

Chapter 9

National Parks

Property Rights and Boundary Systems
on
Canada Lands

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INTRODUCTION

The chapter describes the property rights system for national parks, national historic sites and national marine conservation areas. A property rights system is comprised of a land management system, a land registration system and a land survey system. First a few words about the history of the parks.¹

History

1885 to 1911

Claims to hot springs discovered near the present town of Banff abounded in 1885. The hot springs, first discovered by two railway workers, were seen as having great potential as a tourist attraction. However, the government of Canada had other ideas and in 1885, by Order-in-Council P.C. 2197 reserved “from sale, settlement or squatting” an area of approximately ten square miles which included the hot springs. This action preserved the land for future park use.

The park was realised on 23 June, 1887 when the *Rocky Mountains Park Act 1887* received royal assent. It established a park of 260 square miles, which enclosed the 10 square miles originally set aside in 1885. The Act provided for the park to be under the control and management of the Minister of the Interior and provided for the Governor in Council to make regulations, including regulations for the leasing of land for a term of years as he deemed advisable. Regulations could also be made for issuing of licenses or permits. The time period for leases was a contentious issue. Sir John A. Macdonald was of the opinion that if investors and residents were to build a desirable class of buildings and if leases were to have a time limit there must be a right of renewal.² Regulations subsequently made, while limiting the terms of leases to 42 years, enabled them to be renewed for further 42 year periods, provided the lessee had complied with all the terms of the lease.³

During this early period other areas of land were being reserved by orders-in-council as “forest parks” under the *Dominion Lands Act* or “Dominion forest reserves” under the *Dominion Forest Reserves Act*. Some of these would eventually become national parks.

1911 Dominion Forest Reserves and Parks Act

In 1911, the *Dominion Forest Reserves and Parks Act*, S.C. 1911, c.10 was given royal assent. It was a dual purpose act in that it provided for Dominion forest reserves and for

¹ Throughout this chapter the word “park(s)” is used in the general sense and depending on the context may include forest parks, Dominion parks, National parks, National historic sites and National marine conservation areas.

² Lothian, W.F. *A History of Canada's National Parks, Volume I* (Parks Canada, 1976) p. 26.

³ Lothian, W.F. *A History of Canada's National Parks, Volume II* (Parks Canada, 1977) p. 58.

Dominion parks. Dominion forest reserves were listed in a schedule to the Act. The Governor in Council could, by proclamation, designate Dominion parks from lands comprising Dominion forest reserves. Upon the passing of the Act the *Dominion Forest Reserves Act* and the *Rocky Mountains Park Act 1887* were repealed. The Act was also significant in that it led to the creation of a new branch of the Department of the Interior, the Dominion Parks Branch, to administer Dominion Parks.⁴

Less than a month after the *Dominion Forest Reserves and Parks Act* was assented to, Order-in-Council P.C. 1338, dated June 8, 1911, described and established Glacier, Yoho, Rocky Mountains Park, Jasper and Waterton Lakes as Dominion parks.⁵

Undoubtedly the foresight to preserve parts of the Rocky Mountains for public heritage and enjoyment was the main factor in the development of the parks in western Canada; however a facilitating factor was that the lands for the most part were undeveloped public lands. It was soon realised that it was also desirable to set aside areas outside of Dominion forest reserves as Dominion parks. This was enabled following an amendment to the *Dominion Forest Reserves and Parks Act* in 1913.⁶

Early in the 20th century parks were also established in the central and eastern provinces. However acquiring the land was much more complex than in the west. The St. Lawrence Islands National Park, established as a Dominion park in 1914, was originally Indian lands.⁷ Point Pelee National Park, established as a Dominion park in 1918,⁸ was originally a naval reserve, which in 1875 had been placed in the custody of the Department of the Interior for administration as Ordnance and Admiralty Lands.⁹

For a complete list of national parks and their date of initial establishment see the table at the end of this chapter. Many of these parks went through boundary and area changes after their initial establishment. A good reference describing the changes is *A History of Canada's National Parks*, 1976, Volume 1, by W.F. Lothian.

Canada's first national historic parks (later named national historic sites) were Fort Howe, New Brunswick in 1914 and Fort Anne, Nova Scotia in 1917.¹⁰

⁴ Lothian, W.F. *A History of Canada's National Parks, Volume II* (Parks Canada, 1977) p. 13.

