright.

In 1821, John Edward White began surveying Thorah Township and he was rewarded with a land grant of 1,700 acres, eventually settling immediately north of Beaverton on Lake Simcoe. White went on to complete the survey of the township with David Gibson in 1827. When Arad Smalley subsequently surveyed Thorah in 1830, he found only two heads of households, namely Donald Carter and Samuel Fransworth in what became Beaverton. Thorah Township residents had no direct link to the rest of the province in the south. Their only connections were either along Lake Simcoe to the Toronto Carrying Place or up the Beaver River and onto the Scugog Carrying Place. Naturally, they requested road links with the south and Arad Smalley was contracted to survey a road in 1827, which he called the Whitby Road and later called the Cameron Road, which followed along the west bank of the Beaver River parallel to the Carrying Place down to where Cannington is today. From there his survey ran due east to the Brock and Mariposa town line, following it for six to seven miles down to the Nonquon River. This allowed settlers to come in from Reach and Whitby Townships. In 1829 Smalley surveyed another road in Thorah along the shoreline of Lake Simcoe from the Township's southwest perimeter north to the Talbot River and down to where Beaverton is situated today, the northern terminus of the Scugog Carrying Place. 

Having grown up along the Scugog Carrying Place route, author **Grant Karcich** has long wanted to bring the story of this forgotten trail back to life. Information about his book, “*Scugog Carrying Place: A Frontier Pathway*” can be found in the [Book Reviews](#) on page 46.

⁵ Trent University Archives, D.F. McOuat, “Letter July 2, 1971 to Leslie Frost,” Leslie Frost Fond, 77-024/27/3.

⁶ Archives of Ontario, Samuel Wilmot, “Diary taken on the survey of Township No. 1 immediately in rear of Reach between the 21st of March and 7th May 1817,” MS924, reel 4.

Regulations Governing Unmanned Air Vehicles

By Robin Poot, O.L.S., O.L.I.P.

At the spring conference for the American Society for Photogrammetry and Remote Sensing (ASPRS) the concept of Unmanned Air Vehicles (UAVs) was a popular topic.

I observed one special session by the National Oceanographic and Atmospheric Administration's (NOAAs) UAV Program. The scope of UAV applications at NOAA was breathtaking; from a 200 dollar glider that was lifted to 100,000 feet by a balloon to study a column of air and land exactly where it was launched, to a multi-million dollar Global Hawk that can cruise at 50,000 feet for 24 hours, to which NOAA has integrated over 100 different sensors for various missions. It is staggering to imagine all the applications.

Technical matters aside, what was also discussed was that the regulatory environment in the United States (US) does not permit private civilian use. At that time only one single-use permit to conduct a project was issued to a private commercial operator. Interestingly, as they were operating beyond visual line of sight to a ground observer, they used a manned chase aircraft in order to keep the UAV within visual-line-of-sight.

To back up a minute, in 2007 there were companies in the US operating UAVs under the premise that they were model aircraft, which are governed by different regulations than UAVs. In a 2007 circular, the Federal Aviation Administration (FAA) clarified that when such vehicles are used for commercial use, they are classified as UAV and may not be operated without authorization, effectively restricting UAV from commercial use (FAA Docket 2006-25714).

In 2012, President Obama signed the FAA Modernization Act which amongst other things gave instruction for the FAA to integrate UAVs into the National Airspace System (NAS) by 2015. Before 2013, they were supposed to make a ruling on a "broad class of smaller UAVs", however that ruling is now nearing a year past due.

One thing I did hear was that "Canada is great, you can do anything up there," which prompted some reading and discussions.

In Canada the regulations for UAVs are similar to the US in that any commercial use designates the aircraft as a UAV and not a model aircraft. Canada is however more advanced in this process and is more permissive in that they do allow permitted flights of UAVs.

UAVs in Canada are regulated by the Aeronautics Act and the Canadian Aviation Regulations (CARs).

Being two rather hefty documents that cover all aircraft operations, Transport Canada wrote a 62 page circular advisory called Staff Instruction (SI) 623-001. The advisory gives

guidance to Transport Canada staff on what to look for and what conditions may be applied to a permit, called Special Flight Operation Certificates (SFOCs) as defined by CARs 602.41, which are required for all UAV flights in Canada.



Figure 1: Clip of a Visual Navigation Chart (VNC) used by manned aircraft to navigate the 3D airspace and includes hazards such as glider operations and towers.

SFOCs are operation certificates issued by Transport Canada and are generally issued for each site and occurrence of an operation. The user is to provide details about the equipment, site, risk mitigation plan and other pertinent details.

The instructions touch on items like organizational requirements of a commercial operation, staff training, liability insurance requirements, staff role requirements (manager, supervisor, pilot, observer, and other potential roles that may be required to safely carry out an operation), and operational factors.

Items that limit the scope of operations include the *permission to access* adjoining properties, the need for *continuous and unaided visual line of sight*, restriction of flight to 30 metres lateral distance from *people not involved in the operation, inhabited houses, livestock, and manned vehicles* (i.e. travelled roadway).

A major reason for the visual line of sight rule is that the pilot in a normal aircraft is required to watch for and avoid ground obstacles and other aircraft. Unlike manned aircraft, for UAVs that responsibility goes to the Observer.

As the flight operations for manned aircraft has a floor of 500 feet above ground level in rural areas (except things such as aerodromes and crop spraying operations), Transport Canada has taken the approach that keeping UAV operations to a ceiling of 400 feet reduces risk to other aircraft.

cont'd on page 38



Figure 2: Clip of same area as Figure 1 showing areas of potential UAV deployment challenges due to road restrictions.

