



Fifth Annual Boundary Law Conference

Waterfront Properties in Ontario: Best Practices for Resolving Title & Boundary Issues

- *How can land surveyors show water boundaries in a way that reflects consistency and clarity for their clients?*
- *How can lawyers advise clients who are in the process of purchasing a waterfront property or are in the midst of a dispute over use of a beach?*

This fifth annual conference responds to the uncertainties resulting from recent legal treatments of water boundaries in a manner that will ultimately benefit professionals, property owners and the public. Part of the “muddying of the waters” is the polarization of views stemming from the fact that lawyers, land surveyors and boundary & title officials focus on different questions, investigate different pieces of evidence, or presume only one “correct” approach to addressing waterfront ownership and boundary issues. The artificial distinction between boundary and title also contributes to the seemingly inconsistent decisions concerning waterfront properties over the last decade.

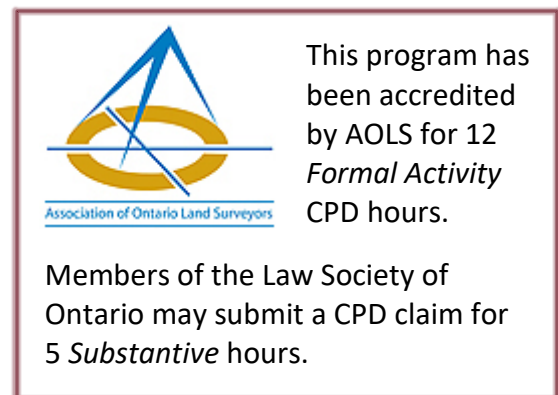
Ultimately, the number of considerations that made it difficult to answer such questions as “What is the correct approach?” and “What is the best practice in this subject area?” revealed that a “more correct” approach is one that requires *multiple approaches* to be considered at the *same time* in response to *multiple issues* that may all be present at the *same time*. This realization informed the selection of topics to reflect differences in both approach and practice without implying that any one is correct or incorrect. Each distinct approach to resolving title and boundary issues has its purpose, time, relevance, value and application. It is the history, the unique circumstances, the one-off fact scenario for every waterfront property that determines the usefulness of one (or a combination of) approaches.

By confronting the problem through thinking about the situation as a *series of factors to be identified*, lawyers and surveyors alike see all the issues at play and can then entertain all possibilities when working towards a “best” outcome or a “more legitimate” solution that can be rationalized to all stakeholders.

As an introduction to some of the topics of this year's conference, a background [paper](#) and a pre-conference [exercise](#) are available. *Why are water boundaries so complex? Introduction to Contributing Factors in an Assessment of Water Boundaries* explores issues that "muddy the waters" in the legal treatment of water boundaries. The scenario-based exercise raises awareness of the multiple issues that can be present *at the same time* and in different configurations. Going through this pre-conference activity is an opportunity for surveyors and lawyers alike to explore solving a puzzle and to appreciate how even a relatively simple configuration could contain factors which do not at first materialize.

By participating in this conference, you will:

- consider the latest decisions affecting title and boundaries at the waterfront;
- revisit the legal principles applicable to waterfront boundary retracement;
- take into account multiple and broader issues when transacting in or surveying waterfront properties;
- gain insights into practical solutions that reduce uncertainty (and thus, potential conflict);
- explore strategies to better manage risk;
- better communicate the results of your work to stakeholders.



The conference takes place on **Monday, April 23, 2018** at the [Hilton Mississauga/Meadowvale Hotel](#) (online reservation is available at the special [group rate](#)). The cost is \$495 plus HST and includes:

- complimentary hot breakfast, lunch, refreshments;
- binder of materials;
- access to copies of materials and presentations for future reference.

Go to [4pointlearning.ca](#) to register¹. If registering someone else or a group, download the [Registration Form](#). If you have questions, call 519-837-2556 or [inquiry@4pointlearning.ca](#).

¹ You will be asked to login. If you have not already created an account, see registration [instructions](#).

DRAFT AGENDA

8:00am – Arrival, Complimentary Hot Breakfast Buffet
8:30am

8:30am – **Opening Remarks by Izaak de Rijcke**
8:50am

The evolution and maturation of the theme for this conference will be described and set the stage for the day.