⁵ Lothian, W.F. *A History of Canada's National Parks, Volume II* (Parks Canada, 1977) p. 12.

⁶ *An Act to amend the Dominion Forest Reserves and Parks Act*, S.C. 1913, c.18, s.4. Section 4 amended s.18 of the *Dominion Forest Reserves and Parks Act*, S.C. 1911, c. 10.

⁷ Lothian, W.F. *A History of Canada's National Parks, Volume I* (Parks Canada, 1976) p.77.

⁸ Lothian, W.F. *A History of Canada's National Parks, Volume I* (Parks Canada, 1976) p.82

⁹ Lothian, W.F. *A History of Canada's National Parks, Volume I* (Parks Canada, 1976) p.80.

¹⁰ Lothian, W.F. *A History of Canada's National Parks, Volume II* (Parks Canada, 1977) p.15. Fort Howe however was returned to the City of Saint John, N.B. in 1930, See Lothian, Vol. II, p.17.

1930 National Parks Act

In 1930, the *National Parks Act, S.C. 1930, c.33* received royal assent. It was important as it provided national parks with its own legislation. It removed the administration of parks from the authority of the *Dominion Forest Reserves and Parks Act* and designated the parks as national parks of Canada. It ensured that no new national parks could be established, or that no change could be made in the boundaries of existing national parks, except by an act of Parliament.¹¹

Part II of the Act authorized the Governor in Council to set apart lands where title is vested in the Crown as historic parks (later named national historic sites).

National Parks System Plan

In the 1970's it became Parks Canada policy to establish new national parks in accordance with a national parks system plan. The plan divided Canada into distinct natural regions with the objective to represent each of these regions by national parks.

Later Canada's oceans and Great Lakes were also divided into natural marine regions with the similar goal of having each represented in the national marine conservation area system.

In recent years a better appreciation of aboriginal rights and aboriginal land claims has been realised by the public. As well recent Supreme Court of Canada decisions have imposed a duty of consultation on the Crown. As a result Parks Canada now consults with affected Aboriginal communities when establishing new national parks and national marine conservation areas, and provision has been made for national park reserves and national marine conservation area reserves where the land is subject to a land claim.

Both these systems and aboriginal rights are discussed later on in this chapter.

LAND MANAGEMENT SYSTEM

Parks Canada Agency

Background

In the early days of national park development the Department of the Interior managed forest parks, forest reserves and Dominion parks. Following the transfer of natural resources to the provinces in 1930 the work of the Department was greatly reduced and

¹¹ As the Act did not contain any specific provision for the establishment of new parks or changes to existing parks it is assumed that in order to do so the Act itself must be amended.

eventually the work was transferred to other departments. Over the subsequent years the home for national parks was shuffled from one federal government department to another.

Currently the Parks Canada Agency is responsible for national parks, national historic sites and national marine conservation areas. It also directs or coordinates the delivery of several additional programs that conserve various aspects of Canada's natural and cultural heritage. The Agency was established by the *Parks Canada Agency Act* S.C. 1998, c.31. Under the Act the Minister of Environment is responsible for the Agency. A chief executive officer having the rank of a deputy minister is appointed by the Governor in Council and has the control and management of the Agency and all matters connected with it.

Realty Services

The Land Management Section, Real Property Directorate of the National Office in Gatineau Quebec has overall responsibility for policy and regulation of realty activity. One of its functions is the maintenance of a parks registry, which is discussed later in this chapter.

Day to day realty operations are carried out by staff in the four service centres (Atlantic, Quebec, Ontario and Western) and in several field units. Copies of registry documents can usually be obtained in service centres and field units for their areas of service.

Other Agencies

The federal Department of Justice is also involved in property rights matters in national parks. This involvement ranges from negotiating land agreements at a federal-provincial level to developing model lease agreements.

The federal Department of Public Works and Government Services provides land appraisal services for parks realty activity.

The Parks System

National Parks

National parks are areas of Canada Lands dedicated to the people of Canada for their benefit, education and enjoyment.¹²

The goal of Parks Canada is to establish a system of national parks that represents each of Canada's 39 distinct natural regions.