The flight restrictions for ground objects include *all portions of flight* including takeoff, landing, flight to project, and flight during the project including *turning manoeuvres*. During a project, for example, if a fixed-wing UAV were to have a turning circle of, say, 300 metres, then one could not generally design flight-lines ending within 330 metres of such ground objects (under zero wind conditions, as wind changes flight dynamics relative to the ground).

Visual line of sight is the other major limitation, being in place to ensure safety with air and ground objects. Given an

observable distance of, say, 500 metres for a small UAV, this would mean that one could not generally design flight-lines ending further than 200 metres from a central observer (assuming the same 300 metre turning circle). The actual visible line-of-sight, however, has many determining factors and can change depending on the conditions.

As SFOCs are issued on a case-by-case basis, experienced operators may receive greater flexibility in the issuance of an SFOC; however, the basic operating challenges for UAVs remain.

We will see what the FAA proposes for the so-called “broad class of smaller UAVs” and if it impacts or follows the way Transport Canada regulates UAVs. In the meantime, while technologically speaking you could launch a UAV from Mississauga, take a picture of Queen’s Park, and return the vehicle to base, this is not actually possible under the regulations. Potential UAV users need to be aware of the regulatory reality that affects the actual deployment of this interesting technology.



Robin Poot, O.L.S. (Geodesy) is the Geomatics Manager of the Airborne Sensing Corporation. He has practiced Geodesy and Photogrammetry in North America, Latin America and the Caribbean. He can be reached by email at rp@airsensing.com for further information.

NEWS FROM 1043

Changes to the Register

MEMBERS DECEASED

Stephen Bernard (Barney) Panting	831	April 18, 2013
Patrick Anthony Monaghan	814	June 9, 2013

RETIREMENTS/RESIGNATIONS

Bernard J. Bezaire	1502	March 1, 2013
John P. Bacon	CR197	March 4, 2013
Gordon W. Garrard	CR89	April 3, 2013
Donald A. Redmond	1342	April 16, 2013
Valerie I. Higgin	CR164	April 29, 2013

COFA’S REVISED

Was: **Halliday Surveying Inc.**

Is: **Tulloch Geomatics Inc.**, Espanola, May 9, 2013

COFA’S ISSUED

Story Geomatics Inc. Haileybury, May 14, 2013

CORRECTION:

In the photos of the 2013 Veterans’ Dinner published on page 25 of the Spring 2013 issue of this magazine, Kirk Stidwill’s name was spelled incorrectly. We apologize for the error.

Surveyors in Transit

Rafal Kaczmarek is now in the Thunder Bay location of **J.D. Barnes Limited**.

Robert D. Halliday is now the managing OLS of **Tulloch**

Geomatics Inc., 449 Second Ave., Espanola, ON, P5E 1L2. Phone: 705-869-5792.

Stantec Geomatics Ltd. has moved to 1331 Clyde Avenue, Suite 400, Ottawa, ON, K2C 3G4.

Vineetha S. Rathnayake is now with **Young & Young Surveying Inc.** in Bolton.

Angela Jeffray is now with the **Ministry of Transportation** in Kingston. Phone: 613-545-4816.

Ryan Seguin is no longer with **exp Geomatics** and is now the managing OLS of **Story Geomatics Inc.** located at 332 Main Street, Haileybury, ON, P0J 1K0. Phone: 705-672-3324.

Ken Ketchum is now with **Collett Surveying Inc.** in Brockville.

Brian A. Coad is now the managing OLS at **Verhaegen Stubberfield Hartley Brewer Bezaire Inc.** in Leamington.

Gabriel Laframboise has transferred to the Whitby office of **J.D. Barnes Limited**.

Raymond Sibthorp is now with **J.D. Barnes Limited** in Milton.

Frank Mauro is no longer with **J.D. Barnes Limited**.

John P. Knowles is no longer with **J.D. Barnes Limited**.

Dan Cormier is no longer with **J.D. Barnes Limited**.

Michael Fisher is now with **J.D. Barnes Limited** in Markham.

Doug Jordens is now the managing OLS at the Dryden office of **exp Geomatics Inc.**

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EDUCATIONAL FOUNDATION NEWS

Congratulations to our Spring 2013 Award Winners and Additional 2012 Award Winners

Survey Law II Awards (2013) – Again this year, two groups of students were recognized for their academic achievement in Survey Law II. **Ayodele Dada** and **Fariya Farhad** were the top two students in ENG 4170 (Survey Law II) at York University. **Justyna Ziemlewska** was the first place winner in the AOLS Survey Law II course and **Tom Finnie** and **James Rakowski** tied for second place.

Paul Crocker received the David W. Lambden Award, which is sponsored by the South Central Regional Group, for finishing with the top mark in the **Fall 2012 AOLS Survey Law I** course and **Tom Finnie** and **James Rakowski** tied for second place.

Loyalist College (2013) – **Rebecca Sharon Morris** received the Eastern Regional Group Award, which is co-sponsored by the members of the Eastern Regional Group. This award is presented to a graduating student for scholastic achievement and leadership in the Survey Technician Program.

Fleming College (2013) – **Peter Richardson** received the Geomatics Award, which is presented to a student with the highest overall average in his/her second year in the Geomatics Technician Program. **Sharon Lam** was the recipient of the GIS Award, which is presented to the student in the

GIS Applications Specialist Program who exemplifies leadership in project management. **Amy Duncan** received the Kawartha-Haliburton Surveyors Scholastic Award. This award is co-sponsored by the Kawartha-Haliburton Regional Group in memory of Larry Nesbit and Jack Fleguel and is presented to a student in Geomatics who helps and assists his/her peers with patience and understanding in achieving difficult goals.

