



The Boundary Point is published by Four Point Learning as a free monthly e-newsletter, providing case comments of decisions involving some issue or aspect of property title and boundary law of interest to land surveyors and lawyers. The goal is to keep you aware of decisions recently released by the courts in Canada that may affect your work.

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Strata Plans have become commonplace for planning and legal ownership in many British Columbia communities. So too, across Canada, community-based tenures, whether called strata, condominium or cooperatives, are appearing more often. Generally speaking, these involve a form of statutory corporation which holds title to the limited common properties (LCP), or common areas while individual strata owners hold title to the defined spaces, called “strata lots,” as prescribed by a land surveyor’s registered plan.

Legislation also established some of the rules for making decisions about a strata corporation’s management and affairs, which is generally decided by a majority vote at a meeting of the strata lot owners. It is therefore unusual to encounter a strata corporation with only two strata lots; the result for decision making by the strata corporation forces consensus, otherwise a “majority” cannot be achieved.

In *Heilemann v. Gardner*,¹ the BC Civil Claims Resolution Tribunal rendered a decision in a claim made by one strata lot owner against the strata corporation and against the land surveyor who had prepared the strata plan in 2008. Although the surveyor was not found liable, this decision is a cautious warning to land surveyors of the need to consider strata lot boundary² locations and their alignment with future physical infrastructure.

Strata Plans and Boundaries: A Decision Directing an Amendment to a Plan

Key Words: *strata, condominium, mistake by surveyor, alteration of plan, privacy*

The background to this dispute is reported in the Reasons for Decision.³ The Tribunal explained,

¹ *Heilemann v. Gardner*, 2025 BCCRT 1692 (CanLII), <https://canlii.ca/t/kgvqk>

² This may hold true in other jurisdictions, such as Ontario, in respect of unit boundaries on a condominium plan.

³ *Heilemann v. Gardner*, *supra*

This strata property dispute involves a 2-unit strata corporation and 3 linked files involving a claim, counterclaim and third party claim. The issues are generally about alleged unauthorized changes to limited common property or LCP, failed resolutions to approve LCP changes, alleged overpayment of property taxes, and an allegedly incorrect strata plan.

The applicants in ST-2023-006222, the primary dispute, Andrea Heilemann and Klaus Heilemann, own strata lot 1, or SL1, in the respondent strata corporation, The Owners, Strata Plan BCS 3156, or strata. The respondent, Corinne Gardner, owns strata lot 2, or SL2, in the strata. Mrs. Heileman represents the applicants. Corinne Gardner is self-represented and did not provide her title, so I will refer to her by her full name. The strata did not participate in this dispute and is not represented as I discuss below.

The Heilemanns petitioned the strata under Strata Property Act or SPA section 43 for a special general meeting or SGM. They sought the strata's approval for 2 changes to LCP. First, they sought approval for changes they had made to SL1's LCP deck to the rear of SL1 to allegedly comply with the District of Squamish's requests. They also sought approval to install a fence on the boundary between SL1's and SL2's LCP front yard areas, which includes a driveway used by both strata lots. Corinne Gardner voted against both resolutions, so they failed to pass. The Heilemanns say defeating the resolutions was unfair and seek orders that the resolutions be deemed to have passed.

Corinne Gardner says the Heilemanns completed the deck alterations contrary to the strata's bylaws and says she was not informed of the specific changes. She also says the deck has been enlarged such that it affects her privacy and interferes with requirements of a registered easement over part of the SL1 LCP.

