

Underwater Archaeology in the Wake of the Atlantic Trial

Preamble . . .

Monday, I sent out thirty emails to various dive clubs in Ontario advocating a move to a diver based cultural resource management system. It is flattering to receive a positive response from some of the more active and progressive dive clubs.

In addition to support I received an exceptionally good question.

“Why had I not joined the Ontario Marine Heritage Committee years ago, and what good was staying on the outside writing critical, satirical papers doing?”

Unfortunately, the answer to that question does not fit into a one-hundred-and-forty-character response, but I can throw in a great shipwreck story and tell the tale.

Initially I studied archaeology at Lakehead University in Thunder Bay where I grew up and OMHC was based in Southern Ontario and it seemed pointless to join an organization that required a nine-hundred-kilometer drive to attend a meeting. When I continued my studies at McMaster I considered joining, at that time I was doing a lot of diving off Long Point in Lake Erie and I was a member of Save Ontario Shipwrecks, Port Dover Chapter. Here, I was contacted by Scott Booth a longtime friend of commercial diver Mike Fletcher who had become entangled in the *Atlantic* shipwreck saga and Scott thought Mike needed a friend with an interest in Archaeology.

Wreck Event

The *Atlantic* was built in Newport Michigan. In 1865 Newport incorporated and the name was changed, and they became the Village of Marine City. The *Atlantic* was built in 1848 but they did not finish fitting out the ship until 1849 when she entered service.

The *Atlantic* was a large ship for that time 267' long, 33' beam and a 12.5' draft 1,155 tons. Built as a passenger vessel she had eighty-five state rooms and could accommodate over three hundred passengers. She was a Lake Erie boat and her route was the length of the lake as she travelled between Buffalo New York and Detroit Michigan.

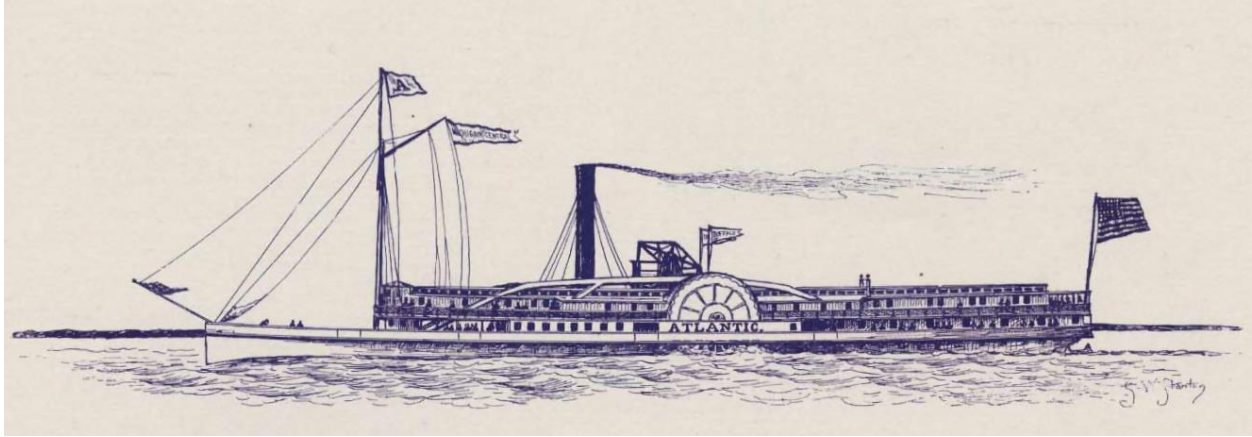


Figure 1 The Atlantic image from Great Lakes Maritime.