York University (2012) - **Joshua Barry** and **Hashem Abdo** were the recipients of the First Year Entrance Awards. **Dennis Sherman** and **Alec Sloan Mantha** received recognition for the Highest GPA in 1st and 2nd year; **Srishti Ramakrishnan** and **Wendel Chan** for the Highest GPA in 3rd year and **Ayodele Dada** and **Wendel Chan** for academic achievement in Survey Law I. **Dennis Sherman** was also the recipient of the Hubert. J. Reinthaler Award, which is presented to a well-rounded student with a combination of high academic performance and evident characteristics of enthusiasm, leadership and professionalism.

University of Waterloo (2012) – Awards were presented to **Ashlyn Jaggernath** and **Sarah Ann Thompson** for their academic excellence in the Geodesy (Geog 310) course in the Geomatics program, Faculty of Environment.

The Educational Foundation would like to recognize with thanks a donation made in the memory of Barney Panting.

SCHEDULE “A”

ALLEGATIONS OF PROFESSIONAL MISCONDUCT

CANADA)	IN THE MATTER OF the <i>Surveyors Act</i>
)	R.S.O. 1990, Chapter S.29
)	
PROVINCE OF)	AND IN THE MATTER OF Brad Warren, O.L.S.
)	
)	
ONTARIO)	AND IN THE MATTER OF a Disciplinary Hearing of the
)	Discipline Committee of the Association of Ontario Land
)	Surveyors held in accordance with sections 26 and 27 of the said Act.

I, **WILLIAM D. BUCK, O.L.S.** of the City of Markham, in the Region of York, am the Registrar of the Association of Ontario Land Surveyors.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. The Council of the Association of Ontario Land Surveyors (AOLS) pursuant to Section 25(7)(a) of the <i>Surveyors Act</i>, by a Motion dated October 22, 2012, directed the Discipline Committee to hold a hearing in respect of allegations of professional misconduct against Brad Warren, O.L.S. 2. It is alleged that Brad Warren, O.L.S. (herein referred to as “Mr. Warren”), in his personal capacity, and as the official representative for the firm Land Survey Group Inc., is guilty of professional misconduct within the meaning of Section 35 of Regulation 1026, R.R.O. 1990, as amended, all on the following grounds: <ol style="list-style-type: none"> a) On June 22, 2012 Joseph Young, O.L.S. of the firm J. D. Barnes Limited filed an official complaint against Mr. Warren alleging that Mr. Warren had purchased the Internet address www.jdbarnes.ca and that he had knowingly and purposefully configured this address so that anyone who attempted to use it was automatically redirected to the Land Survey Group Inc. website. b) On October 11, 2012 the Complaints Committee of the AOLS issued a Final Decision that referred Mr. Warren to Council with a recommendation that he be referred to the Discipline Committee. c) On October 22, 2012 AOLS Council passed a Motion referring Mr. Warren to the Discipline Committee. 3. It is alleged that the member failed to comply with the <i>Code of Ethics</i> of the AOLS in that he failed to conduct his professional affairs in such a manner as to maintain public | <ol style="list-style-type: none"> confidence and trust in the profession, contrary to Section 33(2)(a) of Regulation 1026, R.R.O. 1990, as amended. Failure to comply with the <i>Code of Ethics</i> constitutes Professional Misconduct within the meaning of Section 35(3) of Regulation 1026, R.R.O. 1990, as amended. 4. It is alleged that the member has committed an act of professional misconduct as defined by Section 35(14) of Regulation 1026 of the <i>Surveyors Act</i> in that his misdirection of the public was not factual and was therefore contrary to Section 32 of the said Regulation. 5. It is alleged that the member has committed an act of professional misconduct as defined by Section 35(15) of Regulation 1026 of the <i>Surveyors Act</i> in that his misdirection of potential clients from the J. D. Barnes Limited website may have caused a loss of business to that firm. 6. It is alleged that the member has committed an act of professional misconduct as defined by Section 35(16) of Regulation 1026 of the <i>Surveyors Act</i> in that his misdirection of potential clients from the J. D. Barnes Limited website was an attempt to solicit work from another member. 7. It is alleged that the member has committed an act of professional misconduct as defined by Section 35(21) of Regulation 1026 of the <i>Surveyors Act</i> in that his actions would reasonably be regarded by members as dishonourable or unprofessional. |
|---|--|

Dated at Toronto, Ontario, this 3rd day of December, 2012.

DISCIPLINE DECISION

IN THE MATTER OF the *Surveyors Act*, R.S.O. 1990, Chapter S.29, as amended

AND IN THE MATTER OF Brad Warren, O.L.S.

AND IN THE MATTER OF a Disciplinary Hearing of the Discipline Committee of the Association of Ontario Land Surveyors held in accordance with

Sections 26 and 27 of the said Act

Order and Reasons

cont'd on page 42

This matter proceeded before a Panel of the Discipline Committee on March 27 and 28, 2013. The Member had retained Mr. Jamie Helm and both Mr. Warren, O.L.S. and Mr. Helm were present. The Association was represented by Mr. Izaak de Rijcke, O.L.S. and Counsel; Mr. de Rijcke and the Association Registrar, Mr. Bill Buck, were also present. The Panel was assisted by Independent Legal Counsel, Carol Street.