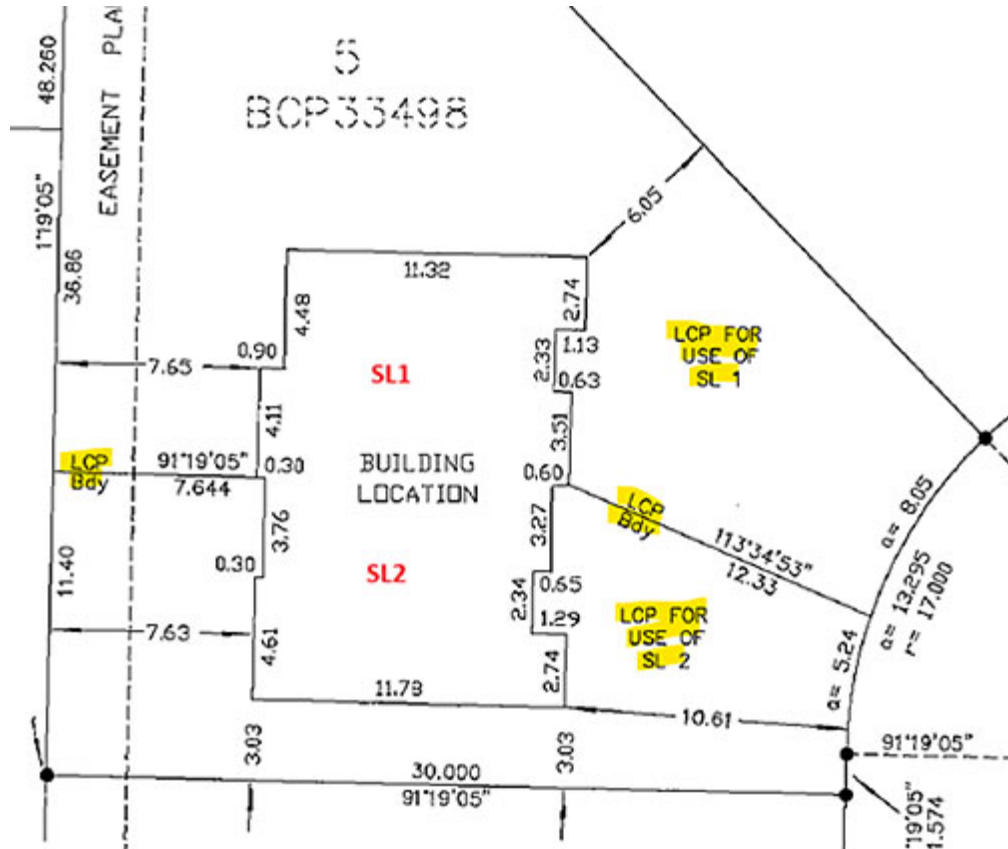
As for the fence request, Corinne Gardner says the intended location of the fence along the boundary of the LCP yard areas will cause her unreasonable hardship because it will cause her to lose access to a majority of her driveway. Corinne Gardner asks that the Heilemanns' deck and fence alteration requests be dismissed.

In ST-CC-2023010348, Corinne Gardner says the dividing line of the LCP yard areas improperly cuts across the portion of the driveway she must use to gain access to her garage and is an error on the strata plan. She says that the installation of a fence along the dividing line would be significantly unfair as it would restrict access to part of the SL2 driveway and garage. She maintains the land surveyor made a mistake on the strata plan by establishing the LCP front yard areas on a basis that does not consider the driveway use and garage access. Corinne Gardner seeks orders that the Heilemanns be prohibited from constructing a fence or other barrier along the LCP yard area division. She also asks for an order that they take steps to ensure the strata plan is amended to reflect the as-built driveways. Although her requested remedy is unclear, from her submissions, I infer her request is that the strata plan be amended to show the driveway as common property rather than LCP.⁴

⁴ *Ibid.*, paras 1-6

A helpful diagram appears in the Reasons for Decision to illustrate where the LCP boundary was located for this strata plan:⁵

Below is a partial copy of page 1 of the strata plan that shows the building and LCP yard areas and boundaries which I have highlighted in yellow. I have also identified the location of the strata lots in red text. SL1 is located in the upper or north part of the building. SL2 is located in the lower or south part of the building. I will refer to the right side of building as the front and the left side of the building as the rear.

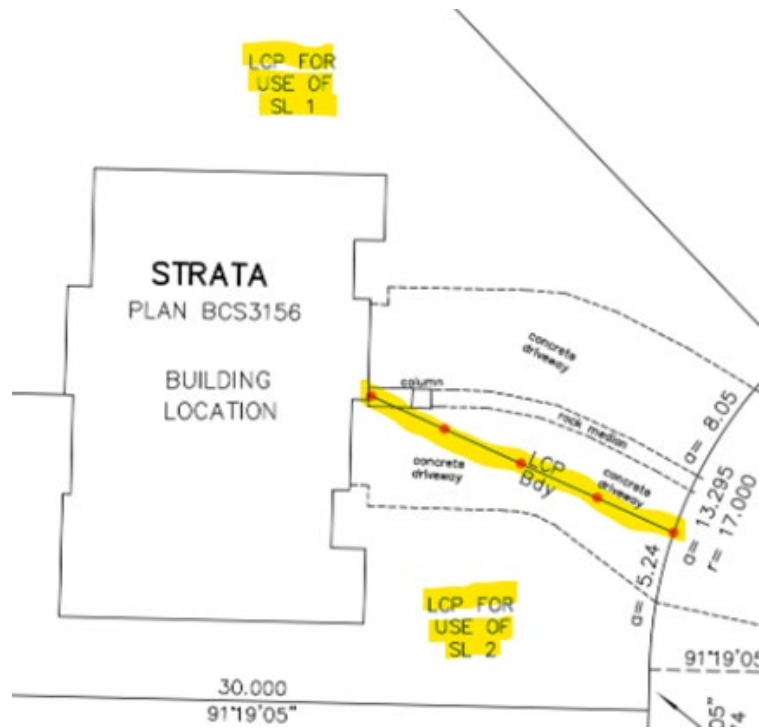


The strata plan shows that yard areas surrounding the building are designated as LCP for each strata lot. Each strata lot has an LCP deck to the rear of the building.

