The Calamity of the Initial Reserve Surveys under the Robinson Treaties

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The boundaries of the new Province of Upper Canada were set by the Constitutional Act of 1791 to include the territory west of the Ottawa River and north of the international boundary established by the Treaty of Paris, “to the utmost extent of the country commonly called or known by the name of Canada” (Ladell 1993:88). All of Upper Canada

... fell within the Indian Territory as defined by the Royal Proclamation of 7 October, 1763, which decreed that the lands therein were reserved “for the Use of the ... Indians as their Hunting Grounds.” (Surtees 1986:1)

The British policy, as codified in the Royal Proclamation of 1763, may be summarized as follows:

In this document, three important principles which would continue to characterize Anglo-Indian relationships were delineated. Firstly, Indian rights of prior occupancy, but not of sovereignty were recognized. Secondly, land surrenders had to be made before the land was open to white occupation, and only the Crown was allowed to conclude such a cession. Thirdly, the Proclamation of 1763 established that all persons who occupied Indian land unlawfully would be expelled. (Ellwood 1977:5)

The systematic acquisition of the Indian title to land became standardized as the treaty system:

Between 1764 and 1836 in Upper Canada about twenty-seven sizeable land purchases were completed, and over the years certain procedures, commonly called the treaty system, developed to provide for the alienation of Indian title to land. These included the following:

1. Payment for the land, ...
2. Hunting, fishing and occupancy rights, ...
3. Reserve lands, ... By 1850 when it became time to negotiate a major land cession on the northern shores of Lakes Huron and Superior, it had become generally accepted that it would include provisions for reserves. (Surtees 1986:2-3)

Within the context of the historical and economic circumstances that precipitated the extension of exploration, surveying and mining activities

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(Winnipeg: University of Manitoba, 2004), pp. 281-335.
into the northern and northwestern portions of Upper Canada, this paper examines processes involved in determining, resolving, surveying and monumenting the boundaries of the reserves resulting from the Robinson-Huron and Robinson-Superior Treaties. These surveys were often consistent with neither the purposes and intentions of the government and its instructions, nor with the general wishes of the Chiefs signatories of the Treaties nor with the specific intentions and expectations of the Chiefs and their people at the reserve locations.

Specific reserves are discussed in the context of the following factors: boundaries partially or not at all surveyed; the conflict between distance dimensions understood by the Ojibwe people, the treaty commissioners and the surveyors (leagues vs. miles); the site negotiation of new boundaries; survey deficiencies; and rear boundaries not adhering to a specified depth from water frontages. Overall, the surveys were often incomplete, inadequate and inappropriate.

BACKGROUND

With the coalition of the Hudson’s Bay and the North West companies in March of 1821, the fur trade, at a reduced competitive level due to the virtual monopoly of the former, continued to be the single significant commercial enterprise in the northern and northwestern portions of Upper Canada.

The Indians of that region, usually referred to as the Northern Ojibwa, participated in that activity as well as the traditional methods of food gathering by hunting and fishing. The Indians were not unified, however. Certainly there were some relations among those who occupied the long shoreline of the upper Lakes, but the population of some 3000 persons was nonetheless divided into about two dozen fairly distinct bands. Each had its own band organization with its own chief; and each group restricted its operations to a clearly defined area. Within that area the band occupied regular village sites on the coast during suitable weather, and other inland areas during the winter. (Surtees 1986:4-5, Ladell 1993:141).

Until the middle of the 19th century the Ojibwe of northern Ontario had been free to pursue their way of life with a minimum of direct interference by the traders, and a tolerated presence of missionaries. However, at that time the Ojibwe began to increasingly encounter prospectors, miners, lumbermen, surveyors, geologists, government agents and independent traders. As the southern area of the province became completely settled, more development opportunities were sought in the northern and northwestern portions of the province. During the 1840s, the discovery and successful development of copper deposits in the upper Michigan peninsula fuelled a drive for mineral exploration on the northern shores of the upper lakes (Rogers 1994:333-334).

In 1846, after the opening of the country’s first commercially successful copper mine at Bruce Mines, the responsibility for administration of mineral resource development was transferred from the provincial executive to the provincial Crown Lands Department. However, it lacked the experience to deal with the requests for authority to pursue such activity on the shores of lakes Huron and Superior, and lacked information about the extent and location of mineral resources in that part of the province. In response to a flood of requests for prospecting and exploration authority, the government enacted a series of executive regulations by orders-in-council relating to licensing of prospectors, size of mining locations and mining land prices, and subsequent policies to issue exploration licenses. However, those enactments and activities were contrary to the policy formalized by the Proclamation of 1763; because they opened up the northwest country to development without first effecting a land settlement with the Ojibwe inhabitants (Ellwood 1977:16-18; see also Surtees 1986:4-5).

Often, the exploration, surveying and mining activities led to conflicts with the locations of Indian villages, and hunting and fishing sites.

Some of these sites either contained or were located close to mineral deposits, particularly copper. Thus, when entrepreneurs began to exploit the mineral deposits—some of which had been known since the days of Father Allouez’s journey into the region in the seventeenth century—their prospecting, surveying and technical parties were actually moving into lands which the Indians considered to be their’s. This activity was regarded by the Indians as trespassing. (Surtees 1986:4).

Following complaints laid before Lord Elgin by several of the Chiefs of the First Nations along the shores of the upper lakes, two separate commissions were sent out to make a thorough examination of the facts on the ground. The first was T.G. Anderson, Superintendent of Indian Affairs, in 1848, and the second was Alexander Vidal in company with Anderson, in 1849. While Anderson’s report was favourable to the Ojibwe claim, his investigation was considered insufficient for a complete determination of

While the Vidal-Anderson journey had not been as successful as hoped, the Commissioners having only met with sixteen of the anticipated twenty-two nations, the mission could not be considered a complete failure. Regarding the claim of the Ojibwe to the lands in question, the Commissioners concluded:

The claim of the present occupants of this tract derived from their forefathers, who have from time immemorial hunted upon it, is unquestionably as good as that of any of the tribes who have received compensation for the cession of their rights in other parts of the Province; and therefore entitled them to similar remuneration; ...

With regard to the general wishes relating to lands and rights to be retained by the First Nations people, the Commissioners reported:

... There is a general wish expressed by the Indians to cede their territory to the Government provided they are not required to remove from their present places of abode, their hunting and fishing not interfered with, and that the compensation given to them be a perpetual annuity; ...

... A list or description of the Reserves which the Chiefs have expressed a wish to make, is furnished in Appendix D: — they are generally of limited extent and intended as places for residence and cultivation: ...

... The reservations selected by the Indians for themselves seem to be generally chosen by a regard either to the capabilities of the soil for cultivation, or to the convenience of the position for fishing; ...

(Vidal and Anderson 1849:7, 14-15 [emphasis supplied])

**Treaties**

In response to the recommendations of Vidal and Anderson that the matter of settling the claims of the Indians of lakes Superior and Huron should proceed at the earliest opportunity, the Executive Council recommended the appointment of William Benjamin Robinson, MPP, to negotiate treaties with the Ojibwe First Nations occupying lands in the northerly portions of the Lake Huron and Lake Superior watersheds. Following some preliminary discussions with chiefs in the vicinity of Sault Ste Marie in the spring of 1850, arrangements were made to meet in August to finalize the negotiations. Formal council with the Chiefs began on 5 September 1850. The Lake Superior chiefs signed a treaty on 7 September, followed by the Lake Huron treaty signing on 9 September 1850 (Leighton 1982:12-13).

Treaty negotiations were conducted for the conditions to secure a surrender of interest to the land, subject to exceptions for reserves to be retained. There was no separate stage of negotiations relating to location or extent of lands to be either conveyed back or set aside for reserves. The reserve lands, unlike most other treaties, were created by way of exception from the overall surrenders for the exclusive use and benefit of the signatory nations, each being occupied by the First Nations within their ancestral territories. In other words, the treaties actually excluded the reserves from the cession of aboriginal title, and the selection of land to be retained was the unilateral decision of each band, thus:

... they the said Chiefs and Principle Men, on behalf of their respective Tribes or Bands, do hereby fully, freely, and voluntarily surrender, cede, grant, and convey to Her Majesty, her heirs and successors for ever, all their right, title and interest to, and in the whole of, the territory above described, save and except the reservations set forth in the schedule hereunto annexed; which reservations shall be held and occupied by the said Chiefs and their Tribes in common, for their own use and benefit. [emphasis supplied]

The annexed schedule provided location descriptions for the reserves to be retained from the cession. The treaty descriptions were recorded by John W. Keating, Provincial Land Surveyor (PLS) attached to Robinson's party as an interpreter, witness and assistant. Surveyor Keating would later play a significant role in the reserve demarcation surveys.

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1. NAC, RG 10, Vol. 266, Reel C-12552, 4, Report of Commissioners A. Vidal & T.G. Anderson on visit to the Indians on the north shores of lakes Huron and Superior for purposes of investigating their claims to territory bordering on those Lakes, 1849.

2. NAC, RG 10, Vol. 661, Reel C-1340, 139-144, Treaty No. 61, known as the Robinson-Huron Treaty, Surrender by the Ojibwe Indians inhabiting the North Shores of Lake Huron (1850).

3. Telford 1997. Keating had previously been employed with the Indian Department from 1839 to 1845, as an Assistant Superintendent, until a reduction of positions by the departmental reorganization of 1845. He was fluent in the Ojibwe (or Chippewa) language, having been assigned to the Walpole Island Superintendency. Subsequently, Keating had been engaged in various activities around lakes Huron and Superior; in 1845 exploring and prospecting along the north shores of the upper lakes, discovering the Bruce Mines copper location on behalf of George Desbarats, and establishing his own claim to the abutting property.
By Order-in-Council dated 12 November 1850, the Robinson treaties were ratified and confirmed by the government, and were subsequently recorded in the office of the Provincial Registrar.4

Reserves

In his report to the Superintendent General of Indian Affairs on transmitting the treaties, Robinson cited the same criterion as Vidal and Anderson (a copy of their report had been provided to him) for the location and use of the reserve lands to be retained by each band, thus:

In allowing the Indians to retain reservations of land for their own use I was governed by the fact that they in most cases asked for such tracts as they had heretofore been in the habit of using for purposes of residence and cultivation, and by securing these to them and the right of hunting and fishing over the ceded territory, they cannot say that the government takes from their usual means of subsistence and therefore have no claims for support, ...5

The First Nations people along the shores of the upper lakes had been exposed to the activities of surveyors as well as those of prospectors and miners during the several years prior to completion of the treaties. No doubt, their exposure to the marking and delimitation of boundaries, as were completed for the various mining tracts, the settlement surveys of Sault Ste Marie, and geological exploration and mapping surveys undertaken during the preceding five years along those lakes provided insight to the value of such activity for their own protection and definition of rights. While not a condition specified in the treaties, Robinson specifically reported:

The chiefs are desirous that their several reservations should be marked by proper posts or monuments, and I have told them the Government would probably send some one next spring for that purpose.6

By the time of the signing of the treaties, the mining activities that had precipitated the treaty settlements had greatly diminished. Very few of the mining locations had actually yielded any great wealth. However,

5. NAC, RG 10, Vol. 191, Reel C-11513, 11701, Robinson to Bruce, 24 September 1850, on transmitting the treaties.
6. NAC, RG 10, Vol. 191, Reel C-11513, 11702, Robinson to Bruce, 24 September 1850.
with the signing of the treaties the settlement at Sault Ste Marie was in a position to expand and diversify, and applications to acquire timber rights along the shores of lakes Superior and Huron had been received by the Crown Lands Department. Also, at that time, very little was known about the land and resources beyond the exploration of the immediate shorelines (Ellwood 1977:39).

By a letter to the Executive Council dated 6 June 1851, Commissioner of Crown Lands J.H. Price reported the necessity of organizing the territory ceded by the Robinson treaties in order to raise funds for payment of the annuity. He suggested, as the initial step, that

... the reserves made by the Indians should be surveyed to prevent the encroachment of Squatters, and to enable [the Crown Lands] Department to decide on applications for Timber Locations now before it.

