



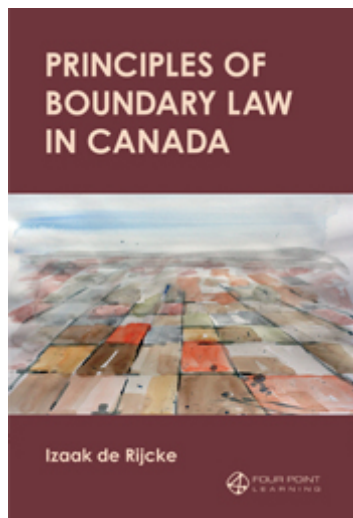
Principles of Boundary Law in Canada

Surveyors

- *Have you wondered about the nature of a boundary – or were at a loss when trying to explain this to a client?*
- *Do you need to make your understanding of boundary law current and wanted to find an easy to read reference work?*

Real Estate Lawyers

- *Do clients seek your Advice on Extent of Title?*
- *Do you know that Title Insurance will typically not respond to boundary disputes?*
- *Do you crave answers to waterfront boundary questions that seem infuriatingly complex?*



This comprehensive treatment of the principles of boundary law lies at the intersection of law and land surveying. Although the book has its foundation in the law of real property in Canadian common law jurisdictions, it is intended as a resource which bridges two professions. For real estate lawyers, it connects legal principles to the science of surveying and demonstrates how surveyors'

understanding of the parcel on the ground has helped shape efficient systems for property demarcation, conveyancing and land registration. For land surveyors, it provides a structure and outlines best practices to follow in the analysis of boundary retracement problems through the application of legal principles. This book is not meant to be used as a "how to" guide for the answering of specific questions about boundary problems. Rather, it is intended to serve as a reference tool to support the

Boundaries are to property lines and Surveyors much like Title is to property ownership and Lawyers.

I am a long time user of the author's work in "Survey Law in Canada" (1989), the "Legal Aspects of Surveying Water Boundaries" (1996), and his ongoing contributions through "The Boundary Point" and Four Point Learning. I applaud this book as an excellent contribution to the betterment of the surveying profession in Canada and highly recommend it as a 'must-have' for the surveyor's reference library.

J. Anne Cole, C.L.S., O.L.S.

formation of professional opinions by clarifying the framework for evaluating boundary and survey evidence. [Extracts appear on the last page.]

View [webinar](#) where the Izaak de Rijcke illustrates how the book supports the formation of opinions.

The 560-page softcover book costs \$245 plus HST, shipping included. You can mail payment to: **Four Point Learning** (address in the footer of the previous page) with your shipping address **or** [purchase](#) online. (NB: A PayPal account is not needed to pay by credit card.) For inquiries, contact book@4pointlearning.ca

Please note that the book's contents are augmented with a free e-newsletter: [The Boundary Point](#).

CHAPTER TITLES

[Forward](#) by Jeffrey W. Lem, Director of Titles for the Province of Ontario

1. Boundaries in History and Law
2. How Boundaries are Created
3. The Role of Intention in Retracing Boundaries
4. Adverse Possession and Boundaries
5. Boundaries of Easements, Restrictive Covenants and Lesser Rights in Land
6. Boundaries of Public Roads
7. Boundaries and Land Registration Systems
8. Natural Boundaries
9. Boundaries and Aboriginal Title
10. Boundaries and Co-ordinates
- Appendix 1. The Canadian Context of Common Law for Land Surveyors
- Appendix 2. Overview of Land Surveying for Lawyers
- Appendix 3. Boundaries and Ethics

Before Principles of Boundary Law in Canada, lawyers and surveyors needing to understand boundary law had very few sources to turn to, the most comprehensive encyclopaedic work probably being the collected essays in Survey Law in Canada, now about twenty-five years out-of-date. In addition to being so much more up-to-date, Principles of Boundary Law in Canada has the benefit of a unified authorship throughout, which, in my opinion, is always a better and more cohesive read than compilation works with contributions from multiple authors. As if that were not enough, and to my delight and surprise, Principles of Boundary Law in Canada serves as an excellent text on marketability of title as well as a text on boundaries law! In satisfying his need to provide legal background to explain some boundary law principles, de Rijcke has not only written a text on boundary law per se, he has also written an excellent "pure" real estate law text in the process!

