



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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Metes and bounds descriptions of land continue as a source of litigation – especially in the Atlantic provinces. When land surveyors craft descriptions based on a survey there is a greater likelihood that uncertainty will not creep in; the intention of the grantor can be marked on the ground and the description reflects that same intention on the ground.

In *MacIntyre v. Gillis*,¹ the court reported on a description used in a 1970s deed, and a description used in an early 2000s deed, described as a “confirmatory deed.” The deeds were for the same parcel. The principles of interpretation are reviewed by the court and readers may detect a shift in how and when the intention of the first owner is to be considered. How a metes and bounds description is (or is not) a reflection of the intended parcel on the ground remains a pressing question.

A New Set of Principles for the Interpretation of Metes and Bounds Descriptions

Key Words: *metes and bounds, deed interpretation, intention of the owner, dispute resolution*

The events leading to this interesting case are simple, but their significance remained as a source of conflict between neighbors. The court explained, early in the decision:

The dispute is the result of an ambiguous, confusing and (in some respects) erroneous description of the lands in a conveyance document from October 1972. In 2001, a substantial clarification of the conveyance was registered in favour of the Defendant. The Defendant says this accurately reflects the scope of what was initially conveyed. The Plaintiff says this has expanded the scope of intended conveyance and that, in the result, it purports to deprive him of familial lands that are actually owned by him.

For the reasons that follow, I find in favour of the Defendant.

Background

¹ *MacIntyre v. Gillis*, 2026 NSSC 266 (CanLII), <https://canlii.ca/t/kmpwq>

The Plaintiff (Donald MacIntyre) is the son of Harry MacIntyre and Sadie MacIntyre. In 1972, Harry and Sadie MacIntyre conveyed lands to George Townsend. The description of this conveyance is contained within a deed dated October 12, 1972 (the “**Original Description**”), as follows:

ALL that certain lot, piece or parcel of land situate, lying and being at Hillside, Mira, in the County of Cape Breton, Province of Nova Scotia, and being more particularly bounded and described as follows:

BEGINNING at the point of intersection formed by the southern side of the road leading from Marion Bridge to Grand Mira South and the eastern line of Stella Johnston’s land;

THENCE in a northerly direction along the eastern sideline of Johnston’s land, following a brook to the southern shore of the Mira River;

THENCE in an easterly direction, a distance of 225 feet more or less along the southern shore of the Mira River to north western corner of Westons land;

THENCE in a southerly direction along westons boundary a distance of 600 feet more or less to the southern sideline of the above mentioned highway;

THENCE in a westerly direction along the southern sideline of the said road to the place of beginning;

These lands were conveyed in 1996 by Mr. Townsend to Norma Woodill and Keith Woodill, and then to the Defendant (Norma Woodill Gillis) in 2000.

On August 14, 2001, a Confirmatory Deed was executed by the Woodills in favour of the Defendant. This Confirmatory Deed purports to provide a “more precise and detailed description” of the lands initially described in the Original Description, as follows:

All that certain lot, piece or parcel of land situate, lying and being at Marion Bridge, in the County of Cape Breton, Province of Nova Scotia and being more particularly bounded and described as follows:

BEGINNING at an iron bar set in the ground marking the intersection of the western boundary line of lands of Ronald MacNeil (being known and distinguished as LOT 94-1) as shown on PLAN M-3733, in the Registry of Deeds, Sydney, N.S. with the northern boundary of Grand Mira South Highway;

THENCE in a westerly direction along said Northern boundary of Grand Mira South Highway for a distance of 354 feet more or less to the eastern boundary of a gravel roadway known as MacIntyre Road;

THENCE in a northwesterly direction following along the various courses of said MacIntyre Road for a distance of 800 feet more or less to the easterly shoreline of a 6 foot wide brook;

THENCE in a northerly direction following along the various sinuosities of said easterly shoreline of said 6-foot wide brook for a distance of 400 feet more or less to the southerly shoreline of Mira River;

THENCE in an easterly direction following along the various sinuosities of said southerly shoreline of Mira River for a distance of 295 feet more or less to the northwest corner of lands deeded to David Wilton as recorded in book 1900, at page 377, in the Registry of Deeds, Sydney, N.S.