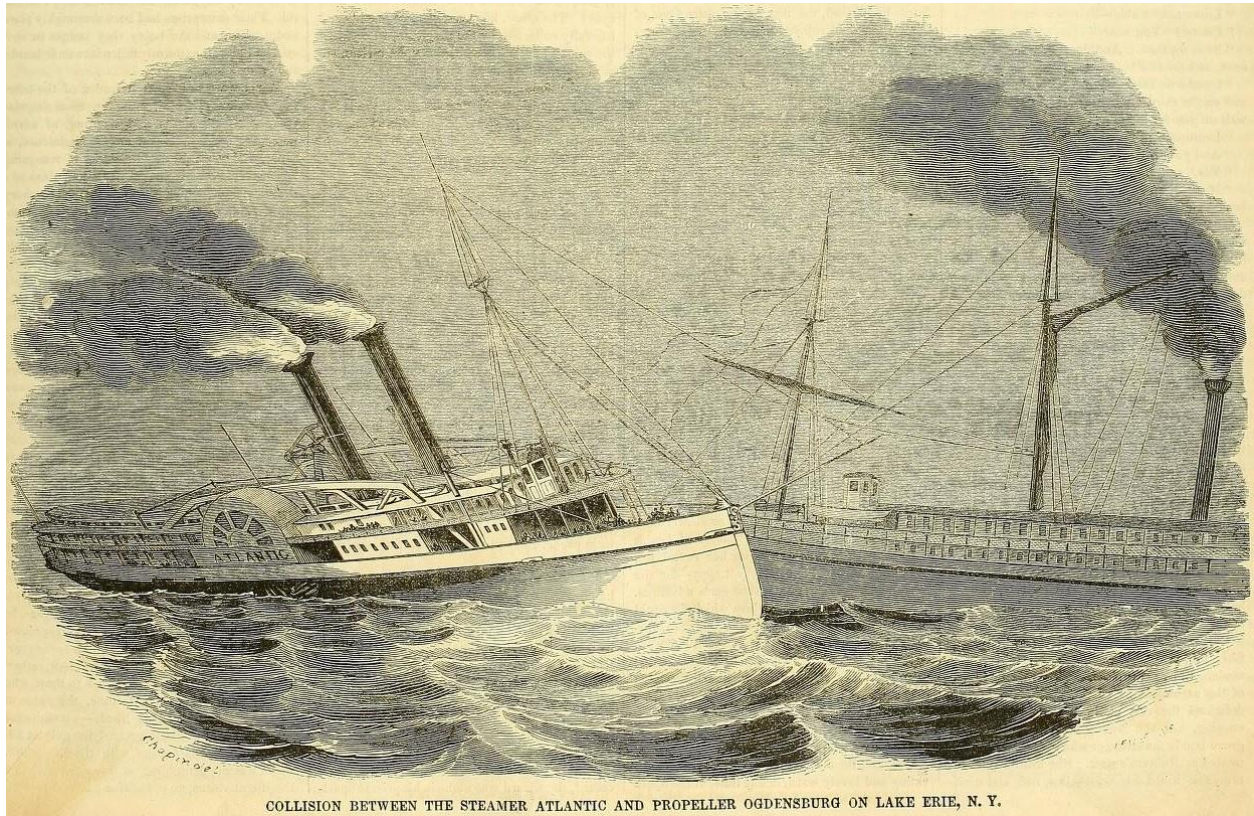
When the *Atlantic* sank, she was overloaded with passengers 500-600 and it is believed to be the fifth largest loss of life wreck event on the Great Lakes. The *Atlantic* picked up a full complement of passengers in Buffalo. These were mainly Norwegian and Irish immigrants. The cabins were full, and two hundred and fifty passengers and their luggage were on the deck. The ship then stopped at Erie Pennsylvania and picked up more Norwegian immigrants. The deck, the hurricane deck and cabin roofs were all packed with passengers, most of whom did not speak English, and their luggage.

At two in the morning in the fog she crossed paths with the *Ogdensburg* off Long Point. The *Ogdensburg* was fully loaded with a cargo of wheat and low in the water and poorly lit with a broken steam whistle. The *Atlantic* made a change in her course in front of the *Ogdensburg* and Degross McNeil the first mate on duty put the *Ogdensburg* engine hard astern, turned to Port to lessen the impact and then ran out onto the deck and attempted to hail those onboard the *Atlantic* but the ship's collided and the *Atlantic* went down and the bow hit the bottom in one hundred and sixty feet of water. For a time, the stern floated and the *Ogdensburg* was able to recover survivors from the *Atlantic's* stern and from the water before the ship sank completely. How many people lost their lives is unknown a popular estimate is two hundred fifty but no fewer than one hundred thirty and possibly as many as three hundred. In a Supreme Court decision both vessels were found to be at fault.

The Divers, Part One.

The *Atlantic* also took an American Express strong box with \$36,700.00 in it to the bottom. That is the equivalent of \$1,202,130.50 today. Tragically, 1852 was

before the conservation ethic was adopted by divers. While the strongbox should have been left for today's archaeologists to recover, later in the fall of 1852 diver Johnny Green made several dives on the site in early hard hat diving equipment. On his first dive he was lowered into one of the smokestacks and did not see much of the wreck. On his second dive he toured the wreck and located the strong box. On his third dive he was able to drag it out onto the deck and planned to attach a line and raise it to the surface on his next dive. Unfortunately, he became badly bent and spent the winter recovering in Port Dover.