Jeffrey W. Lem, Director of Titles for the Province of Ontario

The organization and content seem to me to be clear and coherent... I learned a tremendous amount and appreciate the chance to have a read.

Dean Lorne Sossin, Osgoode Hall Law School, York University

This book is a remarkable achievement. I can just imagine the time and effort needed to prepare such a wide-ranging work. It is thoughtfully and elegantly written and is obviously extensively researched. I would say that the book resembles a doctoral dissertation, except that I have never read a dissertation that is as good as this draft.

Bruce Ziff, Faculty of Law, University of Alberta

FORWARD by Justice Russell M. Raikes

Boundaries are the core of real property ownership. They define and regulate what belongs to whom, and play an integral part in land use. It is convenient to think of boundaries as immutable lines that are clear and constant in location, and ever capable of being confirmed. Time and ample case law have put to bed that chestnut. If the cases have taught us anything, it is that boundaries are the by-product of the technology of the day applied with frailties of human judgment and experience.

In this seminal book, Mr. de Rijcke has valiantly endeavoured to help surveyors, lawyers, and judges appreciate the essential legal principles of boundary law. Those principles have developed over time, evolving as the common law often does, by slow measured degrees with occasional regression, conflict and eventual clarity.

One of the challenges faced by surveyors and the justice system is the application of legal principles to fact specific, real life problems that often emerge long after those best able to shed light on the original circumstances are gone. Where is the physical evidence that was available when the original plan of survey was done? How do we ascertain the intentions of the surveyor or the parties to a transaction decades later? What happens when Mother Nature takes a hand to erode, accrete, or just plain make things disappear?

To make matters more challenging, as if the passage of time was not enough, surveyors wrestle with the application of new technology with greater precision to re-create boundaries made in difficult conditions with what might now be considered primitive equipment. For lawyers and judges not trained in the arts and science of surveying, the challenge of comprehending the reasons underlying the dispute between affected parties is even greater.

This book brings together the applicable legal principles in a way that provides a ready context for the development of the law and the approaches used in surveying real property. I wholeheartedly recommend this book for anyone who needs a comprehensive guide to the legal principles of boundary law. It is a vital resource to anyone entangled in real estate litigation, boundary disputes or who simply needs to be on firm footing as he or she grapples with a boundary issue.

Justice Russell M. Raikes,
Superior Court of Justice – Ontario
July, 2016

BOOK REVIEW by Nancy McCormack

Principles of Boundary Law in Canada by Izaak de Rijcke is an illuminating work. It presents a challenging notion most of us, if we own a home or piece of land, may consider to be so self-evident that we scarcely give it a thought: that in order to fully understand the boundaries of our property, we need to understand what property itself is. But ideas regarding what property is, and how we may modify it, are not static. They have changed over time. The policy choices of various governments, for example, have placed restrictions on what we, as individuals, may do with what we regard as our own property. In most jurisdictions, we cannot – simply because we’d like to – demolish our house, add another floor or two to it, or even turn it into a store. Nor can we claim a right to a view, or to sunshine and fresh air flowing through our windows.

To bring the reader up to speed, *Principles of Boundary Law in Canada* opens with an overview of the law of property before moving on to discuss this vexed matter of boundaries. The reader quickly learns that complexities proliferate in this area of law. Boundaries, de Rijcke explains, are established through the actions of people or the Crown, or through an order of the court. They don’t come into existence merely because there is a plan of survey, which is what many owners tend to believe.

True, the lines on a plan of survey, once they are established as legal boundaries, set out a distinction in ownership rights (i.e., how the nature and ownership of rights differ from one side of the boundary to the other), and legal sanctions exist to reinforce those rights. But where the surveys themselves are in doubt or there is some ambiguity in the grant or deed to property, intention may play a key role in determining boundaries.