THENCE on an azimuth of 172° 54'29" along the western boundary of said David Wilton lands for a distance of 200 feet more or less to the southwest corner thereof;

THENCE on an azimuth of 82° 57'00" along the southern boundary of said David Wilton lands for a distance of 250 feet more or less to the southeast corner thereof;

THENCE on an azimuth of 34° 57'48" for a distance of 78.80 feet to an iron bar found set in the ground;

THENCE on an azimuth of 144° 42'48" along the western boundary line of lands deeded to Alexander and Elizabeth Mugridge as recorded in book 1803, at page 489, in the Registry of Deeds, Sydney, N.S. for a distance of 544.6 feet to the POINT OF BEGINNING.

There are several differences between the Original Description and the Confirmatory Deed. For example, the Confirmatory Deed corrects two known and obvious mistakes in the Original Description: that the lands are not located in "Hillside, Mira"; and that the reference to "Westons land" and "westons boundary" should be to lands owned by the Wiltons.

Additionally, the Confirmatory Deed indicates a different starting point and removes all reference to Stella Johnston's land. It also describes the distance along the southern shore of the Mira River as "295 feet more or less", as compared to the "225 feet more or less" within the Original Description.

Perhaps more significantly, the Confirmatory Deed does not include the following language from the Original Description: "southerly direction along [Wilton's] boundary a distance of 600 feet more or less to the southern sideline of the above mentioned highway". Instead, the Confirmatory Deed describes a path outlining the western boundary ("200 feet more or less") and the southern boundary ("250 feet more or less") of the Wilton's property, before going in south-westerly direction ("78.80 feet" exact) and then a south-easterly direction down to the highway ("544.6 feet" exact).

To the Defendant, this describes the true extent of her land ownership and includes about 400 feet of frontage along the Grand Mira South highway.

The Plaintiff asserts, however, that the Confirmatory Deed expands the description of the lands contemplated by the Original Description. He says that his parents never sold any highway frontage to Mr. Townsend, and that he owns this portion of the property.

In total, the area of the "**Disputed Lands**" is approximately 3.8 acres.²

² *Ibid.*, at paras 2 to 12

One might wonder why the two descriptions, drafted just 20 years apart, and for the same parcel of land, could be so different. The court heard and considered evidence as to what the language in these descriptions means, and how it should be applied to the ground, and then turned to stating the relevant principles. The interpretation of a metes and bounds description has been held in past court decisions as a task similar to contract interpretation. Most significantly, the Supreme Court of Canada's decision in *Sattva Capital Corp v. Creston Moly Corp.*,³ also clarified contract interpretation principles and, post-*Sattva*, there have been many more cases decided in Nova Scotia on the relevance of subjective intention.

After explaining the position of each party, the court explained, in carefully worded reasons:

From this presentation of the parties' positions, the dispute arises upon moving from the southwest corner of Wilton's land. From that point forward, can any of the parties' positions be supported by the language of the Original Description itself? That can only be decided by applying the governing principles of deed interpretation.

Interpretive Principles

The principles of deed interpretation have been considered by this Court on many occasions. On my review of the caselaw, there are two strands of authority.

The first strand was summarized by Justice Chipman in *Dawn v. Nova Scotia (Attorney General)*, 2014 NSSC 48, 2014 CarswellNS 153, as follows:

[15] In *Metlin v. Kolstee*, 2002 NSCA 81, at paras. 65-66, the panel considered the principles applicable to interpreting deeds. The Court of Appeal accepted the following recitation from *Saueracker v. Snow* (1974), 1974 CanLII 1310 (NS SCTD), 14 N.S.R. (2d) 607 (S.C.T.D.), at para. 20:

The general principles applicable to the interpretation of a deed are ...:

13. Construction -- General Rule

The Court must, if possible, construe a deed so as to give effect to the plain intent of the parties. The governing rule in all cases of construction is the intention of the parties, and, if that intention is clear, it is not to be arbitrary [*sic*] overborne by any presumption. The intention of the parties is to be gathered from the sense and meaning of the document as determined in the first place by the terms used in it, and effect should, if possible, be given to every word of the document. Where, judging from the language they have used the parties have left their intention undetermined, the Court cannot on any arbitrary principle determine it one way rather than another. Where an uncertainty still remains after the application of all methods of construction, it may sometimes be removed by the election of one of the parties. The Courts look much more to the intent to be collected from the whole deed than from the language of any particular portion of it.