THE FACTS

The Association alleged that Mr. Warren was guilty of professional misconduct, in his personal capacity and as the official representative for the firm Land Survey Group Inc. In summary, the following facts were established or not disputed:

1. J. D. Barnes Limited (“JDB”) is a large land surveying and mapping firm carrying on business in Ontario, and also in Canada and internationally. Mr. Joseph Young, President of JDB attended and gave evidence. He explained that JDB owns the registered internet domain name www.jdbarnes.com. However, at the time in question JDB had not registered and did not own the domain name www.jdbarnes.ca.
2. In February of 2012, Mr. Warren purchased, for a small fee, the internet address www.jdbarnes.ca. He was legally entitled to buy this domain name. He admitted that he purposely reconfigured this address so that anyone accessing it would automatically be directed to the Land Survey Group Inc. (“LSG”) website. Mr. Warren is a shareholder of LSG.
3. In June of 2012 JDB became aware that anyone typing in the internet address www.jdbarnes.ca would be automatically directed to the website of LSG. On June 22, 2012 Mr. Young, on behalf of JDB, made a complaint against LSG to the Association, and requested that the Association begin an investigation into the complaint. (Exhibit 1, Tab 1)
4. The Association advised Mr. Warren and LSG of this complaint and asked for a response. (Exhibit 1, Tab 3)
5. On the same day, JDB’s lawyers also wrote to LSG and demanded, in summary, that LSG cease and desist making any use of the www.jdbarnes.ca registration. (Exhibit 2, Tab 1)
6. Mr. Warren, on behalf of LSG, replied that LSG was not the owner of the domain name www.jdbarnes.ca. (Exhibit 2, Tab 2), but had voluntarily ensured that anyone typing in this domain name would no longer be directed to the website of LSG. Mr. Warren also responded, on behalf of LSG, to the Association’s letter in the same way: he said that LSG did not own the domain name in question, but had taken voluntary steps to ensure that there was no “redirect” to LSG. (Exhibit 2, Tab 3)
7. Mr. Warren’s responses, on behalf of LSG, were technically correct: LSG was not the registered owner of the domain name www.jdbarnes.ca. Mr. Warren did not disclose that he personally was the registered owner.
8. Mr. Warren believed that he had satisfactorily dealt with the

Mr. Warren’s counsel pointed out, correctly in the view of the Panel, that Mr. Warren had at no time directed clients or potential clients away from the JDB website. The JDB website is www.jdbarnes.com not www.jdbarnes.ca. Mr. Warren had no ability to, and did not, direct or try to direct clients or potential clients away from the JDB website.

The Panel agrees with counsel’s submissions that this Panel is

issue, and no further action was required. However, Mr. Young, by email to the Association dated August 24, 2012 (Exhibit 1, Tab 8) advised that JDB had contacted the Canadian Internet Registration Authority (“CIRA”). In response to JDB’s request, CIRA advised that the registered owner of the domain name www.jdbarnes.ca was Mr. Warren personally.

9. Mr. Warren did not dispute CIRA’s information. He maintained that it was a CIRA concern and not an Association issue. He denied that there had been any financial gain by LSG or him personally, and correspondingly no loss to JDB. (Exhibit 1, Tab 12)
10. JDB’s complaint was considered by the Complaints Committee, which referred it to Council with a recommendation that it be forwarded to the Discipline Committee (Exhibit 1, Tab 13). Council subsequently considered the matter and referred it for a hearing by the Discipline Committee. (Exhibit 1, Tab 21)

THE ALLEGATIONS

Schedule A of Exhibit 3 sets out the allegations made by the Association. In summary, it was alleged that:

3. Mr. Warren had failed to comply with the Code of Ethics of the Association in that he had failed to conduct his professional affairs in such a manner as to maintain public confidence and trust in the profession, contrary to Section 33(2)(a) of Regulation 1026, R.R.O. 1990, as amended, which in turn constitutes Professional Misconduct within the meaning of Section 35(3) of that Regulation;
4. That Mr. Warren had committed an act of professional misconduct as defined by section 35(14) of the said Regulation in that his misdirection of the public was not factual and was therefore contrary to section 32 of the Regulation;
5. That Mr. Warren had committed an act of professional misconduct as defined in section 35(15) of the said Regulation in that his misdirection of potential clients from the JDB website may have caused a loss of business to that firm;
6. That Mr. Warren had committed an act of professional misconduct as defined by section 35(16) of the said Regulation in that his misdirection of potential clients from the JDB website was an attempt to solicit work from another member;
7. That Mr. Warren had committed an act of professional misconduct as defined by section 35(21) of the said Regulation in that his actions would reasonably be regarded by members as dishonourable or unprofessional.

[note that the numbering above is from Schedule A to the Notice of Hearing, Exhibit 3]

DECISION

bound by the wording of the allegations and cannot rewrite that wording to find a member guilty of a different allegation than what has been set out by the Association in Exhibit 1. Accordingly, the Panel does not find Mr. Warren to have committed professional misconduct pursuant to paragraphs 5 and 6 above.

With respect to the remaining allegations, Mr. Warren argued,

through his counsel, that the issue was properly characterized as a CIRA registration issue, and that CIRA had the exclusive right to deal with issues of this sort. In response, the Association provided the Panel with a number of cases. Although they are in the context of other professional regulatory bodies, the Panel is satisfied that whatever CIRA's jurisdiction, the Association, through its Discipline Committee, has the obligation to investigate and determine allegations of professional misconduct. (See *Krieger v. Law Society of Alberta* [2002] S.C.J. No. 45; *Nowoselsky v. Alberta College of Social Workers (Appeal Panel)* (2011, A.J. No. 413; *Histed v. Law Society of Manitoba* [2007] M.J. No. 460.)

The Panel finds on the facts that Mr. Warren is guilty of professional misconduct as alleged in paragraphs 3, 4, and 7 above. His motivation in acquiring the domain name www.jdbarnes.ca is questionable. His response to the initial complaint, in which he said that LSG was not the owner of this domain name, while technically correct, was misleading. He

The Panel heard that Mr. Warren is an experienced and competent member of the Association who has volunteered his time on the Academic and Experience Requirements Committee and the Survey Record Index Committee over a number of years. There have been no prior proceedings by the Association against him. The Registrar of the Association conceded in cross-examination that he held Mr. Warren in high esteem as a person and as a professional.