Identifying, selecting and establishing new national parks can be a long and complex process. While each situation is unique, Parks Canada outlines the normal sequence as characterized by five steps: 1. identifying representative natural areas; 2. selecting a

¹² Canada National Parks Act, S.C. 2000, c. 32, s. 4(1).

potential national park; 3. assessing park feasibility; 4. negotiating a park agreement and obtaining clear title; and 5. establishing a new national park in legislation.¹³

National parks are established by amendment to the *Canada National Parks Act*. Under Section 5 (1) of the Act S.C. 2000, c.32 the Governor in Council may, by order-in-council, establish or enlarge a park by amending Schedule 1 of the Act by adding the name and a description of the park, or by altering the description of the park if the Governor in Council is satisfied that Her Majesty in right of Canada has clear title to or an unencumbered right of ownership in the lands to be included in the park; and the government of the province in which those lands are situated has agreed to their use for that purpose. However it should be noted that Parks Canada policy is to obtain agreement not only with provincial governments but also territorial governments and relevant Aboriginal organizations.¹⁴

The Governor in Council cannot remove any portion of a national park unless a court finds that Canada does not have clear title to, or an unencumbered right of, ownership in lands within the park.¹⁵ The only other way that national park lands may be removed is by amending the *Canada National Parks Act*.

National park reserves also come under the *Canada National Parks Act*. A national park reserve is an area proposed for a national park that is subject to a claim in respect of aboriginal rights that has been accepted for negotiation by the Government of Canada.¹⁶ While the area is a national park reserve, traditional hunting, fishing and trapping activities by Aboriginal peoples will continue. Other interim measures may also include local Aboriginal peoples' involvement in park reserve management.¹⁷

Ivvavik National Park, established in 1984 through agreement between the Inuvialuit of the Western Arctic and the Government of Canada, is Canada's first national park established through a native-land claim settlement.¹⁸

¹³ *Parks Canada Guiding Principle and Operational Policies* (Updated to 2003-10-14) Part II, Activity Policies: National Parks Policy, Section 1.0. Website: <http://www.parkscanada.ca/>

¹⁴ *Parks Canada Guiding Principle and Operational Policies* (Updated to 2003-10-14) Part II, Activity Policies: National Parks Policy, Section 1.4. Website: <http://www.parkscanada.ca/>

¹⁵ Canada National Parks Act, S.C. 2000, c. 32, s. 5 (2,3)

¹⁶ Canada National Parks Act, S.C. 2000, c. 32, s.4 (2)

¹⁷ *Parks Canada Guiding Principle and Operational Policies* (Updated to 2003-10-14) Part II, Activity Policies: National Parks Policy, Section 1.5.2. Website: <http://www.parkscanada.ca/>

¹⁸ National Parks Systems Plan, 3rd Edition (updated to 2005) See Northern Yukon, Natural Region 9. Website: <http://www.parkscanada.ca/>

Schedule 2 of the *Canada National Parks Act* contains the land description of all the national park reserves.

National Historic Sites

National Historic Sites commemorate persons, places and events of national importance pursuant to the *Historic Sites and Monuments Act* on the advice of the Historic Sites and Monuments Board of Canada. The National Historic Sites system is comprised of over 1500 sites, 155 of which are administered by Parks Canada.¹⁹

Section 3 of the Historic Sites and Monuments Act is the legislative authority for all National Historic Sites. As of 2006, of the 155 National Historic Sites administered by Parks Canada 52 have also been set apart as National Historic Sites pursuant to section 42 of the *Canada National Parks Act*. The National Historic Sites of Canada Order, C.R.C.²⁰, c.1112, sets out the legal description of those sites to be set aside. Setting aside the lands pursuant to the *Canada National Parks Act* has the effect of making specific sections of the act applicable to the National Historic Sites.²¹

National Marine Conservation Areas

National marine conservation areas are established for the purpose of protecting and conserving representative marine areas for the benefit, education and enjoyment of the people of Canada and the world.²²

Canada's oceans and Great Lakes have been divided into 29 marine regions. Efforts to create new marine conservation areas are concentrated on those marine regions that are unrepresented.²³

The process for identifying, selecting and establishing national marine conservation areas is for practical purposes identical to that characterized by the five steps for new national parks.²⁴

National marine conservation areas are established through amendment to the *Canada National Marine Conservation Areas Act*. Under Section 5 (1) of the Act S.C. 2002, c.18 the Governor in Council may, by order-in-council, establish or enlarge a marine