24. Extrinsic Evidence

³ *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 (CanLII), [2014] 2 SCR 633, <https://canlii.ca/t/g88q1>

Patent and Latent Ambiguities. An ambiguity apparent on the face of a deed is technically called a patent ambiguity -- that which arises merely upon the application of a deed to its supposed object, a latent ambiguity. The former is found in the deed only, while the latter occurs only when the words of the deed are certain and free from doubt, but parol evidence of extrinsic or collateral matter produces the ambiguity -- as, if the deed is a conveyance of 'Blackacre', and parol evidence is adduced to show there are two places of that name, it of course becomes doubtful which of the two is meant. Parol evidence therefore in such a case is admissible, in order to explain the intention of the grantor and to establish which of the two in truth is conveyed by the deed. On the other hand, parol evidence is uniformly inadmissible to explain an ambiguity which is not raised by proof of extrinsic facts, but which appears on the face of the deed itself. A subsequent will cannot be used to construe an earlier deed of settlement nor as evidence that testator intended to include an additional person among the beneficiaries under the settlement.

Extrinsic Evidence as to Latent Ambiguities Generally: Extrinsic evidence is always admissible to identify the persons and things to which the instrument refers.

Provided the intention of the parties cannot be found within the four corners of the document, in other words, where the language of the document is ambiguous, anything which has passed between the parties at, prior thereto and leading up to it, as well as that concurrent therewith, and the acts of the parties immediately after, may be looked at, the general rule being that all facts are admissible to interpret a written instrument which tend to show the sense the words bear with reference to the surrounding circumstances of and concerning which the words were used, but that such facts as tend only to show that the writer intended to use words bearing a particular sense are to be rejected.

[16] Where there is ambiguity in a deed, the Court of Appeal in *Metlin* at paras. 65- 66, accepted the following passage from *McPherson v. Cameron* (1866-69), 7 N.S.R. 208 at 212:

... The question is how he is to get there, for neither the course nor distance given in his grant will take him there, without the alteration of one or the other. The general rule to find the intent where there is any ambiguity in the grant, is to give most effect to those things about which men are least liable to mistake ... On this principle the things usually called for in a grant, that is, the things by which the land granted is described, have been thus marshalled: *First*, the highest regard had to natural boundaries; *Secondly*, to lines actually run and corners actually marked at the time of the grant; *Thirdly*, if the lines and courses of an adjoining tract are called for, the lines will be extended to them, if they are sufficiently established; *Fourthly*, to courses and distances, giving preference to the one or the other according to circumstances ...

[17] In *MacDonald v. McCormick*, 2009 NSCA 12, the Court of Appeal reaffirmed the discussion found in *Metlin*.

[18] Also, at paras. 65-66 [of *Metlin*], the Court accepted:

... the principle is clear that where distances and monuments clash, in the absence of special circumstances, the monuments prevail; in such cases the context shows the boundary to be the dominant intent, the distance, the subordinate ...

[19] As a general rule, the intent of parties to a deed is to be gathered from the words of the deed. If there is any ambiguity, the common sense rules set forth by the Court of Appeal are applied. In *Anger and Honsburger, Law of Real Property*, 3rd ed. (looseleaf), Diana Ginn and Monica McQueen endorse the following summary of the law:

Where there is an ambiguity in a grant, the object is to interpret the instrument by ascertaining the intent of the parties; and the rule to find the intent is to give the most effect to those things about which things men are least liable to mistake. On this principle, the things by which the land grant is described are thus ranked according to the regard which is to be given them:

1. natural boundaries;
2. lines actually run and corners actually marked at the time of the grant;
3. the lines and courses of an adjoining tract, if these are called for, and if they are sufficiently established, to which the lines will be extended;
4. the courses and distances, giving preference to the one or the other according to circumstances.