Pursuant to section 26(4)(k) of the *Surveyors Act*, R.S.O. 1990, c. S. 29, as amended, the Panel, after making a finding of professional misconduct, has the authority to fix and impose costs to be paid by the member to the Association. The Association sought costs in the amount of \$15,000. Counsel for Mr. Warren pointed out that there had been some negotiations between the parties regarding a Joint Submission that would have included an admission of professional misconduct by Mr. Warren to some of the allegations against him, and would therefore have made a complete hearing on the merits unnecessary. In these circumstances, the Panel considered it inappropriate to award the Association the full amount of costs that it sought.

The Panel orders as follows:

1. Mr. Warren is found guilty of the allegations of professional misconduct as set out in paragraphs 3, 4, and 7 of Schedule A of the Notice of Allegations (Exhibit 3);

ensured that those who accessed this domain name would be automatically directed to the website of LSG, potentially misleading the public as to who they were dealing with. In the view of this Panel, Mr. Warren's conduct in this regard:

1. Shows a failure to conduct his professional affairs in a manner that will maintain public trust and confidence in the profession, contrary to the *Code of Ethics*, and to section 33(2)(a) of Regulation 1026, and is professional misconduct pursuant to section 35(3) of the said Regulation;
2. Was a form of advertising that was not factual in that a member of the public could conclude, for example, that JDB had changed its name to LSG. This action constitutes professional misconduct pursuant to section 35(14) and section 32 of the said Regulation; and
3. Would reasonably be regarded by members as dishonourable or unprofessional pursuant to section 35(21) of Regulation 1026.

PENALTY

2. Mr. Warren has been reprimanded by this Panel and the fact of the reprimand is not to be recorded on the Register of the Association;
3. Mr. Warren will pay to the Association within ninety (90) days of March 28, 2013 the all-inclusive sum of \$10,500 for costs;
4. This Order and Decision will be published, with Mr. Warren's name identified, in the Ontario Professional Surveyor magazine and posted on the public side of the Association website;
5. Mr. Warren is required to successfully pass a course in professional ethics at a College or University level on or before July 24, 2014, such course to be pre-approved by the Registrar of the Association.

This Order may be signed electronically and in counterparts.

Oral Decision given March 28, 2013.

Travis Hartwick, O.L.S.: Chair

Tom Packowski, O.L.S.

Terry Dietz, O.L.S.

Peter Moreton, O.L.S.

Patricia Meehan, Lieutenant-Governor Appointee

Prepare The Way For Change!

By Bob Halliday, Chair Academic and Experience Requirements Committee (AERC)

This article is a summary of a presentation made to the AOLS membership in Feb 2013 at the AGM.

AERC is revising the processes for recognizing student academic qualifications and for the Articling experience. We have been told that young people are very aware of the difficulty of the training expectations and that this has become a disincentive to them for considering joining our profession. Apparently there is less concern with the length of Articles than there is with the amount of work along the way and the uncertainty about reaching the final goal. We are hoping to give the students better value for the time put in, and greater certainty of achieving the desired outcome, which is to receive their commission as an Ontario Land Surveyor.

Academic Evaluation and entrance to Articles:

The past process required a student to submit transcripts of their academic achievements for evaluation. Typically if a student had graduated from a Canadian University in a geomatics program they would pretty much get credited for all of the geomatics subjects required of AOLS. The only time they would have a shortfall would for instance be if they had not taken a course in Satellite Geodesy, perhaps because their degree was so old that the subject was not being offered then, or for some reason they had chosen not to take the subject. A tabulation would be done to see which courses were missing. A very straight forward one for one process would be used and a list of missing courses could be generated and passed on to the student.

We recognized that many candidates had partial credits, especially with respect to Internationally trained candidates, and that asking them to take an entire course when they were only missing one or two topics within a course was a hardship, so as part of a program sponsored by Ontario's Ministry of Citizenship and Immigration we have developed another route, using a competency based assessment. This will essentially allow us to say that we can recognize a student's GPS course from a particular program for what it is, and just require that the student provides proof of their knowledge of whatever was missing when we compared that course to the full stated requirement for Satellite Geodesy. A "Learning Contract" can then be drawn up which specifies the particular portions of Satellite Geodesy the student still needs to learn, perhaps which sources of training will be acceptable, with a commitment that completion of the additional training plus their existing course qualification will equate to the full course. This provides certainty for the student as well as for AERC. We commit to recognizing their effort, and we get the comfort of knowing that the combination of the sources of education will give the student sufficient background.

The authority of the AERC has been revised under O. Reg. 1026. With this new power we could technically take someone

who is a recognized expert in their chosen field of Land Surveying, and upon application and review, give them full status as an OLS without any examinations or articling period. In reality there are probably very few individuals who would receive this kind of full automatic acceptance of their experience, but there may be a few. Of greater relevance is the fact that we can quite readily take someone with many years of high level experience and give them recognition for some or all of their experience. We haven't yet worked out all of the details, but I suspect that they will be asked to submit a portfolio of their work with actual examples and an indication of the level of their involvement.

Relationship between the Surveyor and the Articling Student:

The present Articling process involves the signing of an Articling agreement between the student and the surveyor who is taking on the student. The intention has always been that the surveyor will provide training and the opportunity to obtain actual work experience to the student. In exchange the student promises to work faithfully for the surveyor, and in most cases the surveyor is hoping to end up with a new surveyor on staff, and in many cases views the student as part of the surveyor's succession planning.

Under the present system, each student has a monitor who is essentially a liaison between the student and AERC. The monitor receives quarterly Work Reports, reviews them, comments on the Reports and keeps track of the time credits the student accumulates. Once the time requirements and other assignments have been met the monitor signs off, indicating that in his or her opinion the student is now ready to write their professional exam.

