

LAND STATUS REPORT - TRIAL ISLANDS, BRITISH COLUMBIAI History

1. The Trial Islands are located in Juan de Fuca Strait off Vancouver Island and adjacent to the City of Victoria. The islands are bare and rocky and devoid of trees and potable water.
2. Trial Island(s) was first mentioned among others in a Return to the British Columbia Legislature in 1873. It appears on a list entitled "Return of Government Reservations", prepared in response to a motion in the British Columbia Legislative Assembly on 19 December 1872 that an Address be presented to the Lieutenant Governor requesting "Returns of all Public Lands reserved; such Returns to state the area and object of each reserve". Prepared by Robert Beaven, Chief Commissioner of Lands and Works, the report lists the purpose of Trial Island as "military". (Source: Journals of the British Columbia Legislative Assembly, 1873).
3. In War Office Despatch No. 39 dated 27 March 1884, the British Imperial Government transferred Trial Islands among others to the Dominion Government. (Source: National Archives Co. 42/778 Micro B-613 War Office Despatch No. 39, 27 March 1884, pp. 531-534).
4. a) In 1906, the Department of Marine and Fisheries erected a lighthouse at the southern end of Trial Island. According to the Taggart Report of 1939 "On June 15th 1905, the Agent of Marine and

) Fisheries made application (to the Province) to have Trial Island reserved for lighthouse purposes. On 28th June 1905, he was advised the Island was already under reservation and was then held under lease issued by the Province for a term of five years; but no objection would be offered to his Department erecting a lighthouse and having the use of a portion for that purpose, subject to the right of the lessee." (Source: Canadian Parks Service, CR Files, 790-47-1. Excerpts from Taggart Report Item 35 - Trial Islands, 17 March 1939). While Canadian Parks Service records contain no correspondence between the Department of Marine and Fisheries and the Province of British Columbia, it is possible that correspondence may be located in National Archives RG 42 and in collections at the Provincial Archives of British Columbia.

- b) On 27 March 1914 the Deputy Minister of Militia and Defence wrote the Deputy Minister of Marine and Fisheries that Trial Island was claimed by his Department by virtue of War Office Despatch No. 39 dated 27 March 1884. (Source CPS, CR 790-47-1, Deputy Minister of Militia and Defence to Deputy Minister of Marine and Fisheries, 27 March 1914). An Agreement between the Minister of Militia and Defence and the Minister of Marine and Fisheries dated 1 September 1914 followed. The Department of Marine and Fisheries obtained the right to occupy a portion of Trial Island for a lighthouse along with a right-of-way to the structure for as long as the island was not required for military purposes. This was authorized by OCPC 2045 dated

5 August 1914. According to Gerry Joubarne, Property Records, Transport Canada, the 1914 Agreement is still effective today.

5. By OCPC 532 dated 6 April 1925, the Department of National Defence (successor to the Department of Militia and Defence) transferred Trial Island among others to the Department of the Interior. OCPC 532 notes that the Province of British Columbia does not admit title to the Dominion of these lands. The island was transferred to the Department of the Interior in order that the title be investigated to fully establish the title of the Dominion.
6. On 20 February 1930 an Agreement was made between the Dominion of Canada and the Province of British Columbia for the transfer of the Railway Belt and Peace River Block to the Province of British Columbia. Confirmed by Statutes of Canada 20-21 George V, Chapter 37, An Act respecting the transfer of the Railway Belt and Peace River Block assented to 20 May 1930, the Agreement did not transfer ordnance or admiralty lands to the Province. Under Section 8 of the Agreement, the location and boundaries of these lands was to be referred for determination to two persons - one appointed by the Dominion and the other by the Province of British Columbia. Authorized by the 1930 Agreement and Act, in 1939 the Taggart Report provided a geographical description and brief history of ownership and land use of Trial Island among others. (Source: CPS, CR 790-47-1, Excerpts from Taggart Report Item 35 - Trial Islands, 17 March 1939).