[20] The above is often, in surveyor parlance, referred to as the "hierarchy of evidence". In the *Anger and Honsburger* text, Ginn and McQueen go on to state, following *Diehl v. Zanger*, 39 Mich. 601 (1878), and various Canadian cases citing it:

The question is not how an entirely accurate survey would locate these lots, but how the original stakes located them. No rule in real estate law is more inflexible than that monuments control course and distance.

Justice Chipman's summary of the law was quoted with approval in *Woodlands of Jeremiah Cleary v. Naugle*, 2017 NSSC 98, and more recently in *Davidson v. Nova Scotia (Attorney General)*, 2023 NSSC 199.

This first strand of authority was also summarized, albeit with certain differences, by Justice Stewart in *Goulden v. Nova Scotia (Attorney General)*, 2013 NSSC 253, as follows:

[12] **Boundary determination.** Before embarking on a review of the evidence, it will be of use to set out several of the general legal principles that govern the rather technical field of boundary determination. Various legal principles govern deed interpretation and boundary demarcation

when the court is required to resolve boundaries. The general rules of evidence apply to boundary disputes, which are typically heavily concerned with documentary evidence of title. In deed interpretation, the question is not the grantor's subjective intent. Rather, the court is concerned with the meaning of the words used in the deed. That is to say, the question is "what is the expressed intention of the grantor?": *Knock v. Fouillard*, 2007 NSCA 27, at para. 27. If the terms of the conveyance are clear, extrinsic evidence is not admissible: Anne Warner La Forest, *Anger and Honsberger's Law of Real Property*, 3d edn. (Aurora, Ont: Canada Law Book, 2010) at §18:30:30.

[13] When the words of a deed are not ambiguous, either in themselves or when applied to the land in question, the intention of the original grantor is to be taken from the words of the description in the deed. No further rules of interpretation are required: *Herbst v. Seaboyer*, (1994) 1994 NSCA 210 (CanLII), 137 N.S.R. (2d) 5 (C.A.), at para. 15; *McCormick v. MacDonald*, 2009 NSCA 12, at para 73. A latent ambiguity occurs when the words of a document on their face do not admit a different possible meaning, but surrounding circumstances show that two or more different meanings are possible. A party may demonstrate that a latent ambiguity exists, and attempt to resolve it, by adducing extrinsic evidence, including evidence of subjective intention. A patent ambiguity, by contrast, is "apparent from the face of the document: *Taylor v. City Sand and Gravel Ltd.*, 2010 NLCA 22, at para. 21; Geoff R. Hall, *Canadian Contractual Interpretation Law*, 2d edn. (Toronto: Lexis Nexis Butterworths, 2012) at §2.8.5.

[14] The rules for ascertaining the intention of a grantor in the event of ambiguity were set out in *McPherson v. Cameron* (1868), 7 N.S.R. 208, [1868] N.S.J. No. 2 (S.C.). Dodd J. said the general rule "is to give most effect to those things about which men are least liable to mistake" (para. 5). In applying this principle, the elements of the description are "marshalled" in the following order: "First, the highest regard had to natural boundaries; Secondly, to lines actually run and corners actually marked at the time of the grant; Thirdly, if the lines and courses of an adjoining tract are called for, the lines will be extended to them, if they are sufficiently established; Fourthly, to courses and distances, giving preference to the one or the other according to circumstances" (para. 5).

[15] In *Kolstee v. Metlin*, 2002 NSCA 81, the Court of Appeal confirmed that cases such as *McPherson*, *supra*, *Saueracker v. Snow* (1974), 1974 CanLII 1310 (NS SCTD), 14 N.S.R. (2d) 607 (T.D.), and *Humphreys v. Pollock*, 1953 CanLII 339 (NB CA), [1953] 3 D.L.R. 730 (N.B.S.C.A.D.), *aff'd* 1954 CanLII 358 (SCC), [1954] 4 D.L.R. 721 (S.C.C.), "correctly set out the general principles to be applied in interpreting descriptions of land as spelled out in a deed. As a general rule the intent of the parties to a conveyance is to be gathered from the words of the document. If there is an ambiguity, the common sense rules

as quoted by the trial judge from *McPherson* ... are generally to be applied. When courses and distances clash preference to one, rather than the other, will depend on the circumstances” (para. 66).