Unfortunately, AERC believes that over time, much of the responsibility for ensuring the quality of experience the student receives has fallen to the monitor, rather than the surveyor. In some cases it appears that the surveyor may not be reviewing the quarterly report being submitted by his or her student. This is of great concern to AERC, and we are hoping to turn this around by making some significant changes.

Under the proposed changes, AERC monitors will not be assigned to students. Instead, the surveyor will be required to submit a number of more detailed reports than is presently required including a summary of the categories of work experience the student has obtained, along with an indication of how the surveyor plans to achieve experience in the missing categories. In preparing these reports the surveyor will be very aware of how the student is progressing, and will be expected to put plans in place to keep the student moving forward. Presently it seems that exposure to the required variety of work experience is a low priority for some firms. In

these cases it seems that if the student doesn't get the experience there is little concern and less willingness to take steps to help the student make up the shortfall. Ultimately the responsibility for the student's preparedness and competency will lie with the articling surveyor and the student.

The Articling agreement will be strengthened and clarified to make very plain the expectations of AERC and ultimately of AOLS. The format may be similar to the "Learning Contract" where a very detailed list of each aspect of the expected training will be signed by the surveyor and student. The surveyor will then be required to sign off on each aspect of the contract as their student proceeds, with a final signature required when the surveyor believes that the student is ready to write the professional exam.

To help recognize the surveyor's level of involvement, there will be CPD credits allowed for those surveyors who have Articling students: we are presently thinking of 12 per year (one per month), out of a total of 22 per year as required under professional activities that support the profession.

The Articling Process:

The student is required to obtain 225 days of experience at the party chief level, another 113 days of field experience at the non-party chief level (which generally means activities not specifically related to cadastral surveying) as well as 113 days in office activities including some client contact, estimating, title searching and project research. The student is required to submit quarterly work reports, a Field Notes Assignment, to attend a three day Lecture course and has to write and pass (with a minimum mark of 65%) a Statutes Exam and a Professional Exam.

The Statutes and Professional exams will remain. We are very close to having an on-line, on-demand Statutes Exam. Also, the required lengths of experience will probably remain, although there have been discussions ranging from shortening the overall time required by one year to extending it by one year. We are very aware that we are in direct competition with the engineering field for students, and are trying

to make sure that we don't place ourselves at a disadvantage for recruitment.

A list of 'core' survey experience is being finalized, and in one way or another, every student will be required to experience each during the Articles. If they get exposure through the projects done in their office then fine. If the area of experience is not available through their surveyor's practice, rotation to another branch office or another firm will be encouraged. Failing any of these options, sample projects under each of these categories will be available through AOLS. Once their Articles have been completed, the student will be required to submit a single final report of no more than 10 pages summarizing how they have met the various experience requirements. To assist Surveyors and Articling Students throughout the articling period, the AERC is proposing to enlist "Mentors", OLS members who will volunteer to help any student deal with a topic in which the Mentor is considered an expert, or at least more knowledgeable than their average colleagues.

Surveyors for the future:

The AERC is carrying out a comprehensive and substantial overhaul of the processes for assessing the academic and experience requirements for a candidate to become an Ontario Land Surveyor. It is expected that these changes will be implemented over the next six months for a roll out in early 2014. If you have questions or suggestions for our work under this strategic initiative we would be pleased to hear from you:

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BOOK REVIEWS

Scugog Carrying Place A Frontier Pathway

By Grant Karcich



Published by Dundurn
ISBN 978-1-45970-750-4

The story of Scugog Carrying Place, the ancient aboriginal trails connecting Lake Ontario and Lakes Scugog and Simcoe and the Kawartha lakes, is a multifaceted one. In tracing its documented history from the 1790s to the 1850s, author Grant Karcich unravels mysteries; explores the lifestyles of early First Nations; provides background on local archaeological sites; and introduces the intrepid early surveyors, fur traders, missionaries, colourful characters, and entrepreneurial immigrant settlers from both the newly formed United States and the United Kingdom. In their wake come the demon whiskey, devastating plagues, competing world views, saddlebag preachers, and ultimately the

marginalization of the First Nations people.

The Scugog Trail assumes a significant role in the transition of the land, from forest to agriculture to villages, towns, and industrial centres. Long-forgotten cabins, cemeteries, and a cartographic mystery involving the infamous *Cabane de Plomb* add to the mystique. The trail bore witness to the development of communities, such as Oshawa, Harmony, Columbus, Prince Albert, Port Perry, Seagrave, Cannington, and Beaverton, who stories also unfold. *Scugog Carrying Place* is a must-read for history buffs, genealogists, archaeologists, and anyone with roots in this part of Ontario.

Information taken from the back of the book.

Hardscrabble The High Cost of Free Land

By Donna E. Williams and J. Patrick Boyer

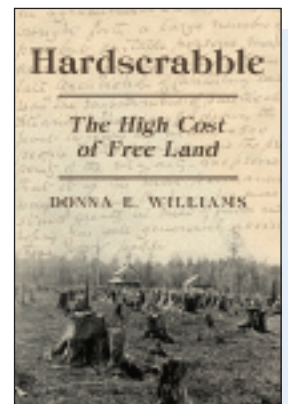
When the Free Grants and Homestead Act was first introduced in 1868, fierce debates erupted in Ontario's Legislature over whether land in the Muskoka region should be opened to settlement or reserved for the Aboriginal population. From the beginning, many people vented serious doubts about the free grant scheme, citing the district's poor agricultural prospects. In the end, such caution was ignored by overeager boosters.

The story in *Hardscrabble* also takes readers to Britain, where emigration philanthropists urged their government to send the country's poor to

Canada, then follows these emigrants as they left the familiar behind to make a new life in the Canadian wilderness. The initial romance of living off the land was soon dispelled as these hapless souls faced clearing the land, building shelters, and sowing crops in desolate, remote locations.