¹⁹ Parks Canada Agency Website: http://www.pc.gc.ca/progs/lhn-nhs/intro_e.asp

²⁰ C.R. C. refers to the Consolidated Regulations of Canada

²¹ Canada National Parks Act, S.C. 2000, c. 32, s. 42(3)

²² Canada National Marine Conservation Areas Act, S.C. 2002, c. 18, s.4 (1)

²³ *Parks Canada Guiding Principle and Operational Policies* (Updated to 2003-10-14) Part II, Activity Policies: National Marine Conservation Areas Policy, Section 1.0. Website: <http://www.parkscanada.ca/>

²⁴ *Parks Canada Guiding Principle and Operational Policies* (Updated to 2003-10-14) Part II, Activity Policies: National Marine Conservation Areas Policy, Section 1.0. Website: <http://www.parkscanada.ca/>

conservation area by amending Schedule 1 of the Act. Before an amendment to Schedule 1 can be made Canada must have title to or an unencumbered right of ownership in the lands, the government of the province in which those lands are situated must be in agreement and if applicable the requirements of any land claim agreement must have been fulfilled²⁵.

Currently there are no marine conservation areas listed in Schedule 1 of the Act; however there are two sites operating within the National Marine Conservation Area program: Fathom Five National Marine Park in Georgian Bay, Ontario, and Saguenay-St. Lawrence Marine Park in Quebec.²⁶ The Saguenay-St. Lawrence Marine Park was established in 1997 by the *Saguenay-St. Lawrence Marine Park Act* S.C. 1997, c. 37.

National marine conservation areas reserves also come under the *Canada National Marine Conservation Areas Act*. Section 2 specifies that where an area or a portion of an area proposed for a marine conservation area is subject to a claim in respect of aboriginal rights that has been accepted for negotiation by the Government of Canada it may be established as a marine conservation area reserve. While the area is a national marine conservation area reserve, traditional hunting, fishing and other marine resource based activities by entitled Aboriginal peoples will continue.²⁷

National marine conservation area reserves are listed in Schedule 2 of the *Canada National Marine Conservation Areas Act*. Currently there are no marine conservation area reserves.

Other National Parks Programs

Other programs directed or coordinated by Parks Canada include the Federal Heritage Buildings Program, Heritage Railway Stations Program, Canadian Heritage Rivers System Program, Federal Archaeology Program, Historic Places Initiative and the National Program for the Grave Sites of Canadian Prime Ministers.²⁸

²⁵ *Canada National Marine Conservation Areas Act*, S.C. 2002, c.18, s. 5 (2)

²⁶ National Marine Conservation Areas System Plan, (Parks Canada Agency) updated to 2003-06-02. Website: <http://www.parkscanada.ca/>

²⁷ *Parks Canada Guiding Principle and Operational Policies* (Updated to 2003-10-14) Part II, Activity Policies: National Marine Conservation Areas Policy, Section 1.5.2. Website: <http://www.parkscanada.ca/>

²⁸ Parks Canada Agency, Corporate Plan, 2005/06-2009/10, Section 4. Website: <http://www.parkscanada.ca/>

Parks Canada also administers Ordnance Lands, Admiralty Lands and Heritage Canals. While some of these lands have been made into national parks or national historic sites others remain as federal lands. Federal lands are discussed in Chapter 10.

Tenure in National Parks

Introduction

Tenure in national parks goes back to 1887. Regulations under the *Rocky Mountains Park Act 1887* provided for leases, licenses of occupation and permits for business and residential purposes. Under the 1887 regulation leases were issued for a period of 42 years and included renewal provisions. Several of these, commonly called perpetual leases, are still in existence in Banff and Jasper and in several other national parks in Western Canada.