[16] More recently, in *Nicholson v. Halliday* (2005), 2005 CanLII 259 (ON CA), 248 D.L.R. (4th) 483, [2005] O.J. No. 57, the Ontario Court of Appeal set out the surveyors’ hierarchy of evidence: (1) natural boundaries; (2) original monuments; (3) fences or possession that can reasonably be related back to the time of the original survey; and (4) measurements (as shown on the plan or as stated in the metes and bounds description). See also *Robichaud v. Ellis*, 2011 NSSC 86, at para. 25. The Court of Appeal recently considered this hierarchy in *Podgorski v. Cook*, 2013 NSCA 47, declining to decide whether it applies in Nova Scotia. The court held that the “application of the ‘hierarchy of evidence’ and related survey principles would initially be a matter for the expertise and opinion of the surveyors in question. So, for example, whether monuments were ‘original’ or whether ‘fences or possession’ can be reasonably related back to the ‘time of original survey’ would be matters of expert opinion for a surveyor” (para. 20).

[17] In re-establishing a line, a surveyor must “consider the best evidence available and re-establish the boundary on the ground in the location where it was first established, and not where it was necessarily described, either in the deed or on a plan. The boundary is the re-establishment on the ground of the original running of the line and this re-establishment of the boundary constitutes the deed line: *Thelland v. Golden Haulage Ltd.*, [1989] O.J. No. 2303, 1989 CarswellOnt 2417 (Ont. Dist. Ct.) at para. 11. Stortini J. stated in *Traynor v. Hilderley*, [1997] O. J. No. 4839 (Ont. Ct. J. (Gen Div)), that if “original monumentation is found and is undisturbed as to location, it must be accepted, erroneous as may have been the original survey” (para. 14). If there is no evidence “of either the original monuments or original line, then the surveyor must refer to the measurements as contained in the deed or on the plan. This approach may, of course, be affected by possessory title. If no other method of establishing the boundary in question is available, the court must fix the boundary with the assistance of deed measurements and the law of possessory title” (para. 15).

Justice Stewart’s summary of the law was most recently quoted with approval in *Potter v. Chute*, 2026 NSSC 184. Paragraphs 14-17 of *Goulden* were quoted with approval in *Davidson*, *supra*. And specifically regarding the use of extrinsic evidence in the face of a latent ambiguity, paragraph 13 of *Goulden* was referred to and relied upon in *Chapman v. C.A. Realty Ltd.*, 2017 NSSC 271, *aff’d* 2018 NSCA 81.⁴

The court continued its analysis and explained as follows:

⁴ *MacIntyre v. Gillis*, *supra*, at paras 28 to 33

“...I observe some tension about whether evidence of subjective intentions can properly be considered, post-*Sattva*, when interpreting a deed. By reference to *Goulden* (at paragraph 13): “A party may demonstrate that a latent ambiguity exists, and attempt to resolve it, by adducing extrinsic evidence, including evidence of subjective intention.” But in *Ponhook Lodge*, after citing *Sattva*, the Court of Appeal agreed with Justice Jamieson that: “evidence of the parties’ subjective wishes, motives or intent is inadmissible.”

Goulden pre-dates the Supreme Court’s decision in *Sattva*, which could be a convenient answer to the tension. But I note that Justice Rothstein did not abolish any established exceptions to the parol evidence rule in *Sattva* and simply stated (at paragraph 61): “For the purposes of this appeal, it is sufficient to say that the parol evidence rule does not apply to preclude evidence of surrounding circumstances when interpreting the words of a written contract.”

I also note that in *Ponhook Lodge*, Justice Jamieson ultimately concluded (at paragraph 140) that “the language of the grant is not ambiguous when the words are considered together with the surrounding circumstances.” In which case, there was no latent ambiguity and no need to consider any impact of *Sattva* upon the first strand of authority as summarized above.

