



Second Annual Boundary Law Conference

Linking Parcel Title and Parcel Boundary: Improving Title Certainty

This online version of the conference held November 2014 includes the presentations, papers and slide decks (where applicable). The purpose of the conference was to explore broader implications and reflect a search for new paradigms in bringing certainty and predictability in the location of parcel boundaries on the ground. Topics included:

- remedies and procedures for resolving boundary uncertainties;
- new data management tools and algorithms for the maintenance of cadastral fabrics;
- definition of “cadastral fabrics” and whether owners of property have ownership in their property data;
- more developments in the courts in understanding “intention”;
- ethical resolution of boundary disputes; and
- continuing importance of surveys and what lawyers need and want to know about survey products.

This program has been accredited by

The Association of
Ontario Land Surveyors



for 12 *Formal Activity* CPD hours.

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PRESENTATION ABSTRACTS

“Rules” Revisited: Water Boundaries After *Ellard, Battaglia* and *Lackner*

John Telfer, *Lawyer*

After the decisions in *Ellard, Battaglia* and *Lackner*, the lawyers for Lackner et al consider these

waterfront cases and question whether the facts of a “subdivider’s intention” has become secondary to the Ontario courts’ determination to reach an equitable, practical and just result in the circumstances of each individual case. Since *Walker* ruled that the legal waterfront boundary had never been the high water mark, most of the older plans cannot be re-established using traditional methods and without recourse to artificial findings of intent. Until amendments to existing legislation can be made, surveyors are encouraged to avoid speculation and assist the courts by continuing to survey with the old established rules. On the other hand, this presentation introduces some flexibility in these “rules” by highlighting their adaptability.

The Role of Intention in Retracing Parcel Boundaries

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

This presentation’s premise is that neither a title registration system’s attempt to catalogue the list of permissible rights, nor a surveyor’s mathematical depiction of a parcel of land on the ground will serve future generations well IF accommodation cannot be found for what individuals, as owners of rights in parcels, meant to do – rather than what an information system might say individuals purported to do. The trend in judicial reasoning which elevates the importance of intention and focuses on the parties as owners of rights in land has broad implications for how boundary retracement principles may need to be reconsidered – even with the potential to revisit the hierarchy of evidence. The implications for surveyors rendering a professional opinion as well as for the range of possible sources of cadastral data are profound.

The Role of Public Sector Surveyors in Government Service Delivery: Enhancing Certainty in Boundaries

Susan MacGregor, *O.L.S., Surveyor General for the Province of Ontario*

Land surveyors working in Government provide key geomatics services and products in support of policy development, best practices and in the maintenance of the survey fabric in Ontario. Using a rich content of examples, the presentation will highlight challenges of concern to all land surveyors in the Province. A shared goal of enhanced certainty in boundaries for the public as well as for the management of public lands will also be discussed.

The Infirmity of Boundaries, Even in a *Land Titles* Milieu

Jeffrey Lem, *Lawyer, Director of Titles for the Province of Ontario*

Ontario's Land Titles system has achieved phenomenal success in guaranteeing the quality and integrity of title by facilitating and regulating the registration of documents which purport to affect title to land — but all of this success remains subject, as it always has been, to the general caveat regarding boundaries. The Ontario Land Titles system has never guaranteed the extent or location (i.e. boundaries) of interests in land, and cadastral accuracy and integrity remains firmly ensconced in the bailiwick of the surveying profession. This crucial conceptual distinction between quality of title, on the one hand, and quantity or location of title, on the other hand, continues to confound and elude many real estate lawyers and lay persons alike, and this paper explores the implications of boundary uncertainty in a Torrens jurisdiction like Ontario.

Proof and Establishing Legal Facts: Using Statistics to Reject Implausible Boundary Positions

Spiros Pagiatakis, *P.Eng., Professor and Associate Dean Research and Graduate Studies, Lassonde School of Engineering, York University*

In this presentation, the requirement of using mathematical co-ordinates and geospatial geometry for the fixing of points in space, as it is now required by the *Surveyor's Act* (Ontario Regulation for Integrated Surveys 216/10), is explored relative to the “legally correct” position of such points in defining a legal boundary. Instead of looking to measurements as the lowest form of evidence in surveyors' retracements of boundaries, the use of measurements as a means of rejecting positions as being statistically implausible is discussed. Although there exists a tremendous amount of spatial data, their attributes or metadata aspects regarding their integrity, correctness and completeness are discussed in order to better understand why measurements – on their own – are so suspect. Turning measurements and the statistical inference associated with same into an analytical tool for rejecting that which, at a certain level of confidence (usually 95%) is implausible is explored as deserving of further research in thinking about cadastral fabrics. This presentation concludes with a description of examples.

Current Ethical Issues in Cadastral Surveys: Who Owns the Boundaries of a Parcel?

Anne Cole, *O.L.S.*

This presentation will explore the ethics of the relationships between property owners, surveyors, lawyers, clients, and society as related to parcel boundaries and more particularly, uncertain or “in dispute” parcel boundaries. The exploration will include discussion on privacy and ‘privilege’, evolving digital and big data, contracts and obligations, implications of case law, legislation and regulation, and the status and meaning of a surveyor's opinion about the location of parcel boundaries. It will look at the questions:

- When is a surveyor's opinion final?

- Who has a right to know a surveyor's opinion?
- Can a surveyor change their opinion?

The tension between a surveyor's need to be neutral and objective on the one hand, but to also do nothing that jeopardizes a client's right to privilege is a tough one to resolve. This presentation, and ongoing discussion on the topic, is intended to lead to improvements for surveyors, lawyers, and property owners in linking parcel title and parcel boundaries, especially in the context of uncertain parcel boundaries.

Innovations in Professional Service Delivery for the Consumer: Product or Service?

Virginia Tinti, *Lawyer*

There are certain elements of the services provided by lawyers and surveyors that can lend themselves to an algorithmic decision making process, thereby removing some of the "human element" and, with it, the uncertainty in delivery of the service (including the process of dispute resolution). By employing repeatable models and reducing the individual human element, a traditional service becomes *commoditized*. Overlay the commodity approach with the presence of "free" data access and the frontier of our definition of service delivery is further blurred. This presentation will explore the transformation of professional services in law and how that may also impact changes in services from other professional groups – especially Geomatics. What is it about a professional service as a *commodity* that rewards the professional service provider with a fee? Moreover, what is it about a survey plan as a graphic display of data that would reward the land surveyor with a fee? What innovations are called for as the traditional professions try to re-invent themselves? Rather than finding a single answer, this presentation wrestles with a process of change – one that has become painfully apparent to land surveyors across Canada for years.

Why there must be a Better Way: Online Dispute Resolution Based on Algorithmic Applications

Robert Fenn, *Lawyer*

With the growth of online commercial activity in the past two decades there has come a development of tools for online dispute resolution (ODR). Simply put, ODR tools refer to dispute resolution mechanisms and platforms that use the internet. In some cases ODR involves a virtual space for communication between the parties and organization of materials; but there is growing capacity in the area of artificial intelligence with optimization algorithms being used to assist negotiations and mediation and in time, an adjudicative role. Online Dispute Resolution tools have grown beyond private e-commerce systems and are now being used to address other types of disputes; some publicly administered ODR systems are already beginning to emerge. In this presentation we will explore the potential that ODR holds as an alternative, efficient and fair means of resolving low value boundary and title disputes that might otherwise involve a traditional hearing or court attendance.