These days the opportunity and eligibility for obtaining tenure in the parks is limited. The current policy of Parks Canada with regard to the national parks is: not to develop new communities, not to make additional land available for private cottages, camps or seasonal camping areas, not to consider new golf courses or expansions to existing ones, and to prohibit development of new commercial skiing areas and manage the five existing ones within their legislated boundaries.²⁹

While future development has been curtailed, the reality is that as a result of past practices and policies there is considerable business and residential tenure in the national parks and in particular in the townsites of the older parks such as Banff and Jasper. Other national parks, such as Waterton Lakes, Riding Mountain and Prince Albert have visitor centres that have historically included land for businesses and residents. Field, in Yoho National Park, is a largely residential community accommodating the administrative centre for the park as well as an operational centre for the Canadian Pacific Railway. Also resort subdivisions were established early in the history of some parks such as Jasper, Wood Buffalo, Prince Albert and Riding Mountain.³⁰

Under current parks policy tenure may be granted on national park lands in the form of leases, licences of occupation or permits for the provision of essential services and facilities for park visitors and for authorized residential uses.³¹

²⁹ *Parks Canada Guiding Principle and Operational Policies* (Updated to 2003-10-14) Part II, Activity Policies: National Parks Policy, Sections 5.1, 5.2. Website: <http://www.parkscanada.ca/>

³⁰ *Parks Canada Guiding Principle and Operational Policies* (Updated to 2003-10-14) Part II, Activity Policies: National Parks Policy, Section 5.1. Website: <http://www.parkscanada.ca/>

³¹ *Parks Canada Guiding Principle and Operational Policies* (Updated to 2003-10-14) Part II, Activity Policies: National Parks Policy, Section 6.1.1. Website: <http://www.parkscanada.ca/>

Leases

The *National Parks of Canada Lease and Licence of Occupation Regulations* P.C. 1991-2469 established under Section 15 of the *Canada National Parks Act* provide regulations with respect to leases in national parks.

Under Section 3 of the Regulations the Minister may grant a lease for any period of time not exceeding 42 years. There are restrictions, depending on the purpose of the lease and the location of the land leased. Under Section 3(1) leases may be granted for residential purposes in the towns of Banff and Jasper, in visitor centres and in resort subdivisions. Section 3 also contains specific requirements for the issue of leases for essential services and facilities for park visitors within the national parks.

The only national parks in which condominiums are recognized in the *National Parks of Canada Lease and Licence of Occupation Regulations* are in Alberta. Condominium plans are registered in one of the two Land Titles Offices in Alberta pursuant to Section 87 of the *Land Titles Act*, R.S.A. 2000, c. L-4. Parks Canada issue one lease (commonly called the head lease) for the entire condominium development to the new leasehold owner, normally a developer. After the condominium survey plan is registered and title opened for each unit the leasehold owner (developer) will issue assignments to purchasers of individual units. Once these assignments, which are required to be consented to by Parks Canada, are received by the Land Titles Office leasehold title to individual units may be transferred to the unit purchasers.³²

Condominium development is generally only allowed for residential and light industrial development.

Licences of Occupation

The *National Parks of Canada Lease and Licence of Occupation Regulations* provide regulations respecting licenses of occupation in national parks. Under Section 18(1) of the Regulations the Minister may grant licences of occupation for any period of time not exceeding 42 years. They are issued for a specific purpose and do not give the licensee any leasehold estate or other estate or interest in land.

They are generally used for such purposes as administrative space in buildings or in areas outside of towns and visitor centres for purposes such as visitor accommodations, corrals, alpine huts, etc. where land conflicts are unlikely to occur and where exclusive use of the land is not required. The land is usually described by a suitable sketch, site plan or in remote areas reference to a topographic map.

³² Parlow, Diane. Parks Canada Agency, 2006. Interview with and information provided by.

Permits

Under the *National Parks General Regulations*, SOR/78-213 permits may be granted for activity ranging from camping to the use of water from watercourses or water supply systems for domestic or business use.

Rights-of-Way for Public Purposes

There is provision under section 15 (1) of the *Canada National Parks Act* S.C. 2000, c. 32, for the Minister to enter into leases of, and easements or servitudes over, public lands in a park that are used for public purposes such as rights-of-way for railway lines and telecommunication or electrical transmission lines. If the lands cease to be used for the purpose intended the right or interest reverts to the Crown.

Tenure in National Marine Conservation Areas

Under Section 16 (1) of the *Canada Marine Conservation Areas Act* S.C. 2002, c. 18 the Governor in Council may make regulations authorizing the granting, and the surrender or relinquishment, of leases, licences, easements or servitudes, of or over public lands in marine conservation areas. To date there are no Canada marine conservation areas or regulations under *Canada Marine Conservation Areas Act*.

Dispositions in Other Lands Administered by Parks Canada.