In the post-*Sattva* landscape, there may be little value in maintaining a distinction between patent and latent ambiguities. This is because extrinsic evidence is now always admissible, at least to some extent, as a component of the interpretive exercise. As noted by Geoff Hall in *Canadian Contractual Interpretation Law*, 4th ed. (Toronto: LexisNexis, 2020) at pages 95-96:

The practice of looking to extrinsic evidence to reveal and then resolve latent ambiguities continues in some Canadian cases, with some cases going so far as to suggest that evidence of subjective intention may be considered in some cases (although the ability to look to subjective intention is highly dubious, and the cases in which the courts have actually looked to subjective intention are few). Two trial court decisions subsequent to *Eli Lilly* accepted the dichotomy between patent and latent ambiguities, and accepted that evidence of subjective intention may be admissible to resolve the latter:

[T]he only exception to the well established principle that evidence of subjective intention of the parties to a written contract is not admissible is where the contract is not ambiguous on its face but, when the court considers the surrounding circumstances or factual matrix, it becomes apparent that there is a latent ambiguity and accordingly, the court may admit evidence of the parties’ intention as to which of two or more alternative subjects the parties intended to refer to.

One of those cases went on to suggest that the distinction between patent and latent ambiguities may no longer be necessary or sensible, given the importance of context in modern contractual interpretation:

It may well be that, with the importance given to the factual matrix, or context, in modern principles of interpretation, the distinction between latent and patent ambiguities should be discarded as having outlived its

usefulness, and that, instead, attention should be given to the justification for distinguishing between direct, and circumstantial, evidence of intention.

This observation illustrates that **the complex rules surrounding patent and latent ambiguities were developed at a time when contractual interpretation was much more literal and focused on the words of a contract than it is today**. In such an era, it made sense to develop means of allowing a court to look beyond the literal meaning of the words of a contract where enforcing the literal meaning would not be consistent with what the parties truly intended. However, **in the modern era**, where context is always considered to assist in ascribing meaning to the words selected by the parties, **it may be simpler and more logical to approach patent and latent ambiguities in the manner of the usual interpretive exercise, giving meaning to the words selected by the parties in a way that is consistent with the context in which those words were used**.

To the extent that the distinction between patent and latent ambiguities and the rules surrounding their treatment makes sense – and it may well be that they do not make any sense and that the time for reconsideration of them is ripe – they can be justified by reference to the goal of interpretive accuracy.
[emphasis added]

That all said, and on principles of *stare decisis*, this Court cannot unilaterally dispense with long-standing approaches that have been endorsed by the Nova Scotia Court of Appeal (as in, for example, *Metlin v. Kolstee*, 2002 NSCA 81, *MacDonald v. McCormick*, 2009 NSCA 12, and post-*Sattva* in *Chapman v. C.A. Realty, in Bankruptcy*, 2018 NSCA 81, specifically at paragraphs 59-60).

In which case, and respecting that which is binding upon this Court, I would synthesize the two strands of authority into the following set of principles for deed interpretation:

1. The ultimate task is to determine the intention of the parties to the conveyance in question.
2. The language of the deed must be read as a whole, “giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time” of the conveyance. (*Sattva*, at paragraph 47)
3. Evidence is always admissible as to those surrounding circumstances, so to inform a reasoned and objective assessment of the parties’ intentions.
4. Although the nature of such evidence will vary from case to case, it should be limited to what “was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting.” (*Sattva*, at paragraph 58)
5. This would include the “situation of the parties and the situation of the land at the time.” (as quoted in *Ponhook Lodge*, at paragraph 129)
6. Subject to more general rules on admissibility and proof, this evidence of surrounding circumstances can come from any number of sources, including the

original parties or witnesses to the conveyance, qualified surveyors, and any relevant documents, maps, plans, photographs, *et cetera*.