Donna Williams's extensive research leads her to conclude that Muskoka's experience epitomizes the wrongheadedness of placing already poor people on remote land unsuited for farming.

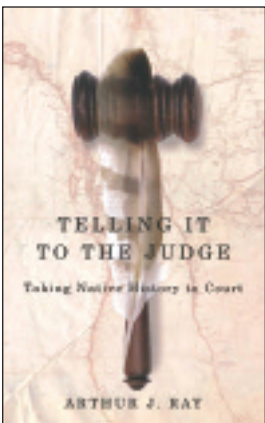
Information taken from the publisher.



Published by Dundurn
ISBN 978-1-45970-804-4

Telling it to the Judge Taking Native History to Court

By Arthur J. Ray



Published by McGill-Queen's
University Press
ISBN 978-0-7735-4080-4

The Supreme Court's historic Calder decision on the Nisga'a community's title suit in British Columbia in 1973 launched the era of Native's rights litigation in Canada. Since Calder, legal claims have raised questions with significant historical implications, such as "What treaty rights have survived in various parts of Canada? What is the scope of Aboriginal title? Who are the Métis, where do they live, and what is the nature of their culture and rights?"

Arthur Ray's knowledge of the Native economic

history and the fur trade brought him into the courts as an expert witness. For nearly three decades he has been a part of landmark litigation concerning treaty rights, Aboriginal title, and Métis rights. In *Telling It to the Judge*, Ray recalls lengthy courtroom battles over lines of evidence, historical interpretation, and philosophies of history, reflecting on the problems inherent in teaching history in the adversarial courtroom setting.

Information taken from the back cover.

“Unusual” Township Names

By Allan Day

If you were to look at a map of the North Channel of Lake Huron and the North Shore of Lake Superior prior to 1974 you would see a series of townships in the Algoma, Sudbury and Thunder Bay Districts that were designated by a number, township number and range, letter or a number followed by a letter.

Jeff Ball, Geographic Names Specialist, at the Ministry of Natural Resources Geographic Names office here in Peterborough told me what the procedure was used to obtain names for these townships for consideration and how the final decision was made for the name. This is his reply. “Names were put forward by an All-Party committee of the provincial legislature. Suitable names from the All-Party committee were submitted to the Minister of Natural Resources for approval by the Premier and government”. The final approval for the names of these townships was given June 27, 1974.

The following is a list of some of the names I find “unusual” and intriguing. The order in which the townships are listed has no significance.

Kamichisitit (Twp 168) named for an Ojibwa who was converted by Jesuit missionaries at Sault Ste Marie and greatly assisted work against his people.

Keesickquayash (Twp 25 Range 24) named for Jasper Keesickquayash, Head Councillor at Cat Lake Reservation.

Nebonaionquet (Twp 28 Range 22) named for D Nebonaionquet, Chief of the Whitefish Lake Reserve.

Running (Twp 24 Range 15) named for T C Running Reeve of Prince Township in the Algoma District.

Way-Wright (Twp 24 Range 14) named for T C Way-Wright Reeve of Chapeau Township.

Root (Twp 4D) named for John Root MPP of Wellington-Dufferin.

Timmermans (Twp 161) named for Arie F Timmermans, RCAF, FL of Blind River who was killed in 1945 during World War II.

Buckles (Twp 144) named for Henry R Buckles, a Canadian mining engineer.

Gunterman (Twp 149) named for Karl G Gunterman, a prospector from Sault Ste Marie who first discovered evidence of radio-activity south of the Elliot Lake area resulting in the discovery and mining of uranium and put Elliot Lake on the map.

Cowie (Twp 27 Range 25) named for Robert A Cowie, Jr. of the Hiawatha Indian Band. (my Mother’s maiden name)

D’Avaugour (Twp 23 Range 23) named for Louis D’Avaugour who was the procurator for all the Jesuit missions in North America in the 17th century.

Beebe (Twp H) named for A L Beebe the Mayor of Sioux Lookout in 1974.

Tweedle (Twp 2A) named for Charles A Tweedle RCAF, PO who was killed during in 1943 in World War II.

Snow (Twp 3G) named for J W Snow MPP for Halton East and Minister of the Ministry of Transportation and Communications.

Oshell (Twp B) named for M J Oshell who in 1973 was the Mayor of Powassan.

Yaremko (Twp W) named for John Yaremko MPP¹ for Bellwoods² in 1974.

Tabobondung (Twp 26 Range 20) named for Flora Tabobondung, Chief of Parry Island.

Nadjiwon (Twp 24 Range 23) named for Wilmer Nadjiwon, Chief of Cape Cocker which is located northwest of Shoals Provincial Park.

Mandamin (Twp 124) named for Henry E Mandamin, Canadian Army Rifleman from the Manitoulin District who was killed in World War II in 1944.

Shingwaukonce (Twp 195) (Indian for “Young Pines”) named for an Indian Chief at Sault Ste Marie who fought with General Brock and Tecumseh at Queenston Heights during the War of 1812.

Druillettes (Twp 37) named for Gabriel Druillettes who was a Jesuit priest at a Sault Ste Marie mission in the 17th century.

Dambrossio (Twp 30 Range 27) named for Canadian Army Corporal Dominic Dambrossio of Thunder Bay who was killed in action in 1944.

Assef (Twp P) named for the Mayor of Thunder Bay W M Assef.

Brothers (Twp 72) named for Sergeant Monty H Brothers RCAF killed in 1942.

Priske (Twp 84) named for Sidney P Priske RC, Navy, Navy PO.

Tuuri (Twp 81) named for Albert W Tuuri RCAF, PO from Thunder Bay District killed in 1944.