There are no specific provisions in national park legislation dealing specifically with tenure or dispositions in national historic sites; in lands belonging to Canada which are being accumulated for the future national parks, national historic sites and national marine conservation areas; and with other lands (for example Ordnance Lands, Admiralty Lands and Heritage Canals) administered by Parks Canada. For such lands, dispositions are carried out under the *Federal Real Property and Federal Immovables Act*.

LAND REGISTRATION SYSTEM

The National Parks Registry

There is no legislation specifically requiring a land registration system for national parks. Nevertheless, for administration purposes a system referred to as a "Registry" has been in place in Ottawa since the first federal park was created. It is basically a filing system. Obligations to those who have acquired rights in lands under the management of the Parks Canada are protected by contract law and the security of the Government of Canada.

The registry is for the storage and retrieval of documents pertaining to the acquisition, alienation and granting of rights in national parks, national historic sites, national

marine conservation areas and other lands administered by Parks Canada. It contains all original documents such as orders-in-council, land transfer agreements and leases and related correspondence.

Other Land Registry and Land Titles Offices

Under section 30 of the *Canada Lands Surveys Act* R.S.C., 1985, c. L-6 copies of official plans are to be sent to the registrar of deeds or of land titles of the county, district or other registration division in which the lands are situated for filing.

However, Alberta is the only province in Canada where leases of land in national parks are registered in a provincial land registration system. As early as 1890, copies of executed leases were sent by the federal Department of Interior to the Land Titles Office at Calgary. The Registrar recorded the lease and issued a certificate of title to the lessee.

Although it is not compulsory for purchasers to register leases in Alberta, they usually do so as mortgage companies require it and it has evolved into general practice. Currently nearly all leases in the towns of Banff and Jasper and in the visitor centre at Waterton are registered in the provincial land titles system under the provision of section 30 of the *Land Titles Act* RSA 2000, c.L-4. Parks Canada officials maintain that registration under the *Land Titles Act* of Alberta is to suit local purposes only and that federal records have precedence over the provincial system.

Under Section 33 of the *Canada Lands Surveys Act* confirmed plans of resurvey are to be substituted for the former official plans of the land affected under the Act. This provision has the potential to cause a misdescription if the land descriptions in existing certificates of leasehold titles in Alberta Land Titles offices are not updated with the new legal description. The Alberta Land Titles Office procedure manual specifies that when a lease is being renewed, the old legal description may be replaced with a new legal description based on a registered plan of resurvey under the *Canada Land Surveys Act*.³³ The renewal must be accompanied by a statutory declaration by a surveyor stating that the land referred to in the old legal description is the same as the land referred to in the new legal description.

³³ Land Titles Procedure Manual, Alberta Government Services, Land Registration and Services, Land Titles Office, Procedure LEA-1.

LAND SURVEYS SYSTEM

Canada Lands Surveys Act

Surveys in National Parks

The *Canada Lands Surveys Act* R.S.C., 1985, c. L-6 provides for the administration, direction and control of surveys of Canada Lands. It provides the legislative authority for the Surveyor General of Canada Lands to manage all legal surveys of Canada Lands. The *Act* is clear with regard to the survey of national parks.

24. (1) In this Part, “Canada Lands” means

(a) any lands belonging to Her Majesty in right of Canada or of which the Government of Canada has power to dispose that are situated in Yukon, the Northwest Territories, Nunavut or in any National Park of Canada . . . ; and

(b) any lands under water belonging to Her Majesty in right of Canada or in respect of any rights in which the Government of Canada has power to dispose.

Surveys of other Parks Canada Lands

There is no specific provision in the *Canada Lands Surveys Act* R.S.C., 1985, c. L-6 for the survey of national historic sites and national marine conservation areas. As well there is no specific provision for land that may have been acquired by Canada for a national park or a national marine conservation area but is still not officially established as such through amendment to the schedules of the *Canada National Parks Act* or the *Canada National Marine Conservation Areas Act*. Also national historic sites are not specifically mentioned as Canada Lands in the *Canada Lands Surveys Act*. Nevertheless there is a general provision for the survey of all these lands under Section 47 of the *Act*.

47. (1) Subject to this Act, the Minister may, if in his opinion a survey thereof under the management of the Surveyor General is required, cause a survey to be made of any lands belonging to Her Majesty in right of Canada or of which the Government of Canada has power to dispose, but where surveys of the lands affect or are likely to affect the rights of landowners of adjoining lands, the surveys shall be made by a surveyor who holds a valid and subsisting certificate, diploma, commission or other document entitling him to survey lands in the province in which the surveys are made.