A curved driveway is located at the front of the building and connects the cul-de-sac to a ground level garage in each strata lot. Notably, the driveway is not identified on the strata plan.

However, on May 17, 2022, the Heilemanns obtained a driveway drawing from Bunburry that shows the driveway location in relation to the building and LCP yard areas, as shown below. The driveway used by Corinne Gardner is largely located on LCP designated to the exclusive use of the Heilemanns as shown below. There is a rock median that separates the portions of the driveway that access each strata lot. I infer the owner developer installed the rock median to distinguish the parts of the driveway to be used by each owner.

⁵ *Ibid.*, paras 31-34



An image from Land Title and Survey Authority of BC's website⁶ appears below and depicts parts of the two strata lots with the aerial imagery overlay showing the most recent configuration of the building and infrastructure:



In the end, the claim succeeded and the Tribunal directed that, *“Within 120 days the strata was to amend the strata plan to relocate the division of the LCP front yard areas for*

⁶ From: <https://parcelmapbc.ltsa.ca/pmsspub/> All rights reserved.

*SL1 and SL2 to the midpoint of the driveway median. The cost of this work shall be borne by both strata lot owners in proportion to unit entitlement.”*⁷ But the developer of the property and the surveyor were also sued. The Tribunal described the basis for the claim as follows:

Corinne Gardner maintains the dividing line for the front yard LCP areas, shown on the strata plan as a straight line, was an error made by Mr. Jones or Bunburry. She says this largely because the strata plan was completed in August 2008, before the driveway and front yard landscaping was installed.

Mr. Jones and Bunburry say the strata plan was finalized on August 12, 2008, which is confirmed by his signature on the bottom right corner of the first page of the strata plan. They say the driveway was not in place at the time and that it was up to the owner developer to ask for the strata plan to be corrected before it was registered with the LTO. For the reasons that follow, I agree with Mr. Jones and Bunburry.

First, Corinne Gardner relies on construction drawings that show the driveway as square to the cul-de-sac and says they do not show the LCP front yard division line. However, construction drawings are not the same as the strata plan and are not required to show LCP. Further, I find in most cases the construction drawings in evidence do not show the driveway in its entirety and often show the driveway angling away from the building along the curve on which the driveway was constructed. Even so, the measurements depicted on the construction drawings do not include the driveway, so I find it was not reasonable for Corinne Gardner to rely on the construction drawings for the driveway design.

Second, the strata plan was finalized by Bunburry on August 12, 2008, but as noted, it was not filed with the LTO until October 21, 2008. Mr. Jones says the driveway was not completed or even started at that time. This supports my earlier finding that there is no evidence the driveway was installed before August 12, 2008, nor even before October 21, 2008. On this basis, I find it was not possible for Bunburry or Mr. Jones to show the finished driveway on the strata plan. Rather, I find it more likely than not that the strata plan was accurate when it was completed on August 12, 2008.

Third, Corinne Gardner says Mr. Jones or Bunburry submitted the strata plan to the LTO. This is incorrect. The SPA contemplates that the owner developer, defined under SPA section 1(1) to be the entity that owns the land shown on the strata plan, submits the strata plan for registration. Page 2 of the strata plan shows the owner developer as Rommel Hones Ltd. with Chris Rommel as the authorized signatory. The PSA agree for SL2 also shows the seller as Rommel Homes Ltd. Therefore, I find that neither Mr. Jones nor Bunburry submitted the strata plan to the LTO for registration.

Overall, I find Corinne Gardner has not proved a mistake was made on the strata plan.

I also find that she has not proved her allegation that Mr. Jones negligently represented the LCP front yard areas. To prove negligence, the Corinne Gardner must show that Mr. Jones owed her a duty of care, Mr. Jones breached the standard of care, she sustained damage,

⁷ *Heilemann v. Gardner, supra* at para 96

and the damage was caused by Mr. Jones' breach. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at paragraph 33. She has not done so.

