



First Annual Boundary Law Conference

*Parcel Title and Parcel Boundary:
Where Lawyers and Surveyors Meet*

This online version of the conference held November 2013 includes the presentations, papers and slide decks from most of the presenters. The purpose of the conference was to review — in a shared lawyer / land surveyor context — recent developments in boundary law as emerging from courts including:

- latest remedies and procedures for resolving boundary uncertainties;
- differences between solutions to title problems vs. boundary problems;
- latest approaches taken by the courts in understanding “intention”;
- advising clients on the resolution of boundary disputes without “breaking the bank”;
- the continuing importance of surveys and what lawyers need and want to know about survey products;
- the limits to the commoditizing of conveyancing and the remaining need for bespoke practitioners;
- why title insurance matters.

This program has been accredited by

The Association of
Ontario Land Surveyors



for 12 *Formal Activity* CPD hours.

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PRESENTATION ABSTRACTS

Understanding Parcel Title and Parcel Extent: Two Sides of the Same Coin in a Land Registration Context

William D. Snell, *O.L.S., Examiner of Surveys*

The conversion of registry lands in Ontario has resulted in virtually every parcel in the province being registered under the Land Titles Act whereby the province guarantees that the parcel register reflects accurately and completely the current title status, subject to the stated and statutory limitations and qualifications. In contrast, the act also sets out that the guarantee does not relate to the boundaries or extent of the title. The implications to the legal and surveying professions of these apparent competing principles will be examined. The role of parcel mapping, the effect of absolute title determination on extent of title and mechanisms to address boundary and description uncertainties will also be reviewed

Problem Easements and Defining them on the Ground in a post-*MacIsaac v. Salo* Ontario

Jeffrey Lem, *Lawyer*

Lesser interests in land, such as easements and rights of way, pose interesting challenges when attempting to reconcile their location and even existence with the registered interests. This is an especially difficult area of practice for both lawyers and surveyors because recent case law suggests that what you see may not be what you get. Furthermore, the absence of a registered easement interest does not necessarily mean that there is no interest being enjoyed “out there”. This presentation discusses recent decisions from our courts, as well as some legislative responses. In particular, the recent decision in *MacIsaac v. Salo* makes for added challenges for lawyers and surveyors alike.

Navigability of Watercourses and Natural Severances: Implications for Land Surveyors

Jeff Buisman, *O.L.S.*

There are many streams and waterways in Ontario which have the potential of being found “navigable”. The difficulty for both lawyers and land surveyors is in the making of a correct determination when the potential owner, Crown Ontario, does not have a ready answer or a catalogue of what it considers to be Crown land as a result of the Beds of Navigable Waters Act. The question of navigability and best practices in making such a determination will be addressed. Arriving at a determination is not always an easy process and there are many factors to consider – including cost. This presentation will not only review the general criteria, but turn to a number of practical examples which illustrate approaches that may be helpful to attendees. At a basic level, this is not only a boundary issue, but directly impacts title. It also has implications for

ownership of two parcels of land rather than just one.

***Mining Act* Surveys and “The Duty to Consult” in Ontario: Implications for Land Surveyors**

Roger Townshend & Michael McClurg, *Lawyers*

Surveyors may be called upon by mining proponents at various points in the *Mining Act* procedures, as part of the requirements for securing the appropriate authorizations for mineral exploration and development. Aboriginal law has developed to require Aboriginal groups to be “consulted and accommodated” if their rights may be impacted. For example, hunting rights often exist throughout a First Nation’s treaty or traditional territory (i.e. far beyond the limits of reserves), and the duty to consult and accommodate can be triggered by mining exploration and development. The Ontario *Mining Act* has recently been amended in view of this. This presentation will discuss the legal and practical requirements involved in consulting and accommodating Aboriginal groups.

The Role of “Subdivider’s Intention” in Determining Natural Boundaries — post-*Ellard* and *Battaglia*

Russell Raikes, *Lawyer*

This topic will examine when and how the subdividers’ intention may be relevant to the determination of a boundary particularly along a watercourse. Whether the boundary lies at the water’s edge or at some point inland from the water’s edge can dramatically affect both the value and the use and enjoyment of the property. The Courts have recently ruled in a number of cases on the significance of subdividers’ intention for the purpose of resolving boundary disputes. Both surveyors and lawyers will find this topic useful for resolving often thorny and contentious issues.

In the Ontario Real Estate Lawyer’s Practice, What is the Role of a Survey?

Virginia Tinti, *Lawyer*

Today’s practice of conveyancing based on title insurance seems to mean the end of surveys; particularly for residential real estate transactions. The practice of conveyancing as we once knew it was a function of a system where a solicitor’s title report was valued by all. Today it seems to be something different, lenders and others defer the risks of the notion of good and marketable title to title insurers. A survey is just as important an element of a real estate transaction as a deed, it is what gives true meaning to the phrase “good and marketable title” and should be a requirement of all property transactions. Unfortunately however contracts are drafted, and signed without legal advice and are created from fill in the blank templates, where the production of a survey is just an added nuisance to the parties. A solicitor’s opinion, and an up-to-date survey and title insurance can all co-exist, we need to make all agreements conditional on a review of a survey. Title insurance is not a substitute for a survey, it is simply a

backup position which hopefully will underwrite losses arising from the transaction.

Boundary Confusion Cleared: Processes and Remedies for Resolving Uncertainty

Robert Fenn, *Lawyer*

One might think of “remedies” as a boring topic but in fact this presentation will be most interesting in terms of strategic considerations as well as costs. The basic procedures for bringing about some remedy will be reviewed, including the considerations which apply when "collateral relief" becomes important. In addition, there are important consequences that flow from the picking of a remedy which only opens the door to an appeal "by way of a new hearing", or ignore the principle of “proportionality”. Why do parties risk legal costs in the tens of thousands when mere inches are at stake? Lastly, an appeal will be contrasted with judicial review as an important part of this presentation.

Ethical Issues and Resolving Neighbour Disputes without Betting the Bank

Anne Cole, *O.L.S.*

For land surveyors, their Code of Ethics requires that they maintain public trust and confidence in the profession, preserve the confidence of clients and regard as privileged, information obtained in respect of clients' affairs while also ensuring that clients are aware of the complexity of the type of surveys recommended and the nature of fees for service. In contrast, lawyers also have a set of ethical obligations which are owed to individual clients and the administration of justice, but are not identical to what applies to land surveyors. Yet, there are common values which encourage a search for solutions which are not acrimonious and are affordable. This presentation will suggest a framework by which the “neighbourly dispute” can be evaluated early on from the point of view of best serving the client embroiled in neighbourhood unrest. Practical solutions through which neighbours can agree on something will be explored as well as suggested best practices in helping clients avoid the escalation of disputes with neighbours.