In addition to requiring that the survey be made by a surveyor entitled to survey lands in the province in which the surveys are made, the surveys are generally made under provincial acts and regulations.

Canada National Parks Act – surveying provisions

Section 16 of the *Canada National Parks Act*, S.C.2000, c. 32, contains provision for the Governor in Council to make regulations for the surveying of public lands, the

making of plans of surveyed lands, the delimitation in such plans of the boundaries of park communities, existing resort subdivisions and cemeteries, their designation as towns, visitor centres, resort subdivisions or cemeteries and the subdividing of lands so designated.

There is provision for surveys in Section 4 of the *National Parks General Regulations* SOR/78-213:

4. The Minister may, from time to time, arrange to have public lands in a Park surveyed or resurveyed

(a) into lots in townsites or other subdivisions;

(b) for any right-of-way of the type referred to in subsection 6(2) of the Act³⁴;

(c) for the purposes of schools, hospitals, churches and the entertainment of persons visiting the Park; and

(d) for the purposes of a cemetery.

Section 3(2) of the *National Parks of Canada Lease and Licence of Occupation Regulations* outlines the requirements for surveys required for leases. This section is quoted under the heading “Surveys for Leases” below.

There are no provisions dealing with surveys in the *Canada National Marine Conservation Areas Act*.

Canada Centre for Cadastral Management

The Canada Centre for Cadastral Management (CCCM) of the Earth Sciences Sector of Natural Resources, Canada is the organizational unit that houses the office of the Surveyor General of Canada Lands and provides for the surveys of Canada Lands. With regard to national parks, national historic sites and national marine conservation areas, this organization provides instructions to surveyors carrying out surveys; examines the resulting plans of survey; records the survey plans in the Canada Lands Surveys Records; arranges for deposit of the survey plans in local land registration offices; and provides information from the records.

CCCM also undertakes a wide variety of other work for Parks Canada which may include projects such as researching and assembling of title and boundary information, arranging for park boundary resurveys, control surveys and mapping.

³⁴ Subsection 6(2) of the National Parks Act has been renumbered. This subsection, in the Canada National Parks Act S.C. 2000, c.32, is now 15(1). An amendment to the regulations changing the reference is pending.

Surveys in National Parks

General Instructions for Survey

The *General Instructions for Survey, e-Edition*³⁵, includes administrative requirements and survey standards for a variety of surveys and related products that are or could be used in national parks. These include official surveys, explanatory plans, strata surveys, condominium surveys, boundary monitoring, boundary maintenance, base mapping, land descriptions, survey reports and as-built surveys. While the *General Instructions* provide general requirements and survey standards, specific survey instructions are required for legal surveys in National Parks. They may be obtained from the Client Liaison Office serving the area where the lands to be surveyed are located. Chapter C1 of the *General Instructions for Surveys of Canada Lands, e-Edition* outlines the information that must be provided when applying for specific instructions.

Surveys for Leases

Section 3(2) of the *National Parks of Canada Lease and Licence of Occupation Regulations* states:

- (2) No lease of public lands shall be granted
 - (a) until the public lands have been surveyed in accordance with the *Canada Lands Surveys Act* and unless the description of the lands in the lease is based on an official plan or plans under that Act; or
 - (b) unless, where the Minister so directs, the lease describes the public lands by
 - (i) reference to an explanatory plan approved by and in the custody of the Surveyor General, or
 - (ii) a metes and bounds description, or the equivalent thereof, prepared under the direction of and approved by the Surveyor General.

For the purpose of surveying condominium subdivisions in Alberta, the *Alberta Condominium Property Act* is used insofar as it can apply for leasehold interests in national parks in Alberta. In addition Part D4 of the *General Instructions for Survey, e-Edition* has general instructions for condominium surveys. Specific instructions are also required.

³⁵ Website: http://cccm.nrcan.gc.ca/english/man/toc_e-ed_v1_e.asp

Surveys for Licences of Occupation and Permits

Legal surveys are not normally required for granting licences of occupation or permits.

