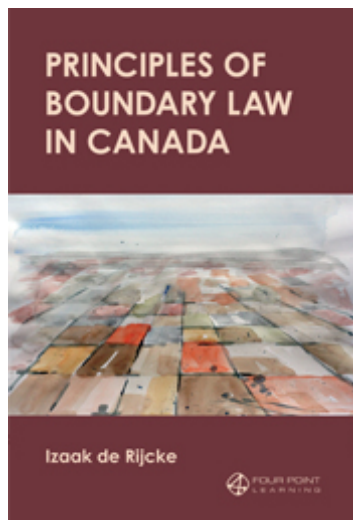




Foreward to

Principles of Boundary Law in Canada

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In the world of real estate due diligence, the public tends to focus on “marketability of title,” a concept which speaks to the quality of title – the certainty of ownership and the nature of the rights that encumber that title. While marketability of title, the domain of the real estate solicitor, is of considerable importance to the real estate buying public (and, for these purposes, “buying” includes lending against the security of real estate), it is not the only feature about real estate that drives its value. Indeed, while a less than good and marketable title devalues a given piece of real estate, a perfectly good and marketable title does not actually ensure that there is indeed a market for that real estate, let alone a market that will yield the owner a price that he or she

expects. There are many other factors that, depending on the circumstances, can often be as important, if not more important than the marketability of title in determining the value of real estate, and each of these factors is the domain of different real estate professionals.

So, for instance, in addition to the marketability of its title, a piece of real estate’s comparative value also depends upon what uses to which that real estate can legally and practically be put (to which we turn to zoning and planning experts), the physical condition of the plant, building, and other infrastructure on and forming a part of that real estate (to which we turn to building inspectors, mechanical engineers, and the like), and sometimes even the physical condition of the land itself (to which we turn to geologists, hydrologists, soil engineers, and other similar technical experts). On top of all that, there is a further level of aggregators (like real estate brokers and appraisers) who purport to do meta-analysis on the reports provided by these more specific real estate professionals.

Of the myriad of factors (other than marketability of title) that drive real estate value, the actual boundaries of that real estate most often tops the priority list for prospective buyers. Unlike marketability of title, which is said to be a measure of the “quality” of the title,

boundaries are said to be a measure of the “extent” of title, encompassing dual dimensions of quantum (how much real estate there really is) and location (where exactly on the ground is that real estate located relative to neighbouring and other nearby lands), both of which are often critical to the value of that piece of real estate. The determination of boundaries has always been the undisputed professional turf of the land surveyor.

Curiously, while real estate lawyers are generally cognizant of their own limitations as the arbiters of marketability of title (so, for instance, you rarely see a real estate lawyer issue a title opinion that also says that the building thereon has been constructed to certain construction standards with only identified building defects, etc.), many real estate lawyers remain totally ignorant of their own limitations in determining the extent of the title that they are examining (so, for instance, you often see a real estate lawyer issue a title opinion which confirms marketability of title and describes, seemingly quite definitively, the extent of the real estate as described in the parcel register or a particular instrument). There seems to be a chronic need to remind the real estate bar about the function of land surveyors in even the simplest of real estate deals – that almost all Torrens based land registration systems do not guarantee the extent of title – and lawyers, therefore, simply cannot be the arbiters of boundaries, even though the documentary evidence that lawyers use to establish marketability of title certainly sound and seem to be definitive as to the boundaries of the lands that they purport to affect.

While boundary determination remains, at first instance, the sole domain of the land surveyor, this does not mean that the surveyor’s craft is not itself also subject to the rule of law. Indeed, as surveyors exercise best practices to come up with opinions as to boundaries, the work product of the surveyor is just that – a professionally researched and informed opinion. When opinions conflict (as opinions are wont to do), the determination of legal boundaries devolves back into the legal sphere of influence, and the cases (and it is almost all case law) surrounding boundaries takes over as the final arbiter. This relatively obscure body of case law (with a sprinkling of statutory rules), collectively and loosely referred to as “boundary law” forms the basis for this new and extraordinary book from Izaak de Rijcke.

Principles of Boundary Law in Canada is extraordinary in many ways, not the least of which is the fact that it is written by an author who is, to my knowledge, the only qualified lawyer who is also concurrently a qualified land surveyor in the Province of Ontario. This unique combination of professional backgrounds gives de Rijcke literally unparalleled perspectives into both land surveying and real estate law, and the interaction between the two disciplines. The text is also extraordinary simply because of the dearth of competing resources in the public realm on this unique body of law. 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 more

than 25 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!

I have an extensive collection of real estate law texts from a variety of jurisdictions. Although it will label me forever as the real estate law geek that I truly am, I must admit that these books give me great comfort and reading pleasure. This vast collection is divided into two categories – my top shelf, which I keep within reaching distance of my desk, and everything else. *Principles of Boundary Law in Canada* has made the cut to that top shelf. Congratulations Izaak.