With regard to the boundaries of the reserves, Price noted that the

... exact position and extent of the reserves are not defined in the Treaty, [and suggested that] some person in whom the Indians confide, be appointed to accompany the Surveyor to point out the limits thereof on the ground.\[^8\] [emphasis supplied]

On the surface, such a statement would appear to conflict with the treaty documents. Location and identification descriptions for the reserves, as provided by the Chief for each signatory Band, were recorded in the treaty documents. However, the descriptions lacked specific detail, except where identifiable geographical or physical features were stated, such as: “the island near the fall,” “the mouth of the river, ...” or “the Huden’s Bay Company post.” Primarily, the descriptions provided an indication of the general location relative to the known lakes and rivers. The reserve boundaries were tentative, subject to specific details to be provided at each site. The descriptions had been provided at Sault Ste Marie as well as could be expected without the intended locations and features being pointed out. Commissioner Price’s statement acknowledged that reality, and the necessity of having the surveyor accompanied by someone to translate each Band’s wishes for the locations of their boundaries.

By Order-in-Council dated 14 June 1851, Price’s recommendations were approved, and the Commissioner of Crown Lands appointed John S. Dennis, PLS, to “perform the service.”\[^9\] In addition to the General Instructions, Dennis was provided with tracings of Bayfield’s\[^10\] hydrographic survey charts of the north shores of lakes Huron and Superior, tracings of PLS Vidal’s plans of surveys for mining tracts along Lake Huron, and printed copies of the treaties comprising a schedule of the reserves to be surveyed. More specifically, Dennis’ instructions stated:

A Gentleman Appointed by the Indian Department will accompany you to point out the limits of the Reserves.

The interior lines of the Reserves may be traced magnetically should no local attraction exist. The surveys of the Lake Shores by Bayfield and Vidal render a traverse of the fronts of the Reserves unnecessary.

You will plant substantial posts at the front and rear Angles of the Reserves marking I.R. & C.L. respectively on the sides of the posts facing the Indian Reserves & Crown Lands and wherever they can be procured plant stone boundaries along side of posts.

Where, owing to the absence of Soil you cannot plant posts, you will cut marks in the rock, place a heap of Stones, or otherwise leave some permanent indication of the Boundary. From the posts or other boundaries at the front points of the Reserves you will take the angular bearings of such islands, points or other remarkable fixed objects as would tend to identify the limits of the Reserves.\[^11\] [emphasis supplied]

The Superintendent of Indian Affairs at Manitowaning, Captain George Ironside, was appointed to accompany and assist PLS Dennis on behalf of the Indian Department to interpret the First Nations people’s wishes, to point out the limits of the reserves to be surveyed, and to assist in resolving any uncertainties about the intended locations of the boundaries.\[^12\]

\[^7\] NAC, RG 1, E 8, Vol. 40, Reel H-1786, Price to Executive Council 6 June 1851.
\[^8\] Price to Executive Council, 6 June 1851.
\[^10\] Ladell 1993:114-155. After the war of 1812-14, the British Admiralty sought to prepare accurate hydrographic charts of the Great Lakes. Lieutenant Henry Bayfield spent four years charting Lake Huron and Georgian Bay, then in 1823 moved on to Lake Superior, for three summers. He then took two years in England perfecting the charts.
\[^12\] NAC, RG10, Vol. 189, Reel -11513, 110659, Letter, 30 July 1851, Bruce to Ironside.
In general, surveying is the art and science of observing or laying out measurements to locate points and features on or near the surface of the earth. Boundary surveying is a unique discipline of surveying: to locate, set, measure and demarcate the limits of distinction between separate property interests or units of land, and to represent that work on plans and in legal descriptions, usually to be used in land ownership records and land transaction documents.

Land boundaries are a matter of law, not survey. Surveyors do not create boundaries; landowners, including the Crown, do. The law gives sanction to a surveyor’s work when it is used by landowners to effect a conveyance, or when the work is completed under the instructions of a competent government authority. A surveyor in the mid-19th century could be engaged by a landowner in several ways: by a vendor to lay out a prescribed parcel or parcels prior to sale, by a purchaser to lay out a parcel that had been acquired, or by the Crown, to divide Crown lands into townships, lots and concessions, mining locations, timber locations, town sites, clergy reserves and Indian reserves. All such engagements relate to the intentions of the parties to the transactions for which the work was completed. Those underlying principles are the same now as they were in the 19th century (Lambden & Rijcke 1989:114-117). In this instance, the Crown engaged PLS Dennis, and subsequently others, to demarcate the boundaries of the lands that the signatory First Nations wished to retain, as they were to be pointed out to the surveyors; a unique circumstance that the surveyors failed to understand.

Prior to commencement of the initial reserve surveys, concerns regarding the dimensions and size of the reserves, as recorded in the treaty documents, came before the Department of Indian Affairs. The above-mentioned J.W. Keating had made applications for timber rights in the vicinity of Reserve No. 3 (Point Grondine) and Reserve No. 4 (Whitefish River). Likely while endeavouring to determine the location of the proposed boundary of Reserve No. 3 in order to initiate his timber operations, Keating was made aware that Chiefs Wagamake and Papainse, of Reserves No. 2 (Henvey Inlet) and No. 3 (Point Grondine) respectively, had several concerns, including the extent of land to be retained for their reserves. Keating translated, documented, witnessed and transmitted to Superintendent Ironside, a speech by those Chiefs that noted the following:

Great Father ... In describing our Reserves we did not understand the distance of miles, but we gave certain points & we hope that in the Survey those Boundaries will be adhered to & not the imaginary space which a term conveys to us tho' well known to you.

Great Father ... We will point out to the Surveyor the Lake we mentioned & which from enquiry of the Whites we find would be further than we said.14

Captain Ironside had forwarded the speech to the Superintendent General of Indian Affairs the day before Dennis arrived at Manitouwaning. However, there can be no doubt that Dennis was made aware of the concerns by Ironside and Keating. During the subsequent survey of Reserve No. 3, Dennis and his party camped and socialized at the settlement and mill site established by Keating and his partner Wm. Davis, located on a small river within the reserve. The response from the Superintendent General was likely too late for Dennis that season; however, the response sentiment specific to the Chiefs’ concerns about the boundaries of their reserves clearly indicated the authority that Dennis was to follow:

The Surveyor sent to lay off their Reserves has been directed to listen to their representations and to consider them carefully when any doubt arises as to the true limits named by the Treaty.16 [emphasis supplied]

THE VISITATION OF THE SURVEYOR

PLS Dennis, together with Captain Ironside and a party of twelve men, departed from Manitouwaning on 9 September 1851, for Reserve No. 3 (Point Grondine) meeting Chief Kitcheposkisegun en route and transporting him to the reserve. On 12 September, the Chief laid the first stone of a pile of stones to mark the intersection of the easterly reserve bound-

13. AO, RG 1, Series G-1, Vol. 1, Letter register entry, 29 November 1850, letter from Keating and E. Davis. See also AO, RG 1, Series G-1, Vol. 1, Correspondence register, 14 February 1851, application from J.W. Keating.


16. NAC, RG 10, Vol. 323, Reel C-9577, Letter, 30 October 1851, Bruce to Ironside.
ary with the Lake Huron shore, and the survey commenced. In essence, the survey was completed making reference to the treaty description dimensions, premised upon the intended location of the easterly boundary as indicated by the Chief, with an adjustment of the width to allow for inclusion of a lake that had been specified in the treaty description. 17

On 28 September Dennis and his party caught up to Captain Ironside and Chief Wabakekik at the fur trading post located on Reserve No. 4 (Whitefish River). Initially, in the presence of the Chief, the location of the westerly boundary was established at the mouth of the White Fish River; however, the easterly boundary location, stated to have been the intention described by the Chief at the time of the treaty, would have resulted in a width along the lake “… at least 3 times as great as that mentioned in the treaty.”18 Dennis recorded:

I did not feel authorized to lay out such an extent of frontage in this case under the instructions and I therefore came to the conclusion to give him the 3 miles frontage (mentioned in the Treaty) wherever he chose within the points and leave it to the Government to include the remainder in his tract or not according as he might be able to substantiate his claim.19 [emphasis supplied]

The initial location of the westerly boundary was adjusted westerly to enclose falls in the White Fish River, as desired by the Chief. Overall, Dennis insisted he was bound by the recorded treaty description dimension in “miles” for the width between the easterly and westerly reserve boundaries along the shore of Lake Huron, and left it to the Chief to substantiate his claim for more land to the government. Dennis recorded no objection of the Chief to the location of the northern boundary as run five miles from Lake Huron; however, it is interesting to note that the depth of the reserve, scaled from PLS Dennis’ plan to the southerly tip of the peninsula in front, is approximately twelve miles, as compared to the treaty description dimension of “five miles inland”.20

With uncertainty about the availability of Lake Huron transport, and winter fast approaching, Dennis and his party, without Captain Ironside,

departed toward Penetanguishene, intending to complete the survey at Reserve No. 2 (Henvey Inlet) on the way. They met Chief Wagamake near his village on 1 November, at which time Dennis found conflict with the reserve as intended by the Chief, and as understood by Dennis from the treaty description, as follows:

I now found that instead of a Reserve three by six miles as mentioned in the Treaty the band wanted one twelve miles by six … The Chief made a diagram which enabled him clearly to illustrate how he wished the Tract as to size and position.

However it was clear I could not lay out a tract of such dimensions as those for this Reserve and after some considerable talking he proposed another outline … which differing but little from the treaty I agreed to lay out.21 [emphasis supplied]

In summary, the initial survey was completed at Dennis’ insistence that the Chief make concessions to more closely agree with the treaty description dimensions; while, at the same time, allowing deviation from such dimensions to accommodate inclusion of lands in the Band’s use. Strict adherence to the treaty dimension of three miles wide would have excluded the Indian village. Dennis’ initial result, while not acceding to the Chief’s wishes, resulted in a Lake Huron width, as scaled from PLS Dennis’ plan, of approximately 6.2 miles; and a depth of approximately 9.2 miles, as compared to the treaty description dimension of “six miles from East to West” it is of further interest to note that Dennis excluded approximately six miles from each of the easterly and southeasterly sides of the reserve, as compared to the intention expressed to him by the Chief.22

Departing from Reserve No. 2 on 13 November, Dennis arrived in Toronto on 17 November 1851.

Prior to the second survey season, PLS Dennis, in response to an inquiry from a Commissioner of Crown Lands about the progress of the work, expressed some disappointment with the progress made and the tedious nature of the work, due to the travel between sites, the time required to determine the boundary locations, and the necessity to project

17. Dennis FNB 832:[13-20 and 40-49].
18. Dennis FNB 832:[22].
19. Dennis FNB 832:[22-23].
21. Dennis FNB 832:[33].
the lines with the theodolite rather than using the compass. More specifically, Dennis reported that he did not wish to take full responsibility, when not accompanied by Captain Ironside, with

... locating a Reserve to a certain extent unsatisfactory to the Band for whom it was Reserved, in consequence of their claim as preferred [sic] being altogether inconsistent with the Treaty –

I feel that it is just and necessary that some one in whom the Indians have confidence should divide with me such responsibility. 23

It is apparent that Dennis was placing too much reliance and emphasis on the recorded treaty descriptions for dimensions; hence, he did not understand the unique circumstances of his commission. While he recognized the need to enclose occupied and developed land within the intended reserves, he became somewhat inflexible in deviating from the recorded descriptions beyond that minimum; contrary to his instructions to satisfy the specific intentions of the First Nations.

By March of 1852, J.W. Keating had successfully made application, and been appointed, to accompany Dennis the next season, on behalf of the Crown Lands Department, to assist in resolving the locations of the boundaries of the reserves. Keating had initially made application to the Indian Department; however, between that Department, the Crown Lands Department, Keating and Dennis the proposed working relationship was established, with Keating’s instructions issued by the Crown Lands Department, as follows:

... you have been selected for your knowledge of the Indians and of their Language and also of the sites of the Reserves to accompany him [Dennis] on the service to point out the position and extent of the reserved lands and to assist in reconciling any difficulties, should such arise, as to the limits.