It was not until July 1st, 1856 that he recovered to a point where he again made a dive only to discover the strong box was gone. It had been removed by another diver, Eliot Harrington. Green was furious and to make matters worse he again was badly bent, and this left him crippled for life. In 1859 he published his life story, *Diving With & Without Armor: Containing the Submarine Exploits of J. B. Green, The Celebrated Submarine Diver*, at Faxton's Steam Power Press, Buffalo New York. It is still a fascinating read accounting his early diving operations on the Great Lakes.

He was known to most of the ship's captains on the Great Lakes and spent his remaining years travelling on passenger ships entertaining passengers with his

stories as they travelled and selling his book at twenty-five cents per copy. There were a couple of salvage efforts, and the **Western Wrecking Company** was formed to raise the *Atlantic*, but nothing ever came of this.

The Divers Part 2

The exact location of the *Atlantic* was forgotten until a commercial fishing boat out of Port Dover hung a net up on the vessel. They contacted local commercial diver Mike Fletcher to free the net and when he did, he rediscovered the *Atlantic*. Mike continued to dive the site and recovered the ships bell and several artifacts and gained a degree of local notoriety with the find.

In 1992 a group of California divers, MARDIVE, dove the site and announced they had found the *Atlantic* and declared their intention to salvage the site. It later came out that one of the MARDIVE divers had broken into Mr. Fletcher's home and copied the site location from Mike's log and that is how they "found" the *Atlantic*.

There may have been a tit for tat artifact removal on the *Atlantic* with Mike removing things like the ship's china before it was removed and taken to the States by the MARDIVE group. During this time Mr. Fletcher wrote to the Ministry and the Provincial Underwater Archaeologist about the site and his claim to it. The Ministry chose not to respond to his correspondence the same way they are not responding to mine now.

The MARDIVE group appeared to me to be setting up a classic "investo scamming" operation on the *Atlantic*. This is similar to mining fraud. It may or may not meet the legal definition of fraud depending on how it is executed. They paid the State of Ohio fourteen thousand dollars and reformed the Western Wrecking Company. They then appeared before a California Court and were awarded salvage rights. The Judge was stunned that Ontario had failed to appear on the matter. Finally, with an armed Pennsylvania Sheriff's Deputy on board they crossed the lake and formally arrested the *Atlantic* Shipwreck site. They placed a buoy with a copy of the court papers and a flag on the wreck site. The Ontario Provincial Police attended, observed, and videotaped. Mr. Fletcher successfully salvaged Old Glory and paperwork after they left and took that home with him for a souvenir.

The MARDIVE group made numerous television appearances and did a lot of chest thumping and bragging and tried to gin up investors by playing up the

international nature of their claim. Some of the artifacts they allege to have found may have been seeded and did not appear to have been submerged for a long period of time. They had been poorly served by counsel. There is no way to enforce a California Court Order in Ontario. Chips does not patrol here.

There is a legal mechanism for cross boarder actions, in this case to be enforceable they had to go before an Ontario Court where, it is at the judge's discretion to either endorse the order or retry the case. The court elected to retry the case.

Then MARDIVE made their third legal mistake. Part of their argument dealt with existing international treaties between Canada and the United States and part of their argument also dealt with Admiralty Law. They had landed in an Ontario Provincial Court in Toronto. Perhaps they were expecting the Ontario Court Justice to rubber stamp the California Court Order but that did not happen. Provincial Court Justice Douglas Lissaman informed them that they may be in the wrong court and offered time for them to move to a different court, but they elected to proceed.

The trial dragged on for two and a half years. The MARDIVE litigants had huge costs travelling back and forth between California and Ontario, hotel accommodations and whatever they paid their lawyer. I had made a few dives on the *Atlantic* and went to court to give evidence for Mike Fletcher. Due to an order for an exclusion of witnesses I was not allowed to sit in court for the first part of the trial. Mr. Fletcher also incurred substantial legal costs. The court was very democratic and systematically chewed out all the litigants but clearly warmed to Mr. Fletcher's argument. Eventually the court expressed its dissatisfaction with the Crown's case and suggested that he might side with Mike Fletcher.

The Crown reconsidered their position and entered into an agreement with Mike in which they dropped their action against him and paid him seventy-five thousand dollars for his legal expenses and in turn Mike agreed to turn the site over to the Province if the court awarded him the site.

I was on the stand for about two hours, the Crown had many questions on the conservation of freshwater artifacts and the current state of the site. MARDIVE had questions about my diving on the site and the Court had questions about how deep the ship was in the sediment.

At the conclusion of my evidence I expressed my interest in the case and I asked for an opportunity to read the court file or the possibility of a transcript. Justice

Lissaman then directed the various attorneys to brief me during the recess, which they did.