Albanel (Twp 169) named for Charles A Albanel a Jesuit missionary sent by first Intendant of New France **Jean Talon** to Hudson Bay.

La Verendrye (Twp 24 Range 11) named for Pierre La Verendrye an explorer who reached the Sault area on his way West in the 1730’s.

Gaiashk (Twp 137) Named for Canadian Army Private Alphonse F Gaiashk who was killed during World War II.

Yesno (Twp 87) named for John Yesno a resident of Fort Hope on the Albany River.

Redsky (Twp 29 Range 21) named for Herbert Redsky a resident of Shoal Lake.

Roy (Twp 27 Range 21) named for Michael Roy a Chief at Wikwemikong.

Solski (Twp 114E) named for M Solski, Mayor of Nickel Centre.

Walsh (Twp 80) named for William M Walsh, Canadian Army Pte from the Thunder Bay District who was killed during World War II.


Wiggins (Twp 88) named for Thomas H Wiggins who was a surveyor/geologist in the late 1800’s.

Goodwillie (Twp 29 Range 17) named for J Goodwillie who was the Reeve of the Township of Red Lake in 1974.

Braithwaite (Twp 9B) named for Leonard A Braithwaite, MPP for Etobicoke.

Adanac is not in this area (Cochrane District) but it’s interesting. It’s Canada spelt backward.

No article on “Unusual Township Names” wouldn’t be complete if I didn’t mention the “Township of the Dancing Pig”. Ken Matthews of the firm *Kim Husted Surveying* in Tillsonburg told me that there was such a township down near them called the “Township of the Dancing Pig”. I asked him what he meant. He replied “Walsingham”, of course. (*groan*)

This article is by no means complete. It is just a random sampling of townships that I happen to find of interest. Maybe in the next issue of the magazine I’ll write about more townships or towns in the province with “unusual names” such as the townships of “Tiny”, “Tay” or “Flos”. These township names are often attributed to ‘Lady’ Elizabeth Simcoe, wife of Governor John Graves Simcoe. In reality they were the names of three pet dogs of Lady Sarah Maitland, wife of Lieutenant-Governor Sir Peregrine Maitland or the Town of Kenora named by using the first two letters of the District of Keewatin and the first two letters of the towns of Norman and Rat Portage. 

The information in this article was obtained from a 3 volume set of books which I have in my library entitled “Places In Ontario” published by Mikki Publishing Company, Belleville, ON. The information on John Yaremko was found on Wikipedia.

Allan Day worked in the Office of the Surveyor General, Ministry of Natural Resources for 28 years as a Survey Records Information Officer. He now owns a survey and research business in Peterborough. E-Mail surveyresearch@cogeco.ca

¹ He was the first Ukrainian-Canadian member of the Legislative Assembly of Ontario. He was initially elected in the 1951 provincial election as a Progressive Conservative Member of Provincial Parliament. He served the riding of Bellwoods from 1951 until 1975. Yaremko served in the provincial cabinet as Minister Without Portfolio in 1958, Minister of Transport from 1958 to 1960, Provincial Secretary and Registrar from 1960 to 1966, Minister of Public Welfare from 1966 to 1967, Minister of Social and Family Services from 1967 to 1971, Provincial Secretary and Minister of Citizenship from 1971 to 1972 and Solicitor General from 1972 to 1974.

² Bellwoods was an Ontario provincial electoral district in the old City of Toronto’s west-end. It was represented in the Legislative Assembly of Ontario from 1926 until 1987, when it was abolished and redistributed into the Dovercourt, and Fort York districts. The district was named after Trinity Bellwoods Park, where the original Trinity College campus was located. It was created in 1926 from the Toronto Southwest and Toronto Northwest ridings. The boundaries varied over its 61 years, with its most northern boundary being the city limits just north of St. Clair Avenue. The eastern boundary went as far as Bathurst Street, and its western boundary eventually ended at Dovercourt Road. Bellwoods was demographically a mainly working class district, with a significant immigrant population. As of 2011, the area that Bellwoods represented is divided among the current Davenport, St. Paul’s and Trinity—Spadina electoral districts.

The Last Word

Pan-Canadian Geomatics Strategy

“The Canadian Geomatics Community Round Table is a multi-stakeholder forum for open dialogue on issues and concerns that affect professional practice and activities in the geomatics sector. It is representative of organizations spanning the geomatics sector, including: federal and provincial/territorial levels of government; private sector companies; academic, non-governmental, and professional organizations and associations, and; geospatial data and service consumers.”

<http://geoconnections.nrcan.gc.ca/1054>

“The Canadian Geomatics Community Round Table is undertaking collaborative development of a Pan-Canadian Geomatics Strategy. The Strategy will provide a vision for the Canadian geomatics sector as well as common goals and objectives that can be achieved collaboratively by the community. Ultimately, the key objectives of the Strategy are to increase understanding of the use and value of geomatics and the geomatics sector

to Canadians, and to ensure Canada has a healthy geomatics sector that is productive, competitive and sustainable well into the future. The scope of the Strategy is broad, covering sector identity, leadership, governance, markets, business model, HR capacity, and legal and policy framework.” Corinna Vester, Canadian Geospatial Secretariat, Natural Resources Canada.

Joseph Young, OLS and Tony Sani, OLS are members of the Round Table Steering committee. The next meeting of the Round Table is anticipated for the end of October 2013. A contract was awarded to Hickling Arthurs Low Corporation to carry out a major study on the state of Geomatics in Canada to be completed by March 31, 2014. The company prepared a document in February for Natural Resources Canada titled *Canadian Geomatics Community Strategy “White Paper” and Scenarios*. A copy can be found at: <http://spatialinformation.files.wordpress.com/2013/04/white-paper-final-version.pdf>

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