While Mr. Dennis is marking out the boundary lines of the reserves you will make a cursory examination of the adjacent country with a view to ascertaining the nature of its soil, Timber, minerals and general resources, and transmit a report thereon to this Department. 24

Similar instructions were issued to Keating by the Indian Department, relative to reporting on the resources of the reserve lands. 25

23. NAC, RG 10, Vol. 192, Pt. 1, Reel C-11517, Letter, 4 March 1852, Dennis to Andrew Russell, 116276-116277.
24. NAC, RG 10, Vol. 190, Reel C-11513, Letter, 8 April 1852, John Rolf to Keating, 110782.
25. NAC, RG 10, Vol. 197, Reel C-11517, Letter, 19 July 1852, Keating to Bruce, confirming instructions by letter from Bruce of 29 May 1852, 115984-115986.
26. AO, RG 1, Series B-IV, Box 3, Item 10, Letters: 13 May 1852, Dennis to John Rolph; 23 June 1852, Keating to Dennis; 26 June 1852, Dennis to John Rolph; MNR Ontario Crown Records, Instructions to land Surveyors, Vol. 5, Letter, 2 July 1852, John Rolph to Dennis; and AO, RG 1, Series B-IV, Box 3, Item 13, Letter, 2 July 1852, Bruce to John Rolph.
a sugar bush, and that the island, beyond that, was
... of no value whatsoever, excepting on account of the fishing off its
South coast and also the large bay to the north. 27

Dennis and Keating readily agreed to a location change that they perceived to be advantageous to the Government by avoiding the necessity of a survey of the island, relying on the island plot by Bayfield. The change of location resulted in a reserve having approximately 19,000 acres, as compared to the 10,240 acres of the treaty description for a reserve of four miles square. 28 In this instance, there did not appear to be any objection by Dennis, Keating, or government authorities for Dennis and Keating to accede to what was reported to be a complete change of reserve location.

On 23 July, the whole of the survey expedition arrived at Reserve No. 17(a) (Shawanaga). In council with the Indians they were shown a plan produced by the Indians on birch bark that indicated the extent of their cession and their intended reserve. Keating, in company with the Chiefs, built a stone cairn at the proposed northwest corner to mark the starting point of the survey; however, at a subsequent council, an alteration to the reserve lands was requested to accommodate inclusion of the several rapids and falls of the Shawanaga River with its valuable pickerel, whitefish and trout fishery. No doubt the fact that their existing gardens and fisheries would not fit within a reserve laid out along the coast in accordance with the treaty description dimensions was of some influence in a decision to also move the reserve inland. Subsequent to moving the parcel inland, it was proposed to make it larger, proportionally reducing the Band’s other reserve tract at the Naiscoutaing River. Instead of two “three mile square” tracts, as called for in the treaty description, a tract three miles by five miles at Shawanaga, and a tract two miles square at Naiscoutaing, were proposed. 29

Keating and Dennis, again, readily agreed to the changes for two stated reasons; firstly and specifically, per J.W. Keating:


28. Dennis FNB 828:[5; 34-35]. See also AO, RG 1, Series A-11, Ms626/6, Letter and Report on the Indian Reserves of Lake Huron, 2 December 1852, Keating to Bruce, 47-48.

29. Dennis FNB 828:[36-37; 85]; also Keating, Huron Report, 48-49.

This we had the less hesitation in doing as with the exception of a few hundred acres of Sugar Bush where they also have small plantations the whole is utterly worthless. 30

Secondly, as a general principle, Keating came to an interesting revelation to explain the problems that he and Dennis were encountering with resolving the size and extent of the reserves as specified in the treaty descriptions as compared to the intentions and expectations of the Chiefs and Bands:

Independently of this, both Mr. Dennis and myself were satisfied ... that in all cases were [sic] the word miles occurs the Indians intended leagues the only mode of measurement known to the Canadians from whom they have derived what knowledge they possess of distances the word in their vernacular meaning simply a measure. Assured however that the real intention of the Treaty was to give to the parties at the time of its execution, the Tracts they severally indicated, we thought ourselves bound to admit this interpretation when claimed. We therefore felt less difficulty in departing from the strict letter of description. 31 [emphasis supplied]

Having resolved the general location of the boundaries and the projected process to complete the survey, Dennis and Keating departed on 25 July to meet the Chief at Reserve No. 17(b) (Shawanaga/Naiscoutaing) leaving Unwin and his party to complete the survey, with an Indian left behind to accompany the party. On 2 August, Unwin reported that the Chief’s appointee requested the length of the westerly boundary be reduced to four miles from five, with the reduction to be made up in breadth. While Unwin made the one mile length reduction, he only added 3,960 feet to the length of the southerly boundary. The easterly boundary was completed on 9 August, with the closing courses of the river “sketched” by use of a pocket compass and timing of the canoe travelling down the river. 32

Overall, the survey appeared to be completed in accordance with the general wishes of the Band to retain control of the fishery; however, adhering to the “miles” dimensions of the treaty description required the tract to be moved inland, then enlarged at the expense of the area of the Band’s other tract at Reserve No. 17(b) in order to enclose the lands in

32. Dennis FNB 828:[84-91]: Keating, Huron Report, 50.
use by the Band, rather than acknowledge the intentions for the reserve to front on Lake Huron and extend inland to include their land use.

On 26 July, Dennis and Keating ascended the Naicoutaing River with the Chief to determine the location of Reserve No. 17(b) (Shawanaga/Naicoutaing). Under the directions of the Chief, a tree was marked along the river between an abandoned trading post and formerly cultivated planting grounds, to indicate the centre of the westerly boundary of the reserved tract. The reserve was then to be laid out having a westerly boundary two miles long and to enclose an area of four square miles, running in a northeasterly direction, being reduced from the treaty dimensions in compensation for enlarging the tract at Shawanaga.

The Chief returned to Shawanaga with the specific survey instructions for PLS Unwin, and Dennis’ party travelled to Reserve No. 1 (Magnetawan). Unwin’s party arrived at Naicoutaing to start the survey on 10 August, laying out a parallelogram generally centred along the main branch of the Naicoutaing River, completing the survey on 17 August. Although the bearing and distance dimensions shown for the survey do not fit together by approximately 110 feet, the area is very close to the four square miles specified by Dennis’ instructions. 33

On 27 July, Dennis and Keating met Chief Pamequonashaing at the entrance to Byng Inlet, into which the Magnetawan River empties. On the 28th, they ascended the river with the Chief to a small lake to which he wished to extend Reserve No. 1 (Magnetawan). While the reserve was to be bounded by the southerly sides of the small lake and Byng Inlet, the Chief wished the reserve to run along the northerly side of the river to enclose the several falls and rapids for the valuable fishery, similar to the wishes at Shawanaga. Boundary markers were erected along the north side of the river at the falls and along the southerly side of Byng Inlet, where the Chief wished to locate the northerly end of the easterly reserve boundary to enclose some former planting grounds. Dennis completed astronomic observations for boundary direction control and connected the northwesterly reserve corner to that work to assist Unwin in starting the survey when he arrived later. Dennis, Keating and party then travelled to the Indian village at Reserve No. 2 (Henvey Inlet) on 29 July.

On 17 August, Unwin received Dennis’ instructions for the survey at Magnetawan and departed Naicoutaing on the 18th, to commence the survey on the 19th. Unwin ran the westerly boundary south for the treaty description distance of three miles, then ran the southerly boundary due east for the treaty distance of six miles. The easterly reserve boundary was run north to the southerly shore of the small lake, less than 1.2 miles from the surveyed southeast corner, and the survey was completed on 28 August. Overall, the adherence to a due east southerly boundary, in combination with the general northwesterly direction of the river and small lake, resulted in a reserve that did not satisfy the treaty description for a tract “… three miles deep.” 34

Keating and Dennis left Magnetawan on 29 July, arriving at the village of Chief Wagamake at Reserve No. 2 (Henvey Inlet). The Band wished to know if they were to be allowed the extra land they had sought when Dennis had attended there the previous season. As the Chief was away, Dennis deferred the matter until he could confer with the Chief the following week at Manitowaning. Keating and Dennis were informed that all the Bands to the west and inland were either at, or travelling to, that location to receive presents. Because they needed to consult with the various Chiefs and arrange appointments for attendance at their reserves, Dennis and Keating also left for Manitowaning on 1 August, arriving there on the 3rd. 35

At Manitowaning Dennis, in consultation with Keating and the Chiefs, learned that Chief Shingwasaconse was leaving on 8 August for Garden River, and would be the first Chief to arrive back at his reserve; therefore, they decided to go directly to Garden River, locate the reserve there, then work their way easterly completing the reserve surveys on the way to Lake Nipissing. Dennis sent instructions for Unwin to bring his party to Garden River upon completion of the work at Magnetawan, with the view of having him engaged on that reserve for the balance of the season. Departing Manitowaning on 6 August, Dennis and Keating arrived at Garden River on 12 August. 36

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34. Dennis FBN 828:7-8, 39-41, 94-95, 207-218; also Keating, Huron Report, 50-51.
35. Dennis FBN 828:41-44.
36. Dennis FBN 828:44-46; also Keating, Huron Report, 52.
Prior to leaving Manitouaning, Keating wrote to Lieutenant Colonel R. Bruce, Superintendent General of Indian Affairs, informing him of the progress of their activities and plans. With regard to some of the inland reserves, Keating stated:

Some of these Reserves, Wé, nah, bi, tê bing [Wahnapitea] and Whitefish Lake for instance are from six to three days travel inland with numerous Rapids and portages intersecting the difficult and barren line of country. There is no likelihood indeed hardly a possibility of the surrounding country ever being settled in the face of the obstacles of access and the sterility of the soil. I should therefore beg to suggest that in those two cases a mere indication by monument of the extent of the tract should be considered sufficient thus avoiding the very great delay attending the transport of a large party with provisions into the interior & the expense of survey from which no commensurate benefits can be derived.37

Apparently, instructions to the contrary, Dennis and Keating decided to not survey Reserves No. 11 (Wahnapitea) and No. 6 (Whitefish Lake) as being too far inland; thereby denying the Chiefs and Bands at those locations the opportunity to specify the location and extent of the boundaries of the lands that they intended to retain.

On 12 August at Garden River, Keating and Dennis held a council with Chief Shinguacsonse and his sons. A proposed outline of Reserve No. 14 (Garden River) was, initially, rejected. Neither Keating nor Dennis provided details of the objection; however, it is clear that the suggested lengths and directions for the boundaries were proposed before the southeasterly and southwesterly corner points, specified by the treaty description, had been physically located. Presumably, the outline had been proposed making reference to the charts prepared by Bayfield for the Lake Huron, Lake George and St Mary’s River alignments, as well as the plans by PLS Vidal for the several mineral locations previously surveyed in the vicinity. Keating, while recognizing the value of the timber and the hay on the reserve, as well as its location relative to Sault Ste Marie, considered the reserve to be

... of very great extent but determined by known points, and therefore not susceptible of any change, nor is it a matter of much moment that such should be the case.38

The proposed outline was stated to be eventually approved of by the Chief and his sons, and all then travelled to Partridge Point to locate the southwestern corner of the reserve, approximately fourteen chains northwesterly of the point. Chief Shinguacsonse and his sons were also present at the marking of a pine tree at Maskinonge Bay for the southeasterly corner of the reserve on 16 August, after which Keating and Dennis and his party departed for the Thessalon River.39

Unwin and his party arrived at Maskinonge Bay on 11 September with the instructions for the survey from PLS Dennis. On 14 September, Unwin started the survey of the easterly boundaries in accordance with PLS Dennis' description, except that he ran the southeasterly line on a bearing of N 44° 30' E rather than N 43° E as stated in his instructions. That initial variation, assuming perfect measurements, resulted in the surveyed locations for each of the most easterly southeast, the northeasterly and the northwesterly reserve corners to be established approximately 1248 feet easterly and 1195 feet southerly, of their locations as intended by Dennis' instructions. That is not to say that the corners were established incorrectly; it is merely to show that the deviation from the instructions compounded the erroneous location of the northwesterly reserve corner.

