

Third Annual Boundary Law Conference

Enhancing Parcel Title by Re-Thinking Parcel Boundary

This online version of the conference held November 2015 includes the recorded presentations, papers and slide decks (where applicable). The purpose of this third annual conference was to revisit traditional assumptions about the nature of boundaries and how we conceptualize them. New mindsets were introduced so as to better align with what the courts do and conclude.

Topics included:

- “quasi-judicial” approach to enhancing certainty in re-establishing the location of a lost boundary;
- recent decisions involving easements and how easements and their boundaries continue to pose challenges;
- adverse possession and the “inconsistent use” test in Ontario;
- going beyond *Code of Ethics and Rules of Professional Conduct* in the resolution of boundary uncertainty;
- practical solutions to problem-solving in a LTCQ environment;
- techniques in organizing and presenting complex and technical evidence for expert testimony on boundary location uncertainty;
- changes to the legal framework to embrace evidence based on co-ordinates.

This program has been accredited by

The Association of
Ontario Land Surveyors



for 12 Formal Activity CPD hours.

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

PRESENTATION ABSTRACTS

Thinking Like a Court: What does *Quasi-judicial* actually mean?

An interview with Mr. Justice R. Raikes, *Superior Court of Justice*

It was Justice Cooley of the Michigan Supreme Court who first coined the expression “quasi-judicial” in *Diehl v. Zanger* in describing the function of a land surveyor. This was a reference to the means by which evidence was evaluated and filtered in the context of mimicking what a court would do. This approach anticipated what would be most probable in terms of what a court would also determine. This video interview with Mr. Justice Raikes explored the expression “quasi-judicial” with a view to enhancing certainty in re-establishing the location of a lost boundary.

A Legal Framework for Embracing Boundary Location Using Only Coordinates

Izaak de Rijcke, O.L.S., Lawyer

A public which increasingly expects the delivery of boundary line, property corner establishment, and retracement, in a virtual environment with no hard features may seem like the exact opposite of what is seen as certain: a monument. Yet, increasing capacity to model boundary location using digital mapping is challenging our traditional views of how evidence based on coordinates is treated. This presentation will address these changes with a view to describing a framework for understanding the changes needed in the legal framework for determining boundary location.

Beyond a Code of Ethics: Integrity and Fairness as Defining Qualities of the Professional’s Mindset

Anne Cole, O.L.S.

Professionals such as land surveyors and lawyers are accustomed to the existence of a Code of Ethics or Rules of Professional Conduct which guide their behaviour in a professional context. Does this mean that strict, but limited, compliance with such a Code or Rules will ensure an ethically appropriate response when engaged in practice? Proceedings which have the resolution of a boundary uncertainty problem as the goal, heighten the need to understand the profile of the "professional person". This presentation explores the broader mindset which assists in a contextual approach to ethics under these circumstances.

Technical Evidence in the Courtroom: Update on the Presentation of Scientific and Complex Evidence in Boundary Disputes

Megan Mills, *Lawyer*

The need for expert testimony to assist courts in understanding complex and technical issues remains high. Several decisions have emerged in the last year which provide guidance on the overall principles to be observed when assisting a court in bringing about clarity in respect of boundary location uncertainty. This presentation will highlight several techniques in organizing and presenting complex and technical evidence in a fashion which provides insight into underlying principles and concepts.

Getting the Thumbnail Right: Correcting Description Problems in a LTCQ Environment

Ron Mak, *O.L.S.* and Izaak de Rijcke, *Lawyer, O.L.S.*

The thumbnail description found in a PIN printout is sometimes incorrect in its effort to define the spatial extent of the parcel on the ground. Despite efforts to resolve inconsistencies, the practical approach needed for efficient resolution is at times difficult to obtain. Using a workshop format, this presentation will use “hands-on” examples to explain a principled approach to correcting this source of uncertainty.

The Servient Owner’s Right to Obstruct Easements: *Weidelich* Revisited

Craig Carter, *Lawyer*

When it was released in 2014 as a decision regarding an encroachment by a building into an easement, *Weidelich v de Koning* raised eyebrows. The fact of a physical encroachment was established, but it was not determined to be “actionable”. What does this mean in terms of how important it is to determine easement boundaries? Is there any point in seeking certainty regarding a physical encroachment? The emerging importance of interference with a use that is allowed under an easement is explored in relation to the legal significance of a technical encroachment over a boundary.

Adverse Possession and the Inconsistent Use Test: Does this Apply in Ontario?

Robert Fenn, *Lawyer*

In a post-LTCQ environment, there is no longer room for adverse possession. However, in addition to the many *Registry* non-converts which remain vulnerable to adverse possession, occupation on the ground often continues as misaligned with the legal boundary location. The uncertainty which flows from this all too common situation deserves careful assessment. Managing this risk and avoiding litigation is the focus of this presentation.