7. At this stage, “evidence of the parties’ subjective wishes, motives or intent is inadmissible”. (*Ponhook Lodge*, at paragraph 128)
8. Evidence of surrounding circumstances cannot be relied upon to adopt an interpretation that cannot be supported by the language of the deed itself. The surrounding circumstances serve to breathe meaningful context into the words of the deed, as a component of ascertaining objective intention. “While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement.” (*Sattva*, at paragraph 58)
9. Evidence of the surrounding circumstances might help to address or resolve what would otherwise be considered an ambiguity in the deed.
10. If necessary, and when assessing the surrounding circumstances as against the language of the deed, decision-makers may resort to the so-called “hierarchy of evidence” and any other preferences as established by the caselaw. This is to give effect to the objective presumption in favour of “those things about which [people] are least liable to mistake”. (as quoted and referred to by Justice Chipman in *Dawn* at paragraphs 14, 16 and 19, and by Justice Stewart in *Goulden* at paragraphs 14 and 16).
11. This may include a consideration that “[n]o rule in real estate law is more inflexible than that monuments control course and distance” and that “where distances and monuments clash, in the absence of special circumstances, the monuments prevail”. (as quoted by Justice Chipman in *Dawn* at paragraphs 18 and 20).
12. If, but only if, a latent ambiguity remains after applying the above-noted principles, decision-makers may then consider additional extrinsic evidence to resolve the ambiguity. This could include evidence as to the subjective intentions of the parties, as well as anything else that is relevant and admissible and that post-dates the conveyance to some extent.

I have found it necessary to consider these interpretive principles in detail, particularly because of the nature and extent of evidence that was tendered by the parties in support of their respective positions about the Original Description. For my purposes, this summary of interpretative principles helps to clarify the type of evidence that can (and cannot) be considered as surrounding circumstances.

Importantly, this is limited to evidence of objective intention at the time of or before the date of the Original Description. As quoted above, this would include the “situation of the parties [to the conveyance] and the situation of the land at the time.” Or, to quote directly from *Sattva*: what “was or reasonably ought to have been within the knowledge of both parties [to the conveyance] at or before the date of contracting”?

Any other evidence, including evidence as to subjective intention or that is beyond the temporal scope of surrounding circumstances, may only be considered in the face of a remaining latent ambiguity.

Surrounding Circumstances

With the above-noted framework in mind, I will now review and assess the applicable evidence of surrounding circumstances. At this stage, I will consider this evidence so to answer the following key interpretive questions about the Original Description:

1. What did the parties to the Original Description know about the “situation of the lands”, or what should they have known?
2. What was intended by the “eastern line of Stella Johnston’s land” and thereafter the “eastern sideline of Johnston’s land”?
3. What was intended by the “road leading from Marion Bridge to Grand Mira South”, the “above mentioned highway”, and the “said road”?
4. What were the boundaries of the Wilton’s land at the time of the Original Description?
5. What was intended by “in a southerly direction along [Wilton’s] boundary a distance of 600 feet more or less to the southern sideline of the above mentioned highway”?⁵

The lengthy decision continued, considering each of these questions in turn. What this decision offers is the remarkable 12-point restatement of deed interpretation when ambiguity and uncertainty regarding boundaries requires a court to decide and make a ruling. In doing so, the court synthesized the two strands of authority into a set of principles for deed interpretation. Note that in the 12-point restatement, *subjective intention* appears as the 12th and last step. Land surveyors and real estate lawyers alike, and across Canada, may find this decision most helpful in reconciling the tension between different strands of case law involving principles of interpretation for metes and bounds descriptions in deeds. It remains to be seen how appellate courts in Canada will treat the same problem.

Editor: Izaak de Rijcke

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

Chapter 3, *The Role of Intention in Retracing Boundaries*, is a relevant point of reflection for revisions and edits when the book is updated and brought out again as a second edition.

⁵ *Ibid.*, at paras 37 to 46

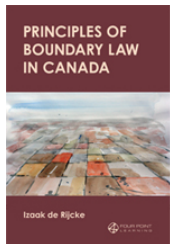
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This comprehensive treatment of the principles of boundary law lies at the intersection of law and land surveying. Although the textbook has its foundation in the law of real property in Canadian common law jurisdictions, it is intended as a resource 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.

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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