Corinne Gardner argues Mr. Jones was negligent because he refused to view the site or confirm the LCP measurements with the owner developer before including the LCP dividing line on the strata plan. Her allegation that Mr. Jones refused to review the site or confirm LCP measurements is speculative at best. There is no evidence that Mr. Jones was asked to do either and he says he was not, which I accept.⁸

Although the surveyor was not found liable for the reasons explaining this outcome, this decision remains as a cautious warning to land surveyors of the need to consider strata lot boundary⁹ locations and their alignment with the *future* physical infrastructure.

Editor: Izaak de Rijcke

Cross-references to *Principles of Boundary Law in Canada*

A discussion of condominium boundaries can be found in Chapter 2 of *Principles of Boundary Law in Canada*, and beginning at page 58.

Holiday Wishes and Two Möbiuses Apart

It's December. Still painting and cutting paper.

The allure of watching watercolours soak into thick paper is a motive to get back to painting. I am getting some inspiration again from the notion of *trompe-l'oeil* and playing with illusion. Sometimes, boundaries are like this.



In this version of impossible loops,¹⁰ the math gets interesting.

⁸ *Heilemann v. Gardner*, *supra* at paras 83-89

⁹ This may hold true in other jurisdictions, such as Ontario, in respect of unit boundaries on a condominium plan.

¹⁰ A Möbius strip is a one-sided surface with one edge. It can be made by taking a rectangular strip of paper, giving it a half-twist, and gluing the ends together. It has the property that if you draw a line along the middle of the strip, you will end up back where you started, but on the opposite side of the strip. If you cut a Möbius strip along the middle line, you will get a single loop with two twists, instead of two separate loops.

Wikipedia¹¹ should be helpful but I do not understand this: *The edge, or boundary, of a Möbius strip is homeomorphic (topologically equivalent) to a circle. Under the usual embeddings of the strip in Euclidean space... the boundary is not a true circle. However, it is possible to embed a Möbius strip in three dimensions so that the boundary is a perfect circle lying in some plane.*

Wikipedia also tells us: *Very roughly speaking, a topological space is a geometric object, and the homeomorphism is a continuous stretching and bending of the object into a new shape. Thus, a square and a circle are homeomorphic to each other, but a sphere and a torus are not.*

A torus is a donut. I may just fetch one instead. Just enjoying days that will soon start getting longer – the paint and paper beckon... finally, some discourse that is more complex than trying to understand water boundaries! From all of us to you: **Happy New Year!**

FYI

There are many resources available on the **Four Point Learning** site. These include self-study courses, webinars and reading resources – all of which qualify for *formal activity* AOLS CPD hours.¹² These resources are configured to be flexible with your schedule, range from only a few hours of CPD to a whole year's quota.

Course: *Survey Law 2*

Survey Law 2 builds on *Survey Law 1* with a special emphasis on evaluation of evidence and special circumstances encountered in problematic and natural boundaries. This course will be taught online Wednesday evenings by Izaak de Rijcke, starting January 7, 2026. For more information, consult the [syllabus](#). Please go to Four Point Learning to [register](#).

Course: *A Practical Guide for Surveyors in Making Boundaries Act Applications*

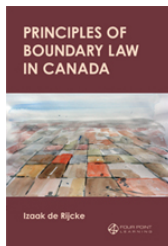
The original presentation delivered by Izaak de Rijcke and Ken Wilkinson at the South-Central Regional Group of AOLS meeting on October 23, 2025 has been reconfigured as a 3-part [course](#).¹³ Cadastral surveyors will learn about the legal framework, procedural steps, practical requirements, and best practices for preparing and submitting applications under *Boundaries Act* as professionally and cost-effectively as possible.

¹¹ https://en.wikipedia.org/wiki/M%C3%B6bius_strip All rights reserved.

¹² Please note that the designation of CPD hours is based on the estimated length of time for the completion of the event. The criteria used are those set out in GeoEd's [Registered Provider Guide](#) for Professional Surveyors in Canada. Other professions may qualify under different criteria. References to AOLS are to its Continuing Education Committee. Elsewhere in Canada, please confirm your eligibility for claiming CPD hours.

¹³ This course qualifies for 5 *Formal Activity* AOLS CPD hours.

Principles of Boundary Law in Canada



This comprehensive treatment of the principles of boundary law lies at the intersection of law and land surveying. Although the textbook 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 textbook 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 formation of professional opinions by clarifying the framework for evaluating boundary and survey evidence.

See [*Principles of Boundary Law in Canada*](#) for a list of chapter headings, preface and endorsements. You can mail payment to: **Four Point Learning** (address in the footer of the first page of this issue of *The Boundary Point*) with your shipping address or [purchase](#) online. (NB: A PayPal account is not needed.)



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ISSN: 2291-1588