

ALL COMMUNICATIONS SHOULD BE ADDRESSED TO THE DIRECTOR OF SURVEYS AND MAPPING THE REPLY TO THIS LETTER SHOULD BE MARKED FOR THE ATTENTION OF.



YOUR FILE NO.

OUR FILE NO.

THE DIRECTOR .....  
AIR DIVISION .....  
GEOGRAPHIC DIVISION .....  
LEGAL SURVEYS DIVISION .....  
TOPOGRAPHIC DIVISION .....

SURVEYS AND MAPPING BRANCH  
DEPARTMENT OF LANDS, FORESTS,  
AND WATER RESOURCES  
VICTORIA, B.C.

April 15th, 1970.

CIRCULAR LETTER TO BRITISH COLUMBIA LAND SURVEYORS

Sir:

Re: Accretions.

The following two quotes are from a letter to Land Inspectors from the Director of Lands, dated April 6th, 1970 and from a Surveys Branch memo attached thereto:

Quote 1:

"The controlled high water mark on Lake Okanagan is 1123.78 feet geodetic. Applications for land alleged to have been formed by natural accretion below this contour line will not be processed under Section 102(2) of the Land Registry Act because it would not appear to be in the public interest for the Minister to grant a certificate that would enable registration of title to such lands if these lands may in fact be flooded from time to time. If the upland owner does not agree with the policy of the Department, he can, of course, still apply to the courts under the procedures set out in the Quieting Titles Act, in which case a judicial ruling would be handed down in respect to the subject area.

It must be kept in mind, however, that the above-mentioned contour line is not necessarily the water boundary of any alleged accretion. The boundary selected and recommended by the Inspector should be coincident with the natural boundary as defined in the Land Act and particular cognizance must be taken of the line of vegetation and the character of the soil. If the character of the soil is not distinct from the character of the bed of the lake and if there is no visible line of vegetation or no way to determine where such a line would be by examining the properties on either side of the area in question, then in all likelihood the land in question is not an accretion but merely the beach that borders the lake.

There has been a growing tendency to use the flooding contour (1123.78') as the water boundary of lands alleged to have been formed by natural accretion and this matter is being drawn to your attention in order that any accreted land applications recommended by yourself do not include lands which in your opinion form a part of the natural beach of the lake itself.

You are no doubt aware that there are many beaches at the coast where the character of the soil is similar to the character of the bed of the ocean and these lands would not be classified as a natural accretion even though they may be above the normal high tide line.

The Lands Branch must not be a party to alienating public beaches where doubt exists as to whether an accretion has actually occurred, because the Department must always be mindful of the public interest." - end of quote 1.

Quote 2:

"Memo respecting the Natural Boundary of lands heretofore surveyed and relative to lands being formed by Accretion:

In 1851 a United States case, Howard vs. Ingersoll (13. How. 381 at P.427) contained as part of the judgment a statement as follows:

'Neither the line of ordinary high water mark nor of ordinary low water mark, nor of the middle stage of water can be assumed as the line dividing the bed from the banks. This line is to be found by examining the bed and the banks and ascertaining where the presence and action of water are so common and usual and so long continued in all ordinary years, as to mark upon the soil of the bed a character distinct from that of the banks in respect to the soil itself.'

In 1855 the U. S. Manual of Survey Instructions was issued and the above case influenced the wording therein as there are clear instructions on:

- P. 13(2) Banks of rivers are to be meandered
- (5) Meandering lakes same manner
- F. 14(5) (cont'd) meander the entire 'margin' (margin must mean bank).

A copy of this 1855 Manual has been in the survey records of the Lands Department since the days of the Royal Engineers and it is interesting that the letter, dated June 18th, 1859, from Colonel Moody to the Surveyor General at Olympia, Washington requesting the manual is on file in the Archives (c/AB/30.7.J).

In the foreword to the Manual of Survey of the Public Lands in Manitoba and the North West Territories dated 1871 is a statement that in preparation of those instructions use has been made of the U. S. Manual of 1855 and on Page 23(4) of the Manitoba manual the same word bank appears where the instructions are to traverse both banks.

