

# More Notes on Historical Context – The Islands of Georgian Bay (Part 1, History of Administration)

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

The islands of Georgian Bay pose interesting problems for surveyors.

Normal water levels in Lake Huron have historically varied over two metres; and there is no regular pattern to the variation. The changing water levels significantly affect any land that is bounded by Lake Huron, especially low-lying lands with relatively flat shores, both mainland and islands. Some shore areas are peninsulas in fact when water levels are low, but are islands in fact when water levels are high. The obvious question is, when is an island an island, and when is it a peninsula of the mainland or, possibly, of a larger island?

The matter is further confused by the division of powers that took place on confederation in 1867. In other words, which government—federal or provincial—has jurisdiction to survey and sell the islands of Georgian Bay? Some of the Georgian Bay islands were surveyed and sold by the Province and some by the federal government; some were claimed by both governments even as the islands were being sold. Some “islands” sold by the federal government were considered to be “mainland” by the Province. Because of imprecise 19<sup>th</sup> and early 20<sup>th</sup> century surveys and haphazard land administration, these can be critical matters when dealing with lands affected by the waters of Georgian Bay. Let’s look at the history.

## The Treaties

In 1836, ostensibly to protect the Chippewa and Ottawa Indians occupying islands in the vicinity of Manitoulin from “the increase of white population”, a treaty (No. 45) was concluded at Manitowaning that, in return for surrendering aboriginal claims, essentially set aside islands in the vicinity of Manitoulin for the exclusive use of the participating bands. The treaty first referred to “*these islands on which we are now assembled ... as well as all those on the north shore of Lake Huron*” as being the territory to be surrendered, but then referred to “*these islands*”, without further specific definition, as the lands to be set aside for exclusive use. It was uncertain whether “*these islands*” referred to only the “islands on which they were assembled”, or all of the surrendered islands including “those on the north shore”. Whatever was meant, the islands set aside for the Indians were thereafter referred to as “the Manitoulin group”.

In 1862, by Treaty No. 94, the usufructuary rights to the

islands designated for exclusive use were surrendered, except for the east part of the Great Manitoulin. The ceded lands were to be sold for “the benefit of the Indians”. But the description of the subject islands was no better than the 1836 description: “*the Great Manitoulin Island, and also ... the islands adjacent which have been deemed or claimed to be appurtenant or belonging thereto*”. In other words, the islands surrendered for sale consisted of “the Manitoulin group”—whatever that meant pursuant to 1836 Treaty 45—with fiduciary obligations to be administered by the Province of Canada.

The east shore of Georgian Bay (the mainland) was opened up to survey and settlement following the 1850 (Robinson-Huron) Treaty No. 61 with the “Ojibway Indians” of Lake Huron and the 1856 Treaty No. 76 with the “Chippewa Indians” of Lakes Couchiching, Simcoe and Huron.

The 1850 Treaty 61 area claimed by the participating “Principal Men of the Ojibway Indians” included “*the eastern and northern shores of Lake Huron, from Penetanguishene to Sault Ste. Marie, and thence to Batchewanaung Bay on the northern shore of Lake Superior, together with the Islands in the said lakes opposite to the shores thereof, and inland to the height of land which separates the territory covered by the charter of the Honorable Hudson’s Bay Company from Canada*”.

While the islands off the north shore were included in 1836 Treaty 45 with the Chippewa and Ottawa Indians, any interest claimed by the “Ojibway Indians” was covered by 1850 Treaty 61. In addition (and this was the main purpose of Treaty 61), the described territory was surrendered unconditionally—free of any fiduciary obligations—in exchange for £2,000, an annuity, and recognition of certain reservations listed in an attached schedule.

But 1850 Treaty 61 did not involve all possible claimants as participants—specifically, the Chippewas of Lakes Couchiching, Simcoe and Huron, who had a claim to islands in the southern portion of Georgian Bay. Nor did it include the Chippewas and Ottawas involved in 1836 Treaty 45 who, by 1862 Treaty 94, conditionally surrendered their usufructuary interest in “the Manitoulin group”.

The 1856 Treaty 76 area included (among other lands) “*all those islands lying and being in the Georgian Bay, Lake Huron, heretofore claimed by our tribe ... saving and excepting always those three islands ... forming a part of*

that group of islands called and known by the name of the 'Christian Islands'. This territory was surrendered "to be sold and disposed of" with the "proceeds ... to be invested and funded in perpetuity for the use, benefit and behoof ... of the Chippewa Indians" of Lakes Couchiching, Simcoe and Huron. In other words, the lands were surrendered conditionally with the Chippewa Indians retaining a beneficial interest in addition to the reservation of the three "Christian Islands".

The description of the island territory associated with 1856 Treaty 76 was not as clear as that of 1850 Treaty 61. However, it is clear that the two treaty areas overlapped.

## Division of Powers

Following confederation, by section 91 of the *British North America Act, 1867*, the federal government was given exclusive powers to deal with "Indians and Lands reserved for the Indians"; by section 92, the provinces were given exclusive powers over the "Management and Sale of the Public Lands belonging to the Province". As a result, the Province had jurisdiction over all unconditionally surrendered lands, and the federal government had jurisdiction over any lands with remaining fiduciary interests.

Surveys of provincial Public Lands were subsequently authorized by the Ontario Crown Lands Department. All surveys of conditionally surrendered Indian lands were authorized by the federal Department of the Interior (later Department of Indian Affairs!) in order to sell the land for the benefit of the respective bands.



Portion of Map attached to 1906 Order in Council OCPC 992.

