

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

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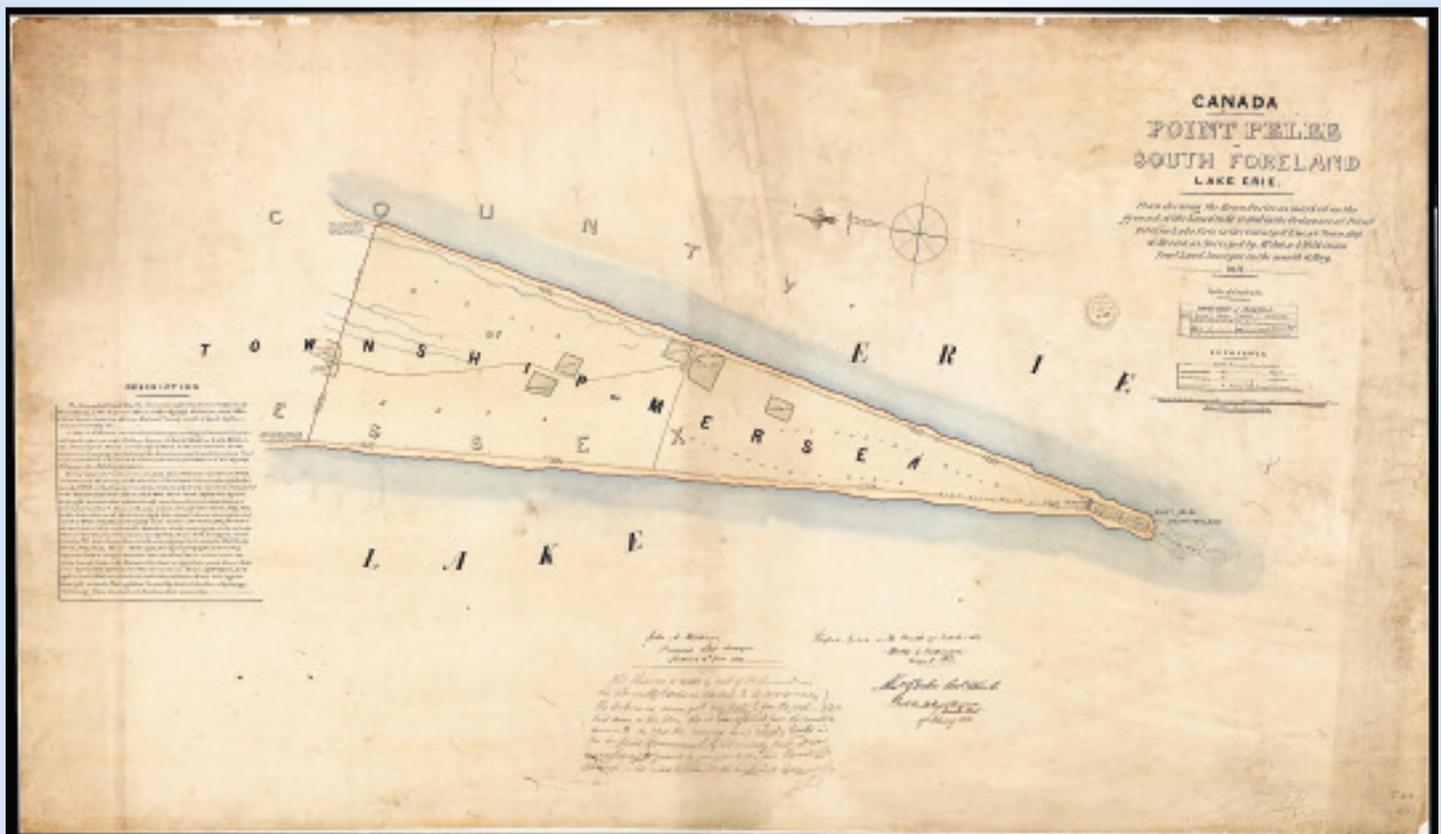
Background: To write this article, the author has drawn upon his experiences preparing a report for FKS Land Surveyors of London, Ontario, which was, in turn, submitted to the “Eastern Regional Operations Centre” of the “Surveyor General Branch” of “Natural Resources Canada”. In order to view this work 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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