The mountainous terrain, the difficulties of keeping the party supplied, together with the lateness of the season and the probable closing in of the winter weather, were factors that, no doubt, influenced Dennis' instructions to run the westerly reserve boundary due south from the surveyed location of the northwesterly corner, with an arbitrary bend to the predetermined location of the southwesterly corner where PLS Unwin could most readily run directly to it, rather than starting at the southwesterly corner and running due north to intersect with the northerly boundary as run. Again, assuming perfect measurements, the northerly portion of the westerly boundary was run approximately 3200 feet easterly of its location as intended to be established by running due north from the southwesterly corner established at Partridge Point. Unwin finalized the westerly lines, as run, on 3 November, then returned to Toronto, arriving 15 November.40 Overall, only the northeasterly reserve corner could be

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38. Keating, Huron Report, 52; Dennis FNB 828:[44-48].
39. Dennis FNB 828:[44-48].
said to satisfy the treaty description call for "... inland ten miles throughout the whole [frontage] distance...".

On 17 August, Dennis and Keating stopped in at the Bruce Mines to receive and write mail and to take on supplies, before arriving at reserve No. 12 (Thessalon). During the council with the Chief and Band, held on 18 August, the issue of reserve dimensions was raised, as "... the Band experienced much dissatisfaction with the size of their tract as set forth in the treaty ..." Specifically, if the dimensions were confined to miles the reserve would exclude the location of the Band’s sugar bush. The Chief informed Dennis, through Keating,

... that at the Treaty the distance of Four miles was entered for Four leagues [sic] which they intended, asserting [sic] that they did not know what a mile was. The French League being the only measure of length they ever refer to.

Keating’s own report on the matter, including his having advance knowledge of the concern, was in essential agreement:

... the Indians were assembled to meet us, and insisted that they had intended Leagues not miles; that miles they know nothing of and that they had already addressed Captain Ironside on the subject, which he had indeed mentioned to me. I was myself fully aware that such was the case.

Keating continued, in his Report to the Indian Department, in further explanation and support of the resolution of the matter:

Mr. Dennis also knew that in all cases the distances are determined by voyageurs and we did not hesitate to extend the reserve to meet their requirements. In this I trust we shall have your approbation.

Dennis, relying on Keating’s clarification of the issue and, no doubt to have someone “… divide with me the responsibility” for deviating from the dimensions provided by the treaty, reported:

As Mr. Keating was the gentleman who translated and wrote the descriptions on the occasion referred to – [the signing of the Treaty]

and is now satisfied that he misunderstood the word used by them to indicate the measure of length they desired – accordingly put that interpretation upon the Treaty.

The intention to allow such a deviation from the dimension specified by the treaty, however, was not fully effected. As reported by Dennis:

We therefore gave the Band the frontage they desired and which proved to be about 10 miles.

The boundary layout was “decided” prior to commencement of the survey, presumably by making reference to Bayfield’s charts of the shoreline. It is not clear if the location of the southeasterly corner was the location specified by the Band, or if they merely acquiesced in it; however, from that point the treaty dimension of four miles was proposed to be set inland for the depth, rather than the supposedly accepted dimension of four leagues. After the council, the location of the southeast corner was marked on the ground. On 19 August, the survey was commenced with Dennis running the reserve boundaries while Keating conducted an examination of the lands to confirm the rumours of valuable mineral and timber capabilities. The northerly boundary was run westerly for ten miles from the northeasterly corner on a course generally parallel to the portion of Lake Huron frontage situate easterly of the Thessalon River. The westerly boundary was run southerly from the northwesterly corner to Lake Huron, a measured distance of 2.8 miles; close to the “decided” layout, but less than the treaty dimension of four miles, and much less than the intended four leagues. Overall, Reserve No. 12 appears to be the first reserve surveyed making adjustments for the difference between leagues and miles; however, the adjustment was only applied by Dennis to the Lake Huron frontage, while the inland dimension was, generally, held to the recorded treaty dimension in miles. It is also of interest to note that the rear boundary dimension of ten miles translates to a scaled dimension of approximately 13 miles along a generalized lakeshore frontage.

The survey of Reserve No. 12 was completed on 10 September, and the following day, Dennis and party, and Keating, travelled to Mississaga,
followed by the balance of the party, equipment and provisions on 12 September. The treaty description for Reserve No. 8 (Mississaga) indicated the reserve was to lie between the Mississaga and Penewabecong Rivers to the first rapid. On 13 September, while awaiting the arrival of Chief Ponekeosh from inland, Dennis and party, accompanied by Keating, went up the River Mississaga and took a traverse of same as far as first large rapid — some 16 or 18 miles back.  

The following day they traversed the Penewabecong River and Lakes and, still in the absence of the Chief, plotted the river traverses the day after that. Chief Ponekeosh arrived on 17 September, and during the council to resolve the boundaries concerns arose about the size of the proposed reserve, as reported by Dennis,

> The Chief on his arrival did not seem to be positive himself as to the points between which he had intended to include his Reserve — at first stating that he wished to include all the land between the two rivers South of an East and West line produced from the first high rapids on the Mississaga some 18 or 20 miles up.

Despite the apparent agreement between what the Chief indicated during the council and what was stated and recorded for the treaty description, and despite the statements of Dennis and Keating regarding the intended units of measurement, they balked at the intention that a reserve of such size could be retained, as summarized by Dennis:

> However from the way the two rivers diverge from each other, I felt sure they would probably back there be 25 or 30 miles apart and we therefore concluded — as Mr. Keating said he recollected from the explanation at the treaty that no reserve of such size was intended to be made at this place — to suggest a smaller tract. We proposed therefore an outline which would include all the timber of value, and extend from the Lake back between the two rivers for 6 or 7 miles and with this the Chief stated he would be satisfied.

The intention to retain a reserve back to the first rapid was also supported by the findings of Keating, who reported on ascending the Mississaga River:

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50. Dennis FNB 828:[55].
51. Dennis FNB 828:[13].
52. Dennis FNB 828:[13-14].
54. Dennis FNB 282:[14].
55. AO, J.B. Robinson Papers, Ms4/5, Transcript of the diary of the Honorable W.B. Robinson, 24 September 1850. See also NAC, RG 10, Vol. 191, Reel C-11513, Report, 24 September 1850, W.B. Robinson to Bruce, 111693, 111696-111717.
in the time remaining that season, as follows:

I saw that to effect this [completion of the surveys] without dividing my party was impossible and consequently determined on a course which had suggested itself a few days before in which Mr. Keating in every way concurred, and which, although it involved a proceeding not authorized by the instructions which I had the honour to hold from the Department, yet inasmuch as it resulted in the general performance of the service to a greater extent than could have been arrived at in any other way, will I trust Sir, not be altogether unapproved of by you.

Mr. Keating and myself had frequently, observing the utter worthlessness of the tracts surveyed, commented upon the matter and come to the conclusion that they were not worth the expense, and I had determined with regard to those inland merely to keep an accurate traverse reckoning from the time of leaving the Lake till I arrived out again so as to enable to fix with approximate accuracy the general position of the tracts respectively, mark the angles by permanent boundaries, and in each case make such a "reconnaissance" [sic] as would enable me to map and describe the reserve.

To effect this would not require a large party and as I had with me another Licensed Surveyor, Mr. Arthur Bristow, a friend who had accompanied me as a chainbearer, but principally from a desire to see the country, and who entered with spirit into the proposition. I determined to divide the party—myself Mr. Keating and 3 men to proceed in advance down the Lake and locating the front boundaries of the reserves at Serpent and Spanish Rivers, continue up to Lake Nipissing by French River, and having established the outlines of the tracts reserved at those places return the same way and meet Mr. Bristow and the rest of the party at Mississauga Reservation (near the "Petite Recollet" Falls on French River) to which point I estimated he would with some little difficulty be able to ascend with the large boat, having previously surveyed the tracts at Mississauga, and Serpent and Spanish Rivers, for which surveys respectively and also for Mishequanga he would find at each place waiting him detailed instructions.

This arrangement was carried out. 56

The extent to which the plan was carried out, and the amount of deviation from the intention and instructions for the surveys, varied for the remaining reserves visited by Dennis that season. As stated above, Dennis and Keating, accompanied by three men, left Reserve No. 8 on 18 September and travelled to Reserve No. 7 (Serpent River), ascending, and presumably mapping, the river until meeting the Chief and Band on 20 September. Accompanied by Chief Windawtegwinini, they continued the ascent of the river to the easterly end of a small lake where the Chief wished to locate the northeast corner of the reserve. On 21 September, the party, accompanied by the Chief, marked the southeast corner of the reserve at Lake Huron. Dennis and his party then travelled down Lake Huron to the Spanish River. 57 It should be noted here, that although Keating accompanied Dennis for the remainder of the season, the records of Keating's report are incomplete for Reserve No. 7 and, to date, are unknown beyond that location.

PLS Bristow arrived at the Indian village at Serpent River on 28 September, where he obtained the instructions left by Dennis for the survey. The following day, accompanied by a member of the Band to point out the southeasterly reserve corner previously marked by Keating and Dennis, Bristow started to run the boundary northerly, arriving, four days later, at the small lake on 2 October. The boundary as run ended approximately 30 chains westerly of the location pointed out by the Chief to Dennis to be the intended northeast corner of the reserve; 58 therefore, it enclosed approximately 236 acres less than intended by the Chief, and also cut off approximately 1,980 feet of water frontage along the small inland lake.

On 22 September, Dennis and his party ascended, and presumably mapped, the Spanish River, being the northerly boundary of Reserve No. 5 (Spanish River). The following day, accompanied by the Chief, he visited, marked and confirmed Mr. Vidal's [sic] post for South West angle of Hudson Bay Company's location as South East angle of Indian Reserve. 59 Dennis and party then departed, with the intention to travel to Manitowaning to meet the steamer carrying supplies for them.

On 4 October, PLS Bristow arrived at the Hudson's Bay Company (HBC) post at La Cloche, where he acquired the instructions that Dennis had left for the survey of Reserve No. 5. The following day he started running the easterly boundary of the reserve by retracing the westerly boundary of the HBC post, as surveyed by PLS Vidal in 1848, and projecting it

56. Dennis FNB 828: [15-18].
57. Dennis FNB 828: [18-19, 58-59].
58. Dennis FNB 828: [62-65, 148-152].
59. Dennis FNB 828: [19].
due north to the Spanish River, completing the work on 12 October, then moving his party toward the French River to meet Dennis’ party. Overall, while specifics of discussions with a Chief of the Spanish River Band were not reported, there was an apparent resolution to the ambiguity of the treaty description for Reserve No. 5. The reserve description provided by the treaty was detailed in a metes and bounds style, with the closing or last course described as joining from a point up the south branch of the Spanish River four miles from the mouth of the river, to the point of commencement at the southwest corner of the HBC post at La Cioche. Such a closing line would have, generally, bisected the reserve. However, it appears that a substitution of “leagues” for “miles” into the description, together with recognition of the intention that the reserve abut the HBC lands, resulted in the more satisfactory solution for the survey. The easterly reserve boundary, as run, intersected the Spanish River approximately 13 miles from the mouth of the river.

After departing from Reserve No. 5 on 23 September, Dennis and Keating travelled to Manitouaning, arriving the following day, to meet the steamer for supplies. They were forced to wait until the 27th for the steamer to arrive; then their departure was delayed by poor weather until 29 September. On 2 October, they started the ascent of the French River. In effecting the previously decided plan to approximately fix the general locations of the reserves on French River and Lake Nipissing, Dennis reported:

From this time till our return again out to the front I kept a Traverse illustrated by continuous sketching from which is compiled the Plan of the reserves on French river and Lake Nipissing.