## Sorting Out Jurisdiction

Initially, the Province claimed jurisdiction over all Georgian Bay islands except "the Manitoulin group". Because of the territorial overlapping of Treaties 61 and 76, jurisdictional disputes arose between the Province of Ontario and the federal Department of the Interior regarding administration of the islands in Georgian Bay. In 1876, an understanding between the Honourable Mr. Pardee, Commissioner of Crown Lands for Ontario, and the Honourable Mr. David Laird, Minister of the Interior for Canada, provided that all islands south of Moose Deer Point, and those of "the Manitoulin group", would be administered by the federal government; and all islands north of Moose Deer Point would be administered by the Province, except the "Manitoulin group". Essentially, for administrative purposes, Moose Deer Point was deemed to be the boundary between

the islands of Treaty 61 and Treaty 76.

In 1882, interpretation of "the Manitoulin group" came into question, and the Pardee-Laird agreement was suspended, when the federal government sold some of the larger islands in the vicinity of Manitoulin that the Province considered to be outside of "the Manitoulin group", which had never been precisely defined. After 24 years of investigation (including some dormant time), almost leading to intergovernmental litigation, a temporary agreement was worked out in 1906, confirmed by Dominion Order in Council OCPC 992, dated 26 May 1906.

The agreement stipulated that the principle of the 1876 Pardee-Laird agreement was to be respected in part; that is, the federal government would administer the islands south of Moose Deer Point in trust for the Indians; and the Province would have control of all islands north of Moose Deer Point, except anything lying between (a) the southerly production of the east limit of Rutherford Township, and (b) the southerly production of the east limit of Thessalon

Township. A map with three lines was attached to OCPC 992, designating specific areas as "Dominion Islands", "Ontario Islands" and "Islands yet in dispute".

The 1906 agreement provided opportunity to deal with islands that were clearly outside of "the Manitoulin group" while the two governments worked on interpreting precisely what was meant by "the Manitoulin group", which were deemed to lie between the two described township boundary extensions.

Ultimately, the governments agreed that the Province had jurisdiction over all islands north of Moose Deer Point except Great Manitoulin, Cockburn Island, Barrie Island, and those islands already granted by the Dominion. All islands south of Moose Deer Point would continue to be


*cont'd on page 22*

two campaigns of two days duration each. Due to the time required in gaining access to the vessel, practices were devised so that the process of taking measurements in both faces, storing and coding the data took no more than 1 to 1 min for each target. Special apparatuses were fabricated by on-site engineers to allow the instrument to be securely mounted on the vessel without damaging or marking its inner surface in any way.



Figure 4: Typical Measurement Situation (Photo credit: James Dorland)

Once all the measurements were completed, the observed information was fed into the computer algorithm. This allowed for statistical analysis and the determination of a

radius from the center of a best-fit sphere to each point of interest. Measurement outliers were removed and a report describing the observed shape of the acrylic vessel was prepared. Instrument and human pointing errors needed to be empirically derived from observation data due to the less than “ideal” design of the stick-on targets. Beyond this, the measurement repeatability exceeded expectation. It is important to note that not only were the results verified, but the quality of these results was also verified through statistical analysis and was fully described in the report. It is also important to note that proper engineering practices were followed; giving consideration to all systematic and random errors, a *design* process was followed to ensure effective utilization of the instrument. This allowed for determination of the expected uncertainty of the requested information *before* measurement, ensuring project requirements would be met. 


## References

ISO, International Organization for Standardization (2008). “Guide 98-3: Uncertainty of measurement” Part 3: Guide to the expression of uncertainty in measurement (GUM:1995), first edition 2008. 120 pp.

**James Dorland** is a graduate of UNB and is currently articling at D. S. Dorland Ltd. James can be reached by email at [jamesdorland@sympatico.ca](mailto:jamesdorland@sympatico.ca). **Dr. Ian Lawson** is a research scientist at the SNOLAB in Sudbury. He can be reached by email at [lawson@snolab.ca](mailto:lawson@snolab.ca).

## More Notes on Historical Context – The Islands of Georgian Bay - *cont'd from page 16*

administered by the federal Department of Indian Affairs, “in trust for the Indians”, pursuant to the 1876 Pardee-Laird agreement. This arrangement was considered and approved by the Privy Council as set out in Order in Council OCPC 3059, dated 10 December 1914, attached to which is a list of the islands in the vicinity of the Great Manitoulin already sold and granted by the federal government. The agreement was ratified by the Ontario government by Order in Council dated 23 December 1914.

Part 2 of these notes will look at some practical applications involving the effect of the jurisdictional history reviewed above, with important considerations for surveyors (including water levels) when conducting surveys of islands and the adjacent shores of Georgian Bay. 

**Ron Stewart** has been an Ontario Land Surveyor since 1978. He is also a Canada Lands Surveyor. Ron is an Associate with MMM Geomatics Ontario Limited and as Manager, Boundary Litigation, specializes in research and boundary survey consulting services. He can be reached by email at [stewartr@mmm.ca](mailto:stewartr@mmm.ca).

<sup>1</sup> The authority for dealing with Indian Affairs from the conquest of 1759 to confederation in 1867 was a confused matter (not the subject of study for this article). After confederation, Indian Affairs continued to be administered by an autonomous entity in Ottawa apparently known simply as “Indian Affairs”, which was run by a Superintendent. In 1873, Indian Affairs was officially formalized as a responsibility of the newly-created Department of the Interior, until the creation of the Department of Indian Affairs in 1880.