A Report of Surveys by A. S. Farwell, Surveyor General (1873-1879) on pages 54 and 55 of the Journals and Sessional Papers of 1873-74 on file in the Archives contains the statement that 'the system of surveying adopted this season has been, as nearly as cir-

circumstances would permit, similar to that in use in the Dominion, in the Province of Manitoba and also by the Government of the United States on this coast'.

The Dominion Manual of 1913 (1903 is the same) says on P. 38 'in the case of a lake or navigable stream, the boundary is the edge of the bed of the lake or stream, which edge is called the bank'.

The bed of a body of water has been defined as the land covered so long by water as to wrest it from vegetation, or as to mark a distinct character upon the vegetation and upon the soil itself where vegetation extends into the water. According to this definition, the limit of the bank is the line where vegetation and soil changes.

In the Land Act Amendment Act of 1961 a definition of the word natural boundary appears. 'Natural boundary' means the visible high water mark of any lake, river, stream or other body of water where the presence and action of the water is so common and usual, and so long continued in all ordinary years, as to mark upon the soil of the bed of the lake, river, stream, or other body of water a character distinct from that of the banks thereof, in respect to vegetation, as well as in respect to the nature of the soil itself.

This is substantially the judgment in the 1851 case of Howard vs. Ingersoll and as continued in all pertinent survey manuals and practice since that time. The 1961 Land Act Amendment merely enunciated what had been the practice in this Province as shown by the data presented. The words 'visible high water mark' in the 1961 definition originate from a B. C. case (Nelson vs. P.G.E.) in 1918.

Authority to use the 'natural boundary' as a boundary of property in British Columbia first appeared in an 'Ordinance for regulating the Acquisition of land in British Columbia' dated 11th April, 1865, where at section 24 it refers to lands bounded by a lake or margin of a river. The word margin is used in the same context as in the 1855 U. S. Manual.

There is ample proof here that in all original surveys of Crown lands the boundary of land alienated was what we term the natural boundary. This is not an arbitrary, confiscatory definition but one that stemmed from the courts and has continued in use.

In respect to what is the true boundary between lands which are building up as an eventual accretion to private lands and what remains the property of the Crown it is believed that the Courts (if the facts are presented) would consistently adopt the same 'natural boundary'.

As a means of interpretation of the phrase 'character distinct from that of the banks' one can refer to the case of the 'Attorney General vs. Chambers' (DeCex MacNaghton and Gordon's Reports, Vol. IV 1853-55):

'In this state of things, we can only look to the principle of the rule which gives the shore to the Crown. That principle I take to be that it is land not capable of ordinary cultivation or occupation, and so is in the nature of unappropriated soil - the Crown right is limited to land which is for the most part not dry or maniorable.'

An example of what is meant by the foregoing reasoning that the normal water level is not the normal boundary of property on large lakes where the 'reach' of the wind and waves in areas where the land is gently sloping, creates an area between the bed of the lake, foreshore, beach or whatever it is to be called, which remains the property of the Crown, can be found in the field notes and surveyors plan of Lot 367, Kamloops Division of Yale District.

This was surveyed in 1877 on Kamloops Lake by John Jane - under Mr. Farwell's instructions, presumably using the Manitoba and U. S. Manuals and clearly leaves a sandy stretch of beach between the edge of the water of Kamloops Lake and the edge of vegetation."  
- end of quote 2.

In the administration of applications under Section 102(2) of the Land Registry Act, policy depends upon the interpretation of a natural boundary rather than automatic acquiescence by the department to a proposal to agree to a controlled elevation on a lake or a mean of high tides on the seashore. Therefore, although the above quotes were specifically directed to a problem on Okanagan Lake, the principle applies wherever accretions are being dealt with by this department. This policy is made known to you in order that it will be reflected in your surveys and be passed on to your clients.

Yours truly,

*A. H. Ralfs*

A. H. Ralfs,  
Surveyor General and Director,  
Surveys and Mapping Branch.