The bearings were taken at each bend and the distances estimated by time—the rate of sailing being frequently measured by a log line. More specifically, Dennis arranged a box in the front of the canoe with a boat compass to observe the bearings, and determined the distances ranged by timing the passage of the canoe past a log, attached to a line, occasionally placed in the water from the front of the moving canoe. In assessing the quality of the information thus acquired, Dennis stated:

The Map is not of course to be taken as perfectly correct, but it is as much as could be produced from any other than a complete instrumental survey. So far as I am able to judge of that country, for such a survey it would be folly to go to the expense.

I may remark that on plotting my traverse of French River it differs but very little from the micrometer survey of Mr. Logan, a tracing of which was provided to me by Mr. Murray.

Dennis and Keating arrived and camped at Reserve No. 13 (French River) on 2 October and fixed the northeast corner of the westerly portion of the reserve on 4 October. No details were reported to determine how, or with whom, the boundaries were resolved; however, instructions were prepared for PLS Bristow, and Dennis and Keating departed for Lake Nipissing. On 16 October, Bristow and his party, together with a supply party sent back by Dennis, arrived at the same corner. PLS Bristow commenced to run the easterly boundary south the following day, and during the course of running the southerly boundary, his party was joined by Dennis and Keating descending from Lake Nipissing. Dennis continued the traverse and mapping of the channels around the island portion of Reserve No. 13, completing the task on 23 October. The boundaries of the mainland portion of the reserve were completed on 26 October.

Overall, it was not apparent by what discussions the treaty dimension anomalies were resolved; however, it was apparent that the island located “east” of the Ogawamanong River (actually lying north, but on the right bank of the river) was the site of occupation by the Band. The largest area of land, suggested by the treaty description as two miles frontage for the “easterly and westerly” portions by one mile depth for each, would amount to four square miles. However, the survey outlined a total of approximately eight square miles. Considering possible alternative interpretations for the treaty description, in conjunction with the physical circumstances, it becomes uncertain whether Dennis and Keating were suddenly generous, or whether the eight square miles represented a com-

60. Dennis FNB 828: [66-73, 153-161]
61. Dennis FNB 828: [60-65].
62. AO Special Collections (Lake Nipissing) Canada Department of Crown Lands/Legacy, 1855, A-7 (small). SRW5999, Copy of Logan’s geological map of Lake Nipissing surveys, made 1844 to 1855. William Logan (eventually to be Sir William) was the founder and first Director of the Geological Survey of Canada.
63. Dennis FNB 828: [21]. Alexander Murray was in the employ of the Geological Survey Department.
64. Dennis FNB 828: [20-21, 27, 65-66, 73, 75-78, 162-171].
promise adjustment of the boundaries that was still smaller than the reserve intended to be retained by the Band. There is a strong suggestion that leagues was the intended dimension for the mainland portion; which would indicate that the reserve should have been larger.  

After leaving Reserve No. 13 on 4 October, Dennis and Keating ascended the French River to Lake Nipissing, mapping the river along the way; arriving at the HBC post on the Sturgeon River on 6 October to locate Reserve No. 10 (Nipissing). Dennis reported:

We ... continued up to the North shore of Lake Nipissing where we were engaged from the 6th to the 15th of October in connection with the large Reservation of Shabokeshick and Band - the position of which to suit the wishes of the Band we placed about 4 miles farther Easterly then is described in the Treaty but preserving about the same extent of frontage.

More specifically, Dennis recorded that upon arriving at the HBC post on Sturgeon River, and confirming the arrival of his provisions previously forwarded, they also found Chief Shabokeshick at the post. Dennis took the Chief on board his canoe, and

proceeded down Lake Easterly to establish South East limit of this reserve, it being understood that on West, Reserve is to be bounded by Sturgeon River - [emphasis supplied]  

On 8 October, Dennis

accompanied by chief went down this morning and marked a Birch tree at the mouth of a small Brook about 3 miles below the Village [Beaucage Point] as the South East angle of Reserve – In our return went back on high land and inspected Indian Gardens.  

The same day, en route back to the HBC post, the party camped at Chief Dokis’ trading station at Dokis Point; where they were held by weather conditions until 11 October. Dennis had intended leaving the lake upon arriving at the post; however,

... at instance of Chief [Shabokeshick] remained to hear some objection which he stated some of his Band wished to make to the manner in which the Reserve had been bounded which parties are to be here tomorrow.

The following day, Dennis and his party

... were waited on by Chief and part of Band when a council was held, when it appeared that there were some cornfields and improvements still farther East than Where we had fixed the South East angle of the Reserve and they now wished to take off about four miles of frontage from end next Sturgeon River and add that distance on to the east end so as to include the said cornfields and improvements which we agreed to do tomorrow.

On 13 October, Dennis

Left the Hudson Bay Company’s Station this morning to go down Lake to mark South West and South East angles of reserve according to the arrangement desired by the Band – For the former marked a white Pine tree in a sandy cove about two miles West of Dokis’ Point and 3 or 4 miles East of Hudson Bay Station, and then continued down Lake.

At about 5 o’clock arrived at a small River about 5 miles East of the tree marked the other day for the South East angle of the reserve, the River is called “Wash_kamick_fan_shick”. Here on the East Bank and about 5 rods from the Lake marked a red Pine tree as the Boundary – and then turned back and camped at one of the Indian Gardens referred to – On our way down the Lake to day stopped and destroyed the tree formerly marked for the South East angle.

On 14 October, Dennis and his party attempted to return westerly up the lake, but were forced to take shelter against a storm at the Indian village situated at Beaucage Point. The following day Dennis picked up Chief Dokis at his trading post, together with three of his Band members, and crossed the lake to the French River to locate Reserve No. 9 (Dokis).

Overall, the survey returns relating to Reserve No. 10 confirmed that Dennis made no effort to run the sidelines of the reserve, beyond marking trees at the lake for the front corners, and no effort to locate or point out

65. Considering that the frontage specified by the treaty description could also be interpreted to mean two units on the lakeshore, lying both “east and west” of the river by one unit inland, and that the frontage of the parcel “east” of the river was approximately three miles long (i.e. one league), if the units were intended to be leagues, the area intended by the treaty description would amount to eighteen square miles. If the units were intended to be miles, the treaty description area would be two square miles. Regardless of the dimension interpretation, Dennis and Keating were, prior to this reserve, only generous with the size of the reserve at Parry Island.

66. Dennis FNB 828:[21-22]
67. Dennis FNB 828:[67-68].
68. Dennis FNB 828:[68-69].
the rear boundary of the reserve as he proposed to draw it. Also, the lake-
shore was mapped in the same manner as the French River; by continuous
sketching from the moving canoe. While Dennis’ exploration plan indi-
cated only one location for Indian gardens, his report clearly stated that
there was more than one garden. The plan also illustrated a path or route
leading from the Beaucage Point village both northerly inland and easter-
ly, parallel to the shore, to the vicinity of the second east boundary and
northerly thereafter; presumably to the gardens and improvements (not
illustrated) that he confirmed existed and at which he camped after mark-
ing the second southeast corner on 13 October.72 Further, there was no
apparent justification or need to shift the westerly boundary to the east.
The easterly boundary was ultimately located correctly in accordance
with the requirement by the treaty description to enclose the "... present
planting grounds on Lake Nipissing,"73 and there was no extra land
acquired on the east for which a shift of the westerly boundary was to
compensate.

On 15 October, Dennis, Keating, Chief Dokis and their parties left
Chief Dokis’ trading station on Reserve No. 10 to travel to Reserve No. 9
(Dokis). Dennis reported:

... we found Chief Dokis an exceedingly intelligent Indian who owns
the Reserves near the Chaudiere Falls on French river and derives his
living chiefly by trading among the Indians of this Region—

Accompanied by him and others of his Band we left Lake Nipissing
on the 15th of October and descended to the Chaudiere Falls, where
we made an examination of the large Island called in the treaty
"Olkicendawt" which as also a tract on the South side of French river
opposite here was reserved to this Band—

The latter mentioned of the two tracts reserved here we found to be a
case similar to that at Thessalon — The Chief stated that he meant that
the Indian word used at the treaty to indicate the measure of length,
should represent the League that he knew nothing of miles and that the
tract which he desired was between two certain rivers about 3 leagues
apart—

72. MNR, Ontario Crown Survey Records, Plan 2413, Map of Exploration of French
River and Lake Nipissing, Shewing Indian Reserves No. IX, X and XIII under the Treaty
of September 9 A.D. 1859, J.S. Dennis, 14 May 1853.

73. The Robinson-Huron Treaty, no. 61, Canada 1891.1:150.

Of this we made the circuit and I took particular pains to keep an accu-
rate reckoning illustrated by notes and sketches, and am enabled to lay
it down with considerable accuracy.74

Dennis’ diary essentially confirmed the report summary, and pro-
vided further clarification that the intended mainland portion of the
reserve was surrounded by two chains of rivers and lakes which created a
large peninsula. A short portage that connected the two waterways was
used to mark the easterly boundary. Overall, the physical location and
extent of the lands intended to be reserved by the treaty supported the
Chief’s contention for leagues rather than miles. The distance along the
French River frontage between the termini of the lake and river chains,
shown by Dennis’ exploration plan, scales very close to nine miles; how-
ever, the depth from the river scales somewhat less, depending upon the
way the measurement is taken.75

Upon completing the circumnavigation of the mainland portion of
Reserve No. 9 on 18 October, Dennis and party descended the French
River, arriving at Reserve No. 13 on 20 October. The following day,
Keating departed for Manitowaning and Sault Ste Marie, his field duties
being then completed for the season. Upon the completion of the survey
of Reserve No. 13, described above, Dennis and Bristow descended the
river to Lake Huron, where, due to stormy weather, they were delayed in
picking up Chief Wagamake until 31 October. They went with the Chief
to the northeast corner of Reserve No. 2 (Henvey Inlet) to locate an addi-
tion to the reserve that Dennis and Keating had resolved between them-
selves prior to parting company.76

Having completed the work that he was going to perform for the sea-
son, Dennis departed on 2 November for Toronto, arriving home on 7
November 1852.77

Prior to the third survey season J.W. Keating transmitted his ‘Report
on the Indian reserves of Lake Huron’ to Lieutenant Colonel R. Bruce,
Superintendent General of Indian Affairs, with a letter dated 2 December
1852.78 Subsequently, Bruce reported, with a copy of Keating’s report, to

74. Dennis FNB 828:[25-26].
75. Dennis FNB 828:[73-76]; also MNR, Ontario Crown Survey Records, Plan 2413,
Map of Exploration of French River and Lake Nipissing..., J.S. Dennis, 14 May 1853.
76. Dennis FNB 828:[28, 79-81].
77. Dennis FNB 828:[81-82].
the Committee of the Executive Council on Land Applications, for their advice and guidance relative to two issues arising out of the survey; the first issue relating to the extent of lands surveyed for the reserves, as follows:

On a Communication from the Hon’ble R. Bruce, Superintendent General of Indian Affairs dated 20 January 1853, submitting for consideration a Copy of a Report addressed to him by Mr. J.W. Keating, who, under instructions from the Crown Land Department, accompanied Mr. Surveyor Dennis while employed last summer in laying off the Indian reserves on the Shores of Lake Huron & of its Tributaries — from which it appears that these gentlemen felt themselves constrained, for reasons explained by Mr. Keating, to deviate in some cases from the strict letter of the treaty with reference to the extent & limits of the reserves — that as these deviations seem to be made in a spirit of Justice towards the Indians & with the view of supplying omissions which originated in their inability to communicate their wishes in an intelligent manner to the Commissioner Mr. Robinson, — the Superintendent General hopes that they will be confirmed by the Provincial Government. 79

The Committee responded to Superintendent General Bruce, in that issue, as follows:

The Committee recommend that the proceedings of Messrs. Dennis & Keating above alluded to be approved and confirmed. 80

