



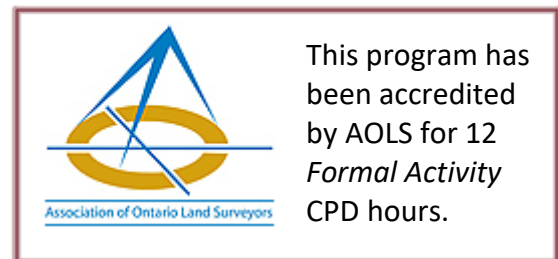
## Fifth Annual Boundary Law Conference

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

This online version of the conference held April 2018 includes the recorded presentations, papers and slide decks (where applicable). This fifth annual conference responded to the uncertainties resulting from recent legal treatments of water boundaries in a manner to ultimately benefit professionals, property owners and the public. 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.

Topics included:

- latest decisions affecting title and boundaries at the waterfront;
- legal principles applicable to waterfront boundary retracement;
- accounting for multiple and broader issues when transacting in or surveying waterfront properties;
- practical solutions that reduce uncertainty (and thus, potential conflict);
- strategies to better manage risk;
- communicating the results of your work to stakeholders.



The fee for 2 months' online access and a binder of conference materials is \$425+HST. Go to Four Point Learning to [register](#)<sup>1</sup>. If you have questions, call 519-837-2556 or email [inquiry@4pointlearning.ca](mailto:inquiry@4pointlearning.ca).

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

# PRESENTATION ABSTRACTS

## **Expectations of Title to the Waterfront: Review of Several Cases that Use Seemingly Different Methods of Analysis**

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.

## **Surveyors at the Waterfront: Review of Selected Problems and Solutions**

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.

## **The Effect of Bodies of Water in Legal Surveying**

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.

## **Title and Boundaries at the Waterfront: What Happened in *Krull v. MacDonald*?**

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.

## **Understanding the Difference and Impact of Boundary Retracement under the Common Law and the *Surveys Act* as it Relates to Waterfront Plans of Subdivision**

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.

## **Expectations of Waterfront Ownership and Accessibility by the Public: Access Questions for Backlot Owners**

Virginia Tinti, *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.

## **Beaches in Ontario: It Depends on Whose Ox is being Gored**

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.

### **Waterfront Properties in Ontario: The Role of Title Insurance**

Ray Leclair, *Lawyer TitlePlus*

The purchase of title insurance as part of a residential real estate transaction in Ontario has become the norm. While some waterfront property may be considered as “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?

### **What can Lawyers and Land Surveyors Do in Helping with the Resolution of Competing Interests at the Waterfront?**

Panelists: Chester Stanton, Virginia Tinti, Scott Fairley

Lawyers and surveyors revisit the pre-conference exercise after having had the benefit of the various contributions and insights shared during the conference.