7. On 21 June 1943, the Province of British Columbia passed Order-in-Council 874 reserving to the Dominion Government the Trial Islands, among others, "for so long as required for naval or military purposes." On 26 August 1943, the Federal Government passed OCPC 6777 which grants, releases and quit claims to the Province of British Columbia all the right, title, interest, claim and demand of the Dominion government in the Ordnance lands listed in the Taggart Report excepting and reserving thereout all Indian Reserves and all lands presently under the jurisdiction of the Dominion Government by reason of concessions, transfers or reservations made by the province, more specifically all those lands listed in the OCPC. Included in the list, the entry for Trial Island notes "Reserved by Province for Use of Dominion Order in Council No. 874 approved 21st June, 1943."
8. Between 1944 and 1963 no instruments affecting Trial Island were prepared. Since 1964, the Province of British Columbia has passed a number of Orders-in-Council pertaining to Trial Island.
  - a) OC 17 dated 7 January 1964 authorizes the Province to grant a 21 year right-of-way over Trial Island containing 24.28 acres to the Saanich Broadcasting Co. Ltd. for operation of a radio transmission tower "on the understanding that the Grantor may resume possession of the Crown lands at any time without compensation should the Crown lands be required by Canada for defence purposes." OC 296 dated 30 January 1967 grants a similar right-of-way under similar conditions for 9.8 acres to

- ) British Columbia Hydro and Power Authority for operation and maintenance of a submarine and underground power transmission cable.
- b) Two OCs amend the description of the Trial Islands provided in OC 874 dated 21 June 1943. OC 18 dated 7 January 1964 amends the 1943 description of Trial Island to except thereout the easement granted to the Saanich Broadcasting Co. Ltd. OC 2840 dated 12 October 1965 excepts thereout from the description of Trial Island an easement applied for by the British Columbia Hydro and Power Authority and which was later granted by OC 296 dated 30 January 1967 in addition to the lands excepted thereout by OC 18 dated 7 January 1964. (For the hydro easement note that OC 2840 dated 12 October 1965 refers to Plan 8 Tube 747 while OC 296 dated 30 January 1967 refers to Plan 7 Tube 800).

II Land Title Irregularities  
Title to Trial Island

1. The Province of British Columbia and the Federal Government have both claimed title to Trial Island.
2. No correspondence in Canadian Parks Service files clearly identify the document(s) on which the Province of British Columbia bases its claim.
3. The Federal Government bases its claim to Trial Island on War Office Despatch No. 39 dated 27 March 1884 (National Archives CO42/778 Micro B-613) which transfers Trial Island among others from the British

Imperial Government to the Dominion of Canada. The despatch notes that reserves made by Governor Douglas had always been considered valid and became effective without confirmation of the Secretary of State. Despite the fact that no formal deed appears to have been made conveying them to the military and naval authorities, it adds that the reserves could be surrendered without the formality of a regular deed of conveyance. The despatch constitutes the formal notification of surrender to the Dominion of Canada.

4. The 1914 DND/MOT Agreement, OCPC 2045 5/viii/1914, is still effective today.

### III Documents Not Found

The following documents are not in Canadian Parks Service files:

1. List of land parcels appended to War Office Despatch No. 39 dated 27 March 1884.  
(Schedule of land parcels attached to War Office letter of 27 March 1883 -- a copy which should have been enclosed with the despatch).
2. Plan attached to British Columbia Order-in-Council OC 874 dated 21 June 1943.
3. Plan attached to OCPC 6777 dated 8 August 1943.
4. Plan 10 Tube 692 attached to Province of British Columbia OC 17 dated 7 January 1964.

5. Plan 8 Tube 747 attached to Province of British Columbia OC 2840 dated 12 October 1965.
6. Plan 7, Tube 800 attached to Province of British Columbia OC 296 dated 30 January 1967.

#### IV Pending Transactions

The Department of National Defence has proposed the transfer of Trial Island to the Province of British Columbia. See Section VI Recommendations.

#### V Observations

##### Buildings on Trial Island

A lighthouse (Light No. 212) is operated on Trial Island by the Canadian Coast Guard. According to Ted Mills, Architectural Historian, Canadian Parks Service, Victoria Office the building is a recent one and replaced the original 1906 structure.

#### VI Recommendations

It is unlikely that further land title research will determine whether the Province of British Columbia or the Federal Government possesses a clear title to Trial Island. A legal opinion is perhaps needed. The Department of Environment could transfer its interest in Trial Island to the Department of National Defence. DND could then transfer the Federal Crown's interest to the Province of British Columbia subject to MOT interest.

David Spector  
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