That is where it all came out. There were many remedies available to stop MARDIVE's salvage efforts. They were all working in Canada without visas. They were entering Canada without clearing customs to work the site. The Provincial underwater archaeologist had used his special magic legal powers and offered Mr. Fletcher immunity from prosecution. Mike cooperated only to discover that underwater archaeologists do not have any special legal powers and then he was prosecuted, and his own words used as evidence against him.

The Ministry had other legal remedies but had elected to try the case this way in an attempt to set a precedent that served their agenda and allowed them to control submerged archaeological sites and the court was not having anything to do with it. Parts of the case were very amusing. After patiently listening to a long speech by the Provincial archaeologist the judge had to inform the archaeologist that he had to render a decision based on the way the laws are and not the way he thought they should be.

Also, in court it is important to have evidence and the Province did not really have a lot. They had inculpatory unsworn statements from Fletcher and MARDIVE and some of the Artifacts from MARDIVE and the artifacts Fletcher had removed but no real proof they had been removed from the *Atlantic*. The Crown moved to remedy this and more diving was necessary. This led to a lengthy discussion and numerous directions on underwater archaeology and Ministry of Labor diving regulations.

The Ministry archaeologist was compelled to comply with the Ministry of Labor diving regulations and use surface supplied diving equipment. He borrowed a hat and they chartered one of the commercial dive boats and they headed out. The dive supervisor had reservations about running a dive in one hundred and sixty feet of water with a diver who was new to him in a borrowed hat. They decided to do a check out dive and they tied up to a well head. After a great deal of messing around and huffing and puffing the archaeologist made it down fifty-eight feet to the well head. The dive supervisor was not confident in his ability to dive the site and that was as close to the *Atlantic* the Province's underwater archaeologist came. In the end they hired a commercial diver to dive the site and shoot video tape to meet their evidentiary needs. It just went on and on, one error after another.

I also attended at the end of the trial for the reading of the judgment. The Crown suggested the MARDIVE lawyer be compelled to stay in Ontario until MARDIVE paid the one and a half million dollars in costs awarded to the Province.

Unfortunately, the judge did not go along with this and MARDIVE and counsel sheepishly slipped back across the border and defaulted on costs which were passed onto the Ontario taxpayer. They do not dive in Canada anymore. The Court denied the MARDIVE claim.

OCSD

If you have been wreck-diving long enough you may have already encountered other cases of OCSD, it is tragic when it strikes as it drives divers mad and there is no known cure. Scarlet Janusas from the Ontario Marine Heritage Committee arrived at a Port Dover SOS meeting fully infected. One of the tell tail symptoms of Obsessive-Compulsive Shipwreck Disorder is the inability to tell the truth and detachment from reality.

Ms. Janusas read the equivalent of a shipwreck riot act. She pointed out that this had come straight from the Provincial archaeologist and with the Court order there was now going to be a total prohibition of diving on the *Atlantic*. An archaeological license was now going to be required by anyone wishing to dive the site, etc. Scarlet was lying.

As I said, I had been interested in the case. What the judge did in court was decline the MARDIVE claim. I did not understand what was going to happen to the *Atlantic* site next, so I called the court and asked, I left a message on his answering machine. When he returned the call, he said that he did not feel compelled to address that point and that it was his intention that the *Atlantic* be treated like any other shipwreck in the Province. Scarlet did not have a lot to say after I mentioned that.

Therefore, I chose not to join OMHC. Not all the members had been a party to this ploy and now there are many people there who were not members then, but they did elect Scarlet President for the past ten years. Who wants to go through life going from one conflict to another? What they were doing, editing, and adding a self-serving fictitious addendum to the court order might have been seen as a form of obstructing justice. Perhaps I failed in that I did not lay an information or write the court about this, it could have meant jail time for them.

All introductory texts about archaeology specifically address the subject of professional ethics and all archaeological societies in North America have codes of professional conduct, professional guidelines for professional ethical conduct. This includes the Ontario Archaeological Society. They have a Statement of Ethical Principles. The organization's respect and support for all relevant Ontario, Canadian and International legislation is one of the things they hold to. Writing your own version of a court order to serve your own political agenda falls a little short in the respect department.

Also, it states that the society views altering artifacts, records and/or falsifying reports or reporting information gathered by others is unethical. There is absolutely nothing ethical about repeatedly and demonstrably lying to divers and then inflicting the hardship and financial burden of litigation upon them. I cannot condone or tolerate that kind of behavior. It is unconscionable and the *Atlantic* shipwreck trial is just one example of unethical untruthful behavior within the Ministry and OMHC.