8:50am – **Expectations of Title to the Waterfront: Review of Several Cases that Use Seemingly Different Methods of Analysis**
9:20am

Scott Fairley
Lawyer

Certainty and predictability in the law are goals that lawyers and courts are very familiar with. When it comes to land title and boundaries, the courts often use principles of law that support an outcome which will meet reasonable expectations. While members of the public may have certain hopes and expectations regarding their entitlement and ability to enjoy land, an effective way for lawyers to communicate the courts' approach to clients is important.

9:20am – **What Surveyors have been doing at the Waterfront: Review of Approaches and Factors that have Proven to be Problematic**
9:55am

Ron Stewart
OLS & CLS

In this presentation a number of examples will be reviewed to illustrate the different approaches that land surveyors have used in the Province of Ontario for waterfront boundaries. Some of these approaches have been endorsed by the courts while others have added to inconsistency in practice and approach. Insight to the variability in approach is used to identify potential areas of consensus.

9:55am – **Boundaries and Surveys: Retracement of Property Lines and the Use of Evidence**
10:30am

Ken Wilkinson
OLS,
Examiner of Surveys

Boundaries at the waterfront appear on Plans of Survey and these in turn are used to prepare Block maps and other products that are used by laypersons when involved with land parcels. While not plans of survey, Block maps are often assumed to be accurate representations of the extent of ownership interests and serve as a starting point for research into land records at a local Land Registry Office. This presentation will review and discuss the factors to be considered when survey plans for waterfront properties are received for registration or deposit.

10:30am – Refreshment Break
10:50am

10:50am – **Title and Boundaries at the Waterfront: What Happened in *Krull v. MacDonald?***
11:25am

Jeff Cowan
Lawyer

In this presentation, the interesting result in the *Krull v. MacDonald* appeal will be reviewed. An appeal from an Order under the *Boundaries Act*, Divisional Court set aside and substituted the Order with a determination that reflected the settlement reached by the parties.

11:25am – **Understanding the Difference and Impact of Boundary Retracement under the Common Law and the *Surveys Act* as it Relates to Waterfront Plans of Subdivision**
12:10pm

Chester Stanton
OLS & CLS

The need for consistency is greater today than ever before as the use of natural waterfront resources come under increasing pressure. Professionals are often on the “front line” of disputes resulting from failed expectations on the part of the public. The *Surveys Act* provides mandatory methods to approach retracements when there is no ambiguity. When there is ambiguity we must look to the common law for guidance.

12:10pm – Complimentary Lunch
1:15pm

1:15pm – **Expectations of Waterfront Ownership and Accessibility by the Public: Access Questions for Backlot Owners**
1:55pm

Izaak de Rijcke
OLS & Lawyer

The public generally has an expectation that beaches and waterfronts are part of the natural resources of this province and are accessible to be enjoyed by all. This is normally reflected in the listings for waterfront property posted by realtors and is used as a factor in adding market value by appraisers. How realistic is this expectation? This presentation will explore court decisions that have addressed accessibility to the waterfront for owners having no water frontage.

1:55pm – **Beaches in Ontario: It Depends on Whose Ox is Being Gored**
2:40pm

Dr. Brian Ballantyne
Consultant

Ontario’s challenge with beaches (title, use and bounds) requires posing two fundamental questions about subdivider intention; addressing the bias of each party (frontager and publican); and using techniques from afar. To wit: legislation that vests beaches in the public (SK, BC & NS); ambulatory marginal strips as easements (NZ); bestowing human rights on a watercourse (NZ); and the public trust doctrine that mingles public and private rights (USA). Bespoke solutions are needed and insights learned in other jurisdictions are available to assist.

2:40pm – Refreshment Break
3:00pm

3:00pm – **The Role of Title Insurance: What are Expectations from Title Insurers
3:40pm When Use of, and Title to, the Beach are Disputed?**

Ray Leclair The purchase of title insurance as part of a residential real estate transaction in
Lawyer Ontario has become the norm. While some waterfront property may be considered as
TitlePlus “recreational”, title insurance is typically available as a first response to a claim made
by the property owner when the beach use and title come under attack. How do title
insurers respond? What qualifies as a valid claim? What is the Public Trust Doctrine
and is it an emerging issue in Ontario?

3:40pm – **What can Lawyers and Land Surveyors Do in Helping with the
4:15pm Resolution of Competing Interests at the Waterfront?**

Panelists Lawyers and surveyors will revisit the pre-conference exercise after having had the
benefit of the various contributions and insights shared during the conference.
The panel will also entertain questions from the audience.

4:15pm – **Concluding Remarks – Common Threads in the Emerging Trends for
4:30pm Best Practice in Title and Boundary Matters at the Waterfront**

TBA