In continuing to misunderstand their instructions, Dennis and Keating likely misled Superintendent Bruce and the Executive Committee. While reporting that they were “constrained” to deviate from the location and dimensions of the recorded treaty descriptions to include occupied and inhabited lands (by way of blaming the Indians for Keating’s failure to interpret their dimension wishes correctly at the treaty ceremony), they glossed over the fact that they were usually not satisfying the intentions and expectations of the Chiefs and Bands. On the one hand, at Reserve No. 16, on the perception that the mainland portion was more suitable to agriculture than Parry Island, and the cost of a survey was saved, Dennis and Keating took on the authority to allow or accept the complete change of location from the mainland to an island, with a reported larger area. On the other hand, however, they denied any authority to allow or accept the full extent of site-specified dimensions, limiting expectations to occupied land or requiring trade-offs of width or depth or not completing the surveys at all, at most other reserve locations. Dennis and Keating proceeded in a manner that they perceived would be most favourable to the government in terms of quality and quantity of land, rather than in accordance with their instructions: Dennis to locate, demarcate, measure and represent the reserve boundaries as intended by the Chiefs and Bands, and Keating to interpret, represent and act on behalf of the Indians to determine their boundary location wishes and resolve any difficulties. By letter dated 21 May 1853, J.S. Dennis transmitted his return for the 1852 season to the Crown Lands Department. At the close of his Report he summarized the list of reserves remaining to be surveyed, comprising two located inland from Lake Huron, one inland from Lake Superior and three on Lake Superior; and expressed his views that the third season should be sufficient to complete the outstanding work. 81

While it appears that Dennis intended to complete the assignment to the point of assembling and forwarding provisions to Sault Ste Marie, by June of 1853, he was aware that personal matters involving the family property would preclude his attendance. He, therefore, arranged to transfer the instructions for the survey to his brother in law, James Bridgland, PLS. 82

Instructions were issued to PLS Bridgland by the Crown Lands Department on 18 June 1853, to complete the surveys of the Indian reserves on Lakes Superior and Huron, as well as a mining location on Michipicoten Island, and expressed the desire that he proceed immediately. However, Bridgland appeared to be hesitant and uncertain about the assignment and the short notice and season remaining to him. He wrote to the Crown Lands Office for suggestions on making the assignment more cost-effective and efficient; to which the Department suggested that Bridgland delegate some of the work to PLS Dennis, when his personal business had been completed, or take PLS Unwin along, as had been previously done. 83

78. Keating, Huron Report, 47.
81. AO, RG 1, Series B-IV, Box 3, Item 13, Letter, 21 May 1853, Dennis to John Rolph; also, Dennis, FNB 828.
82. AO, RG 1, Series B-IV, Box 3, Item 13, Letters, 8 June 1853, Dennis to Bridgland and Bridgland to Dennis; June 10, 1853, Dennis to John Rolph. Also, AO, RG 1, Series A-1-1, Vol. 47, Letter, 10 June 1853, Dennis to A. Russell.
In the meantime, J.W. Keating had written, first, to Superintendent General Bruce, then to the Crown Lands Department, seeking permission to engage his own canoe and four men, enabling him to more extensively explore the shores of Lake Superior for mineral and fishery opportunities without being constrained by awaiting completion of the reserve boundary surveys. However, the request was refused.84

Also, prior to the 1852 season, in anticipation that the surveys for the Lake Superior reserves might be addressed during that season, a copy of a petition of the Fort William Indians had been forwarded to Keating. With regard to the dimensions of the reserve to be excluded from the cession, the petition stated that the land was too small; that they had asked for the French measurement (lieues or leagues) and believed, when signing, that the treaty description indicated that fact, but that the treaty had used the English measurement (milles or miles). Further, the petition stated that they did not even know where their land was located, as it was described in the treaty; that before leaving for Sault Ste Marie for the treaty signing they had decided together to reserve the lands for fifteen miles upstream from the first division of the river for a width of eight miles on either side.85

J.W. Bridgland departed Toronto on 19 July 1853, in company with one of his chain bearers, arriving at Sault Ste Marie on 25 July, where he met J.W. Keating for the first time. On 28 July, after engaging more men and purchasing a boat, Bridgland departed from Fort Brady, on the American side of the St Mary’s River, for Reserve No. 15 (Batchewana) with Keating travelling in his own canoe.86

On 29 July, in the company of Keating and three Band members sent by Chief Nebenaigoching, Bridgland erected monuments to mark the Lake Superior ends of the northerly and southerly reserve boundaries;

however, he did not run the boundaries at that time.87

The party moved on to Reserve No. 2 of Lake Superior (Michipicoten) arriving on 3 August. Upon attending at the HBC post, Keating learned that Reserve No. 3 of Lake Superior (Gull Bay) was located seventy miles inland from Lake Superior, on Lake Nipigon. Keating reported the circumstances involved in transporting men and provisions to the location in a letter to the Superintendent General of Indian Affairs, stating:

Under these circumstances, and in view of the great difficulties attending the transport of a Boat, provisions and Men so far inland, I have thought it better to refer the matter to you, satisfied that there can be no necessity of incurring so large an outlay—

For years no one will penetrate to the distance of seventy Miles, and a tract of four Miles (two on each side of the mouth of the Gull River) define the reserve sufficiently well.88

Once again, Keating chose to not survey Reserve No. 3 of Lake Superior (Gull River) as being too far inland; thereby denying the Chief and Band at that location the opportunity to specify the location, dimensions and extent of the boundaries of the lands that they intended to retain.

With reference to Reserve No. 2 of Lake Superior (Michipicoten) Keating held discussions with Chief Totomenai, who "... pointed out the limits of his reserve which were duly marked."89 Keating, expressing the view that by the terms of the treaty the reserve was not to interfere with the lands that the HBC wished to acquire, enquired of John Swanston, the Post Master, if the reserve so indicated was in conflict with the HBC proposed interests. Swanston suggested some conflict; however, the protests of the Chief prevailed.90 Keating provided instructions to Bridgland for locating the Lake Superior intersections of the easterly and westerly reserve boundaries, and Bridgland marked those locations.91 Ultimately, no attempt was made to run the reserve sidelines, or to locate or point out

85. NAC, RG 10, Vol. 194, Reel C-11515, pp. 113931-113935, Petition, 3 January 1852, Indians of Fort William to Lord Elgin. See also NAC, RG 10, Vol. 205, Reel, C-11521, pp. 121372-121374, Letter, 18 August 1853, Keating to Bruce, outlines that Keating had previously been provided with the petition, 121373.
87. Keating, Superior Report 1853:122406. See also Bridgland FNB 824:[118].
88. AO, RG 1, Series B-IV, Box 3, Item 13, Letter, 3 August 1853, Keating to Bruce
89. Keating, Superior Report, 122410.
the location of the inland rear boundary as it was proposed to draw it.

Departing Michipicoten on 5 August, Bridgland and his party arrived at Reserve No. 1 on Lake Superior (Fort William) on 12 August, a day before Keating. With John MacKenzie, Chief Trader of the HBC at Fort William, Bridgland held an interview with the priest in charge of the mission to the Band about the reserve at that location. Upon Keating’s arrival the following day further councils were held with Bridgland, MacKenzie, Keating, the priest and the Chief on the 13th and 14th. In order that Bridgland could commence the survey, he and Keating resolved the treaty description anomalies to their own satisfaction; intending to maintain overall dimensions of six miles by five miles, but relocating the starting point to facilitate frontage along Lake Superior.92

Subsequent to Bridgland commencing the survey, the absent Band members were assembled in council with Keating. He reported:

When the Indians assembled in Council, they at once protested against the survey claiming an extent of twenty miles by sixteen to which I of course at once refused to consent. I referred them to the treaty, to the speech of Pau de Chat their speaker and recognized chief and they at once acknowledged that I was giving them what they had then claimed, but that they now found it not sufficient and wished for more, especially as they desired the “Pigeon River” (American Indians) to settle among them as also some families from “Lac de la Pluie”. To this I replied that Treaties could not be altered to suit their changed views, that the land given them was of excellent quality and ample for a settlement, indeed for more than they would ever cultivate and that the survey should proceed. I left them quite dissatisfied [sic] but I think urged on to their demands by others.93

Keating reported to the Superintendent General of Indian Affairs by letter, about the difficulties encountered:

90. Keating, Superior Report, 122410. See also review of NAC, RG 10, Vol. 661, Reel C-13401, “Treaty No. 60, known as the Robinson-Superior Treaty, Surrender by the Indians inhabiting the North Shores of Lake Superior (1850) 136-139, indicates that Keating was in error about the condition not to interfere with the Hudson’s Bay Company’s proposed lands. The condition was not a statement within the document general, but was recorded as a condition specific to the reserve at Fort William.
91. Bridgland FNB 824:[122]. No field notes were filed.

I met the Indians yesterday [17 August 1853] in Council and they utterly refused the Boundaries assigned by the treaty requesting to extend their reserve to an inordinate extent & wishing me indeed to put a stop to the Survey.

I of course refused to entertain so extravagant a proposition nor do I think their demands should be acceded to except in one instance ...

I also made reference to the Petition of which you sent me a copy & have their reply in full which I shall forward on my return. It turned out very much as I suspected, much of it being made for them without their knowledge or consent.94

An independent assessment of the circumstances, and a possible influence on the resolution imposed by Keating, was provided by Chief Trader John MacKenzie, of the HBC post at Fort William, reporting to Sir George Simpson as follows:

Mr. Keating arrived here on the 13th, he was not employed to survey the Indian reserved Lands, but I believe was sent principally with the view of enquiring into some complaints made by the Indians in a Petition which they forwarded to the Governor General in the month of March 1852 — ...

2 Surveyors, 2 Brothers of the name of Bridgland [sic] arrived here a day before Mr. Keating & are now employed surveying the Indian reserved Lands, but the Indians are not by any means pleased with their share & have thru Mr. Keating claimed as high as the Falls on the right bank of the River, & a Line extending from the Little Forks about a mile on the right back from this post to Sturgeon Bay a distance of about 13 or 14 Miles. This I protested against as being against the treaty – it being distinctly stated that the reserve was to commence about 2 Miles from the post — where accordingly I got the Surveyors to commence the Survey- The Company Lands being all on this side. It is not likely that the Indians will succeed in their object.95

Trader John Swanston, of the HBC post at Michipicoten, reported separately to Sir George Simpson, and more indirectly by way of information provided by John Bonner of Michipicoten Island:

... it would appear that Mr. K [Keating] has not been able to come to any satisfactory arrangement with the Indians of the [Fort William] Establishment but on what point they suffer I do not exactly know, but I strongly suspect it has reference to the reserves, as I am aware that

the Indians wish to claim leagues in lieu of miles, and also to have the
Fie Island made over to them as a fishing station. 96

Keating, in this instance, chose to pointedly and specifically not
implement his previously stated practice of accepting the substitution of
leagues for miles when contended for; choosing to dismiss all of the peti-
tion items as some sort of conspiracy created by others using the Indians.
On the one hand he refused to deviate from the size of the reserve as
stated by the treaty description; on the other hand, recognizing that the
treaty description was unclear and inadequate, he chose to interpret and
vary the description to his own view of what was intended. Bridgland, for
his part, acted under the instructions of Keating with variations to accom-
modate a quick field layout, relying on physical features (e.g., the south-
side of the big horseshoe curve of the river) that were not mentioned in
either the treaty description or the petition. The southerly boundary, being
comprised of four distinct courses, was only monumented at its westerly
extremity. 97

In summary, the reserve, as surveyed, was located at variance from
the treaty description (except as to the general overall dimensions in
miles), in direct opposition to the expressed representations of the Indians
both in their petition to the Governor General and in council with J.W.
Keating during the course of the survey. Also, in both the petition and
the council, the intention to rely on leagues rather than miles for the reserve
boundary measurements were refused by Keating, contrary to his own
prior stated admissions and acknowledgements on the issue. Further, the
location of the Hudson’s Bay Company post should not have been a guid-
ing element of the reserve location unless the Band wished it to be; the
company rights were at the pleasure of the Band, and Keating and Bridg-
land should not have unduly relied upon input from Chief Trader Mac-
Kenzie. In this instance, Keating, with the acquiescence of Bridgland,
contrary to assuming the authority to allow or accept a change of location,
as he had done with Reserve No. 16 (Parry Island) or to reconcile the
recorded treaty description that was not capable of interpretation, pro-
cceeded in a way that he perceived was advantageous to the government

96. HBCA, D.5/37, fo. 555, Reel 3M104, pp. 583-584+1, Letter, 25 August 1853, John
Swanston to Sir George Simpson.
97. Bridgland FNB 824:[18-27], [37-57]. See also MNR, Ontario Crown Survey
Records, Plan 2438, Plan of Fort William reserve, J.W. Bridgland, PLS.

and the Hudson’s Bay Company, in terms of quantity and location of
reserve land, rather than in accordance with his instructions to act on
behalf of the Indians.