For instance, older grants and deeds frequently refer to artificial monuments (e.g., a stone wall), as well as natural landmarks (e.g., a three-hundred-year-old oak tree) to establish property boundaries. Unfortunately, these may have been altered or moved or could have disappeared entirely over time. In such cases, though existing fences are often accepted as strong evidence of where lot lines should actually be, land surveyors will need to search for other confirmation in order to ascertain the intention of the grant. *Principles of Boundary Law in Canada* presents a multitude of cases and other sources that consider the types of extrinsic evidence necessary to determine intention and resolve any ambiguities that have arisen.

A variety of peculiarities in the law related to this domain are dealt with in the book, most notably, certain cases of adverse possession (sometimes referred to as “squatter’s rights”). These involve situations in which someone who is, for all intents and purposes, a trespasser upon a piece of property or even a dwelling-place can, through “exclusive, continuous, open or

visible and notorious” occupation of the property in question, end up claiming title to what was formerly someone else’s.

Other related anomalies include such matters as the boundaries of easements (a legal right to cross or otherwise use someone’s land for a specified purpose), and public roads. Land registration systems, including their historic origins, are covered in depth, and the use of natural boundaries (e.g., rivers or lakes) is insightfully considered. Likewise, the question of Aboriginal title and associated boundaries are dealt with in light of the common law, current legislation, and agreements.

De Rijcke does not belabour us with mathematics for most of the book. But in the final chapter, he feels he must discuss a mathematical model that captures “the spatial extent of property rights by using co-ordinates to define a point, line or plane in virtual space” (p 413). Non-mathematicians will forgive him that, especially since he makes it appear coherent, and even comprehensible. Three useful appendixes – “The Canadian Context of Common Law for Land Surveyors”, “Overview of Land Surveying for Lawyers” and “Boundaries and Ethics” – round out the volume.

This book was an unexpected pleasure to read. It fills a much needed gap in Canadian publishing in that it bridges two professions: law and boundary surveying. If I may introduce a personal note: when I articulated 20 years ago in a law firm with a significant real property practice, I had to spend a great deal of time at a local land registry office. During that period, I would have relished such a book, dispelling as it does many of the seemingly impenetrable mysteries I had to deal with. *Principles of Boundary Law in Canada* is an exceptionally well-written book, full of insights into the practical and theoretical considerations of its topic. The book is a must-have for every law firm with a real property law practice, as well as for court and academic libraries.

Nancy McCormack,
Librarian and Associate Professor of Law
Queen’s University
Kingston, Ontario

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EXTRACTS

In the chapter which reviews the law of natural boundaries, an irony with which many of us are familiar, is noted to set the stage for a deeper analysis:

“Natural boundaries are also seen as ranking at the upper echelon in the evidentiary hierarchy for the retracement of legal boundaries. But therein also lies a conundrum: the dynamic and fluid nature of water boundaries suggests that they can move and are perhaps unstable in position. Yet, at the same time, it is the kind of boundary which is accorded the most weight in the overall hierarchy of evidence. This conundrum may seem more like the irony which arises in that the boundary which is accorded most weight is also the boundary type which is most prone to fluctuation from one time period to another...”

In the chapter on boundaries and land registration systems, the separate (but detailed) description of title registration in several jurisdictions is compared in order to illustrate the practical differences which distinguish one approach from others:

“The purpose in providing a narrative description of land registration systems in these three Canadian examples is not to provide a comparison of quality; these are compared in order to illustrate the range of land registration systems which prevail in Canada and how history, patterns of settlement and surveying practices have all had a bearing on what a surveyor in Canada today may expect to encounter. As examples, these jurisdictions are but a sampling of what has emerged, to varying degrees, of the impact of land registration on property law and parcel boundaries. These three examples also highlight the unique rules and statutory provisions that prevail in each jurisdiction.”

No reference work on boundary principles can be complete without addressing the role of intention in considerable detail. An entire chapter is devoted to this topic and in it, many practical examples are used to illustrate how principles are capable of being applied in practice; the book is not a theoretical treatise for academics, but a useful source of thoughtful answers.

“That intention is paramount in resolving ambiguities is made out repeatedly in case law in which intention is referred to as the most important thing to be searched for – and has been the single most important factor in well over a century in Canada. This is not to say that intention is easily ascertained, or even clear. Like other types of boundary evidence, there are gradations and, for that reason, evidence of fences and long usage may trump descriptions in deeds.”