Surveys for Rights-of-Way for Public Purposes

As a general rule, rights-of-way for public purposes under section 15(1) of the *Canada National Parks Act* require a survey in accordance with the *Canada Lands Surveys Act*. In some situations an explanatory plan approved by and held in the custody of the Surveyor General or, at the discretion of the Surveyor General, a metes and bounds description or the equivalent may be used to describe the lands.³⁶

Acknowledgments

It is one thing to write about property rights and boundary systems using as sources of information legislation, policy and planning documents and history texts however nothing can substitute for input from those who work in the field. I am indebted to John Low, Diane Pralow, Lorrie Marlow and Deb Witham of the Parks Canada Agency who I was able to interview and who also reviewed and commented on a near final draft. A thank you is also due to Moez Murji from the Northern Alberta Land Titles Office who clarified the procedure in issuing leasehold titles for condominium units in the National Parks in Alberta. As well Stephen Howard and Steve Rogers of the Canada Centre of Cadastral Management also reviewed and invaluable input on a near final draft of this chapter.

This chapter is a rewrite of chapter 9 of the (Provisional) May 1990 book *Property Rights and Boundary Systems on Canada Lands*. While this book was extremely useful for this rewrite any material in it that was used was independently verified.

³⁶ Interdepartmental Agreement re Description of Canada Lands, 1955, *General Instructions for Surveys, e-Edition* (Surveyor General of Canada Lands) Chapter B1-1. Website: <http://www.lsd.nrcan.gc.ca>

Table: Canada's National Parks and National Park Reserves

National Park/Reserve (R)	Year Established
1) Banff, Alberta	1885
2) Glacier, British Columbia	1886
3) Yoho, British Columbia	1886
4) Waterton Lakes, Alberta	1895
5) Jasper, Alberta	1907
6) Elk Island, Alberta	1913
7) Mount Revelstoke, British Columbia	1914
8) St. Lawrence Islands, Ontario	1914
9) Point Pelee, Ontario	1918
10) Kootenay, British Columbia	1920
11) Wood Buffalo, Alberta, NWT	1922
12) Prince Albert, Saskatchewan	1927
13) Georgian Bay Islands, Ontario	1929
14) Riding Mountain, Manitoba	1929
15) Cape Breton Highlands, Nova Scotia	1936
16) Prince Edward Island, PEI	1937
17) Fundy, New Brunswick	1948
18) Terra-Nova, Newfoundland	1957
19) Forillon, Quebec	1974
20) Kejimikujik, Nova Scotia	1974
21) Auyuittuq, Nunavut	1976
22) Kluane, Yukon Territory (Part Reserve, see note 3)	1976
23) Nahanni, Northwest Territories (R)	1976
24) La Mauricie, Quebec	1977
25) Kouchibouguac, New Brunswick	1979
26) Ivvavik, Yukon Territory	1984
27) Mingan Archipelago, Quebec (R)	1984
28) Gwaii Haanas, British Columbia (R)	1992
29) Vuntut, Yukon Territory	1995
30) Tuktut Nogait, Northwest Territories	1998
31) Aulavik, Northwest Territories	2000
32) Grasslands, Saskatchewan	2000
33) Pacific Rim, British Columbia (R)	2000
34) Sirmilik, Nunavut	2000
35) Wapusk, Manitoba	2000
36) Gulf Islands, British Columbia (R)	2003
37) Gros Morne, Newfoundland	2005
38) Torngat Mountains, Labrador (R)	2005
39) Bruce Peninsula, Ontario (Proposed)	See note 4
40) Pukaskwa, Ontario (Proposed)	See note 4
41) Quttinirpaaq, Nunavut (Proposed)	See note 4
42) Ukkusiksalik, Nunavut (Proposed)	See note 4

The source of the table is the document National Parks Systems Plan; 3rd Edition with updates to April 2006 provided by Parks Canada.

Notes:

1. "Year established" refers to year park was formally created by order-in-council, proclamation, or enactment.
2. (R) means National Park Reserve.
3. Kluane National Park. The eastern portion of the park has attained full national park status. Pending settlement of the Kluane First Nation and White River First Nation land claims, the remaining western portion remains a park reserve.³⁷
4. "Proposed" mean that there is a federal/provincial agreement to establish a national park and the land has been acquired, however the park has not yet been formally created.

³⁷ National Parks Systems Plan, 3rd Edition (updated to 2005) See Northern Coast Mountains, Natural Region 6. Website: <http://www.parkscanada.ca/>