Upon completion of the survey on 24 August, Bridgland and his
party separated from Keating, and departed from Fort William the follow-
ing day for Michipicoten Island. They arrived at that location on 5 Sep-
tember and commenced the survey of John Bonner’s mining location the
following day. In complete contrast to the partial and non-surveys of three
of the four reserve locations that he had attended at, all boundaries of the
mining location were run and corners posted. 98

On 21 September, Bridgland and his party departed Michipicoten
Island, arriving back at the northerly boundary of Reserve No. 15
(Batchewana) on the 28th. Three miles of each of the northerly and souther-
ly boundaries of that reserve were run and marked. 99

Overall, the survey of the reserve at Batchewana was not complete to
indicate the location of the rear, or easterly boundary, nor was the full
length of the northerly and southerly boundaries run and marked. The sur-
vey of the reserve at Michipicoten provided no marking of the boundaries
other than the lakefront corners. In both instances the location of the rear
reserve boundaries, as Bridgland proposed to set them, were not indicated
on the ground to confirm if they were in accord with the intention of the
respective Bands. Also, in the absence of further explanation, it appeared
that the lakeshore configurations were derived from Bayfield’s charts.
Further, the projected rear boundary for the reserve at Batchewana did not
appear to allow for the treaty description requirement to be “... inland ten
miles throughout the whole distance, including Batchewanaung Bay...” 100
The surveys for these two reserves stood in complete contrast to the
extent of work completed to survey John Bonner’s mining location.

Bridgland, anxious to catch the steamer from Sault Ste Marie before
the winter season closed in, departed from Batchewana on 7 October, left
Sault Ste Marie on the 11th, and arrived home on the 15th. 101

98. Bridgland FNB 824:[27-31], [74-104] and [145-158].
99. Bridgland FNB 824:[58-73], [162-170]
100. The Robinson-Huron Treaty, no. 61, Canada 1891.1:151.
101. Bridgland FNB 824:[169-174].
A GREAT PUBLIC CALAMITY

Thomas M. Cooley, Chief Justice of the Supreme Court of Michigan from 1864 to 1885, on consideration of the activities of boundary surveyors appearing before him, observed:

When a man has had a training in one of the exact sciences, where every problem within its purview is supposed to be susceptible of accurate solution, he is likely to be not a little impatient when he is told that, under some circumstances, he must recognize inaccuracies, and govern his action by facts which lead him away from the results which theoretically he ought to reach. Observation warrants us in saying that this remark may frequently be made of surveyors.

Unfortunately, it is known that surveyors sometimes ... disregard all evidences of occupation and claim of title and plunge whole neighborhoods into quarrels and litigation ... 102

Indeed, the mischiefs that must follow would be simply incalculable, and the visitation of the surveyor might well be set down as a great public calamity. 103

These statements were originally directed toward the practices of land surveyors erroneously proceeding to relocate previously-established and settled land parcel boundaries in different, “theoretical” locations based upon measurement and description. The same statements, and the concerns they embody, can be applied to the practices of those land surveyors engaged to initially demarcate the Robinson treaties reserves.

Although not specifically made a condition of the treaties, W.B. Robinson reported specific mention of the signatory Chiefs’ requests to have their reserve lands surveyed and monumented. As described above, further initial intentions and purposes for completing the surveys of the reserves were clearly laid out by the Crown Lands Department and confirmed by Order-in-Council. Pursuant to that Order-in-Council, PLS Dennis was initially selected to complete the work, with specific instructions provided for the technical aspects of the surveys, the requirements for monumentation and marking of the boundaries and allowance for the presence of someone to accompany him, on behalf of the Indians, to assist in resolving any doubts as to the limits of any reserves. In the circum-

stances of the surveys under discussion, the surveyors appeared to no understand their instructions and objective: to establish the boundaries of the lands that the signatory Bands wished to retain, in accordance with their wishes. The result of the processes to determine, resolve, survey and monument the locations of the reserve boundaries, as practised by Dennis, Keating and Bridgland, were often not consistent with the purposes, intentions and instructions of the government, and often not consistent with the specific intentions and expectations of the Chiefs and their people at the reserve locations. Indeed, they proceeded most often in a way that they perceived as giving advantage to the government by minimizing the extent of retained lands.

The most common problems arising in the course of the surveys are as follows.

Leagues and miles

As outlined in detail in the reports, field notes, diaries and correspondence of Dennis, Keating and Bridgland, significant difficulties were encountered during the reserve surveys, most often relating to the size and location of the reserves. As noted above, during the course of recording the descriptions of the reserves for each Band, PLS Keating erroneously inserted the word “miles” into the general descriptions, when dimensions were provided. During subsequent encounters and dealings with some Bands in his own right, and during the course of his engagement to assist during some surveys of the various reserves, Keating became aware of his error, and acknowledged:

... the Indians intended leagues the only mode of measurement known to the Canadians from whom they have derived what knowledge they possess of distances ... 104 [emphasis supplied]

There is no doubt that the “mile” referred to by Keating and as intended to be laid out by the initial reserve surveys in the 19th century was the British statute mile, corresponding to 5,280 British feet (since 1497). However, the length of the French league to which he referred is not as readily apparent.

103. Diehl v. Zanger (1878) 39 Mich. 601. Chief Justice Cooley’s remarks and the principles upon which they are based, have often been quoted and relied upon in Canadian court cases.
104. Keating, Huron Report, 49. This observation no doubt acknowledges the reality that contact and influence along the fur trade routes through the Robinson treaties area had been almost exclusively French since Champlain’s exchange of youths with the Huron in 1610.
Based on long-term studies of the 17th-century cartography of Eastern Canada in general, and the Great Lakes area in particular, as well as the cartography and navigational practices of Samuel de Champlain, Conrad Heidenreich offers an authoritative review of distance measurements employed on 17th- and early 18th-century maps. One of the initial problems encountered by Heidenreich was the multitude of measures of distance in use during the [17th century]. Besides the French, who used about six different leagues, one also finds various English, Spanish, Italian and German measures. (Heidenreich 1975:121)

In order to assess the accuracy of the maps being studied, it is necessary to determine, in modern terms, the absolute length of the measures that the author of the map had in mind. Heidenreich found that, in fact, the league could vary anywhere from just over two statute miles to just under four statute miles depending on the league that was meant, its country of origin, and whether it related to the early 17th century, the late 17th century, or later centuries. (Heidenreich 1975:121)

In general, units of length for cartographic purposes were based upon a proportional division of a degree of latitude, as measured along a meridian. For example, from 1600 to 1710 in England there were 60 London miles, 20 marine leagues, 48 common miles and 24 common leagues in one degree of latitude. Similarly, France, Germany, Italy and Spain also had their own leagues relating to different proportions of the degree of latitude. However, the size and shape of the earth was not as well known then as it is now, and "... the absolute length of a degree was a matter of some controversy well into the 18th century ..." (Heidenreich 1975:122).

While refinements in the understanding of the earth's size and shape, and to the precision of the measurement of the length of a degree of latitude, were made,

Governments and sailors were slow to change. It appears that for most practical purposes such as navigation, exploration and cartography, some of the old measures continued to be used along side newer ones. (Heidenreich 1975:125)

It is unlikely that such formal revisions were introduced into the hinterland and voyageur routes of New France.


Heidenreich determined that the grande lieue or French league of the early 17th century was equivalent to 3.05 British statute miles. That value very closely agrees with the general conversion factor of "three", often noted by Dennis and Keating during the course of the surveys under discussion. Heidenreich also notes that those leagues equate to the general length of the lieu d'une heure de chemin,

... a flexible measure representing the distance a man could walk in an hour over an unimpeded course. At 20 to a degree, the lieu d'une heure was about three statute miles [3.05, table 2].

Heidenreich's conversion is corroborated by a memorandum from the Surveyor General's office to Reuben G. Thwaites, dated 20 October 1896:

The length of the French "Arpent" is 180 French feet, which is equal to 191 feet, 10 inches, English measure.

The French "league" is 84 arpents which is equal to 3.05 statute miles.

Further confirmation appears in a letter from F.H. Peters, Surveyor General of Canada, to F. Williams, dated 12 September 1932:

The arpent is an old French measure introduced into Lower Canada during the French regime. So far as I am aware its exact equivalent in English measure has not been fixed but I am advised that the practice of Quebec Land Surveyors when surveying parcels of land described by arpents is to allow 191.86 English feet for each arpent.

Differing by only one part in two thousand, the latter two references provide a more formal and definitive conversion value of one French league equivalent to 3.052 British statute miles.

At several locations, the Indians' recognition and understanding of leagues as the known measurement is evident from the records, summarized in table 1.

106. Heidenreich 1975:130. This was a realistic way of reckoning a standardized distance measure under the circumstances of 17th century New France. It was apparently the measurement understanding of Father Francesco Bressani who resided in what is now Ontario during the 1640s, and produced what Heidenreich calls a "highly accurate map."


Table 1. Leagues and miles.

<table>
<thead>
<tr>
<th>RESERVE NO. &amp; NAME</th>
<th>COMMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>9      Dokis</td>
<td>Leagues mentioned at site. Leagues accepted by Dennis and Keating.</td>
</tr>
<tr>
<td>12     Thessalon</td>
<td>Leagues mentioned at site. Leagues accepted for lake frontage; but miles held for depth by Dennis and Keating.</td>
</tr>
<tr>
<td>1      Fort William</td>
<td>Leagues mentioned at site and in prior petition. Leagues completely denied by Keating and Bridgland.</td>
</tr>
<tr>
<td>4      Whitefish River</td>
<td>Expectation of 3 times the treaty description distance along the lake. Dennis insisted on miles according to the recorded treaty description.</td>
</tr>
<tr>
<td>17(a) Shawanaga</td>
<td>Holding dimensions in miles from the lake did not enclose all the inland fishery and gardens, which would have fit within dimensions in leagues. A reserve sized in miles was moved inland away from Lake Huron by Dennis.</td>
</tr>
<tr>
<td>5      Spanish River</td>
<td>Clearly leagues intended and satisfied by intention to abut HBC lands.</td>
</tr>
<tr>
<td>13     French River</td>
<td>There is a strong suggestion that leagues was the intended dimension for the mainland portion, which would indicate that the reserve should have been larger.</td>
</tr>
</tbody>
</table>

While the issue of “leagues” and “miles” was very specifically acknowledged, explained and addressed, as documented above, by both Keating and Dennis in their reports and correspondence, the issue was rarely mentioned specifically with regard to the interactions with the Chiefs, except at Reserves No. 9 (Dokis), No. 12 (Thessalon), and No. 1 of Lake Superior (Fort William). Dennis and Keating, having resolved between themselves that they would accept leagues “...when claimed...,”

109 required that the word actually be spoken to be acknowledged. However, in the cited instances, leagues were completely accepted, partially accepted and completely denied, respectively.  

Overall, given the duration, extent and nature of the French contact and trade influence along the fur trade routes, together with the reported difficulties experienced by surveyors Dennis, Keating and Bridgland in trying to resolve large differences between the intentions and expectations of the signatories to the Robinson treaties and the recorded treaty descriptions, it is reasonable to infer that many, if not all, of the signing Chiefs to the Robinson treaties neither knew of, nor understood, “miles.” That is not to say that all Bands understood “leagues”; however, it is apparent that most Bands understood and intended “leagues”.

Negotiation of new boundaries

Contrary to the unilateral authority of the Band representatives to specify the location and extent of the reserve lands to be retained, the arrival of Dennis and/or Keating often resulted in the “negotiation” (which in some cases meant outright imposition) of a revision from the expectations and intentions of the Chiefs as to the locations of the boundaries of their reserve lands. Some examples are summarized in Table 2.

Table 2. New boundaries negotiated.

<table>
<thead>
<tr>
<th>RESERVE NO. &amp; NAME</th>
<th>COMMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>17(a) Shawanaga</td>
<td>An “adjusted” miles reserve was moved inland, but the adjustments were to be taken off Reserve 17(b).</td>
</tr>
<tr>
<td>17(b) Shawanaga/ Naiscoutaing</td>
<td>Reserve size negotiated down to compensate for enlarged area of Reserve 17(a) all in miles.</td>
</tr>
<tr>
<td>14     Garden River</td>
<td>Dennis and Keating proposed an outline that was rejected for three days by the Chief and his sons, before they agreed to it.</td>
</tr>
<tr>
<td>10     Nipissing</td>
<td>Unnecessary and inappropriate “negotiation” to shift westerly boundary to the east by several miles.</td>
</tr>
<tr>
<td>4      Whitefish River</td>
<td>Dennis rejected what the Chief specified and surveyed the treaty description lake frontage in miles.</td>
</tr>
<tr>
<td>2      Henvey Inlet</td>
<td>Dennis rejected what the Chief specified and “negotiated” a smaller reserve to near the treaty description size.</td>
</tr>
<tr>
<td>13     French River</td>
<td>Mainland portion of reserve was larger than the treaty description; but, much smaller than the likely expectation of leagues.</td>
</tr>
<tr>
<td>12     Thessalon</td>
<td>Chief specified leagues; however, Dennis and Keating only allowed leagues for the lake frontage, imposing miles for the depth.</td>
</tr>
<tr>
<td>8      Mississaga</td>
<td>Contrary to clearly intended physical features, Dennis and Keating imposed a reserve of one-third the expected depth, thereby cutting off fishery and sugar bush lands.</td>
</tr>
<tr>
<td>1      Fort William</td>
<td>Keating and Bridgland laid out the reserve in direct opposition to the expectations of the Chief and people set out in a petition to the Governor General, and in council with Keating during the course of the survey.</td>
</tr>
</tbody>
</table>

Overall, it is apparent that Dennis and/or Keating, even with the understanding of the “leagues instead of miles” problem, through “negoti-

ations” often surveyed larger tracts than described in the treaties in order to make the boundaries enclose improvements that would otherwise be excluded by a strictly “miles” interpretation. However, those tracts were still smaller than intended and expected by the Chiefs and Bands. Such actions were contrary to the intentions and instructions of the Crown Lands Department under which they were working.

**Boundaries not surveyed**

Again, contrary to the instructions under which they were working, some surveys were partial and others were not carried out at all, as shown in table 3.

<table>
<thead>
<tr>
<th>RESERVE NO. &amp; NAME</th>
<th>COMMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 Wahnapite</td>
<td>Reserve not surveyed at all under instructions.</td>
</tr>
<tr>
<td>6 Whitefish Lake</td>
<td>Reserve not surveyed at all under instructions.</td>
</tr>
<tr>
<td>3 Gull Bay</td>
<td>Reserve not surveyed at all under instructions.</td>
</tr>
<tr>
<td>10 Nipissing</td>
<td>Only marked at front corners; hence, sidelines and rear boundary not run on the ground.</td>
</tr>
<tr>
<td>2 Michipicoten</td>
<td>Only marked at front corners; hence, sidelines and rear boundary not run on the ground.</td>
</tr>
<tr>
<td>15 Batchewana</td>
<td>Sidelines only partially run on the ground; hence, incomplete, and rear boundary not run.</td>
</tr>
</tbody>
</table>

The result of these non-surveys and partial surveys was that the First Nation parties to the treaties did not have the opportunity to see where those boundaries were projected to be, or to identify any problems or omissions, or to resolve any potential uncertainties regarding the location of those boundaries. Further, the certainty of location necessary to avoid future conflicts with the various Bands’ location and use of their land, one of the Crown Lands Department’s justification arguments for undertaking the surveys, was compromised.

**Survey deficiencies**

In addition to the reserves indicated above for which the sidelines were partially or not at all surveyed and for which the rear boundaries were not at all surveyed, some of the surveys were deficient by not adhering to the principles of the descriptions (whether treaty or site-“negotiated”) that were intended to be translated to the ground, or by not adhering to the specific technical survey instructions to monument all corners in a permanent manner, as follows:

<table>
<thead>
<tr>
<th>RESERVE NO. &amp; NAME</th>
<th>COMMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>17(a) Shawanaga</td>
<td>A reduction in length was only partially added to the width, resulting in a 960 ac. deficiency.</td>
</tr>
<tr>
<td>1 Magnetawan</td>
<td>Rear boundary run due east, rather than parallel to the river frontage. The easterly boundary was less than half the description length.</td>
</tr>
<tr>
<td>14 Garden River</td>
<td>Method of layout results in deficient westerly side of reserve.</td>
</tr>
<tr>
<td>7 Serpent River</td>
<td>Easterly boundary enclosed approximately 236 acres less than intended by the Chief, and also cut off approximately 1,980 feet of water frontage along a small inland lake.</td>
</tr>
<tr>
<td>1 Fort William</td>
<td>Several deflection points along the imposed southerly boundary were not monumented.</td>
</tr>
</tbody>
</table>

These technical deficiencies, together with the non-surveys and the partial surveys, stand in sharp contrast to the fully completed surveys for John Bonner’s mining location and all other mining location and Sault Ste Marie townsite surveys completed prior to the signing of the treaties, under similar Crown Lands Department instructions.

**Rear boundaries**

Some of the treaty descriptions contained requirements to maintain a specified depth from the water frontage. Leaving aside the issue of overall dimensions, many of the rear boundaries, as either run or “projected” to be placed, did not satisfy those requirements to recognize crooked shorelines and deeply indented bays (see table 5).

Overall, the activities relating to the initial surveys of the Robinson treaties First Nation reserves by J.S. Dennis and J.W. Bridgland, in conjunction with J.W. Keating, were often incomplete, inadequate and inappropriate; resulting in reserves that were usually smaller than the intended tracts, often reduced to as small as one third the intended depth, or width, or both.

On 10 August 1850, the statute 13 & 14 Victoria, Cap. 74, *An Act for the protection of the Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury*, was passed. It established the administrative framework and powers of Com-
**Table 5. Deficient rear boundaries.**

<table>
<thead>
<tr>
<th>RESERVE NO. &amp; NAME</th>
<th>COMMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>14 Garden River</td>
<td>The northerly and westerly boundaries did not satisfy the treaty description requirement to be &quot;... inland ten miles throughout the whole distance.&quot; Only the farthest inland corner satisfied that criterion.</td>
</tr>
<tr>
<td>12 Thessalon</td>
<td>Because the rear boundary was set parallel to part of the lake shore, the westerly boundary is 1.2 miles short of being &quot;... four miles inland.&quot;</td>
</tr>
<tr>
<td>10 Nipissing</td>
<td>The rear boundary, projected to be due east, did not satisfy the treaty description requirement to be &quot;... six miles in depth ...&quot;, from the irregular Lake Nipissing shoreline.</td>
</tr>
<tr>
<td>15 Batchewana</td>
<td>The rear boundary, as projected by Bridgland, did not satisfy the treaty description requirement to be &quot;... inland ten miles throughout the whole distance, including Batchewananung Bay ...&quot;, from the very irregular Lake Superior shoreline.</td>
</tr>
<tr>
<td>1 Magnetawan</td>
<td>The rear boundary, as run due east, resulted in the easterly boundary, as run, to be less than half of the treaty description call for a tract &quot;... three miles deep,&quot; from the river running southeasterly.</td>
</tr>
</tbody>
</table>

Missioners to implement and manage the government policies relating to Native peoples and their lands; being the early precursor to the Indian Act. By a proclamation dated 1 February 1854, the provisions of that act were extended to the reserves under the Robinson treaties. That proclamation incorporated new descriptions for the reserves as surveyed by PLS Dennis, based upon his survey plans (the returns of PLS Bridgland having not then been received). From then on, the new descriptions and surveys became administratively “fixed” to delineate the Robinson treaties reserves.

To further compound the deficiencies inherent in the surveys, it is of interest to note that in the two instances No. 17(a) (Shawanaga) and No. 1 (Magnetawan), where portions of bounding rivers were marked to be contained within the reserves to retain the exclusive right to the fishery, the new descriptions neither included nor noted the retained rights; hence, the beds of those rivers appear to have been erroneously excluded from those reserves. \[111\]

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**CONCLUSION**

Over the more than one hundred and fifty years since the signing of the treaties and the completion of the initial surveys for the reserves, the development of the surrendered land was initially slow to materialize. Being free to continue inhabiting their traditional territories with a minimum of direct contact or pressure from European people, no doubt, contributed to a loss of information and knowledge relating to the conflicts between the intentions of the First Nations for their reserve land boundaries and the resulting deficiencies in reserve land area; particularly where only partial surveys, or no surveys at all, were completed during the time that the signatory Chiefs were available to point out their intentions. At later times, when surveys became necessary at those locations, the Native people having direct knowledge of the true intentions were no longer alive, and the new treaty descriptions, with their inherently flawed statements of distances to be used, were adopted as the rule.

As the development of Upper Canada subsequently moved north and west, transportation and access improved. The opening of the canal at Sault Ste Marie in 1855 permitted sea-going vessels to reach the western end of Lake Superior. Other developments included the 1880 to 1885 construction of the Canadian Pacific Railway across the southern section of northern Ontario; logging as far west as the boundary waters region beyond Lake Superior commencing in the late 1870s, and commercial fisheries in the mid-1880s. Each new development brought changes that affected the Native inhabitants; sometimes positively, and sometimes negatively.

The increased accessibility and development brought the Ojibwe of northern Ontario and their reserve lands more readily under the administrative control of the government. The original recognition of nation-to-nation relations was submerged by the economic demands for building the Euro-Canadian nation and the increased needs of Aboriginal peoples for assistance in adjusting to the changes occurring around and, to a great extent, without them.

The improved accessibility for land speculators, developers, and timber, mining and agricultural interests also brought pressure for further acquisition of the reserve land and resources. If a First Nation chose to participate in the increasingly land- and resource-based economy by surrendering further land or interests, its options were limited, in most cases,
boundary and survey issues, have recently been filed with Indian and Northern Affairs Canada for at least six other First Nations under the Robinson treaties. 115

As the Ojibwe people of northern Ontario continue to reaffirm their rights and their place in the fabric of the country, and as research on land and treaty rights continue within, and on behalf of, their communities, the opportunities to seek relief from the deficiencies imposed by the calamity of the initial reserve surveys will continue to be realized, whether by fulfilment of their land entitlement, provision of replacement land in other locations, compensation for loss of use of land and resources, or some combination thereof.

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115. According to Policy and Research Directorate, Specific Claims Branch, Indian and Northern Affairs Canada.

112. Attorney-General of Ontario v. Francis et al. (1889) (Previously unreported: Ontario High Court, Chancery Division, Ferguson H.C.J., 19 January 1889); 2 C.N.L.C. 6 (Ontario H.C. Ch. Div.)

113. A “lawful obligation” as described in Outstanding Business, a booklet published in 1982 by Indian Affairs and Northern Development Canada that sets out the Specific Claims Policy of the Government of Canada, is described as an obligation on the part of the federal government that is derived from law, such as “the non-fulfilment of a treaty or agreement between Indians and the Crown,” as reproduced in [1994] 1 ICCP 171, 179.

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