The Boundary Point
Volume 14, Issue 2, February 2026
Case Commentaries on Property Title and Boundary Law

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.

There continues to be no shortage of questions around water boundaries, riparian rights, and the application of basic common law principles to unique and specific situations on the ground. Shorelines exist in a multitude of forms – whether in their natural state, or augmented, or altered by human activity – and in dynamic states that keep changing over time. Such was the backdrop to a recent decision of the British Columbia Superior Court in *Mackenzie v. Harken Towing Co. Ltd.*[1]

Principles of riparian status and riparian rights were considered in *Mackenzie* in the context of a shoreline property that was being used for a barging and towing operation through a lease of the adjacent water lot. Did a barricade change the riparian status of the upland parcel? *Mackenzie* is an interesting decision, both for its discussion of riparian principles and also for its account and treatment expert evidence. It also demonstrates the complex interplay of ownership and lesser interests in land that are often at play in shoreline properties. When the bed of the waterway, owned by the province, is leased to a party different from the upland owner for a commercial enterprise, there are often conflicting interests at play.

Clarifying Riparian Rights in an Altered Waterfront

Key Words: *riparian rights, water lot, interference, access to foreshore, expert opinion, weight*

While the list of riparian rights (access, drainage, flow, quality, use and accretion) are catalogued often enough in decisions involving waterfront properties, clarity on what those rights actually entail and how principles are applied in the wide variety of possible waterfront scenarios continues to evolve. Of those rights, access generally seems to be the most commonly raised and was the central theme around the dispute in the case commented on in this month's issue.

[1] *Mackenzie v. Harken Towing Co. Ltd.*, 2025 BCSC 2493 (CanLII), https://canlii.ca/t/kh3qv

The decision of the British Columbia Superior Court in *Mackenzie* focussed on the riparian status of a waterfront property along the Pitt River in Coquitlam, BC. Both parties were members of the family that had owned the property since the 1940s. The corporate defendant (also owned by family members) had leased the foreshore and water lot in front of the property on which they conducted barging and towing operations. Upon the plaintiffs taking ownership of the property in 2016, tensions arose with the business towing operations that intensified over time - particularly when the defendants constructed a barrier blocking the plaintiff's access to the foreshore.

The configuration of the impacted and surrounding properties was described by the court as follows. A cropped image of the parcels leased by the defendant (A & B) and the upland property was included in the decision and appears below as Figure 1.

> 1950, 1990 and 2000 Argue Street all face the Pitt River at the approximate confluence of the Pitt and Fraser Rivers. 1950 Argue Street lies immediately to the Northeast (upriver) of the Property. 2000 Argue Street lies immediately to the southwest (downriver) of the Property.
>
> As noted, it is not disputed that the foreshore of the Property and the bed of the Pitt River are owned by the federal Crown and administered by the VFPA.
>
> By a lease dated September 24, 2020, between Harken Towing and the VFPA (the "VFPA Lease"), Harken Towing leased land and a water lot "fronting" the Property. Clause 1.01 of the VFPA Lease describes the leased premises as follows:
>
> > 1.01 Leased Premises
> >
> > The Authority hereby leases to the Tenant those certain land and water lot areas totalling some 3,907 square metres, more or less, comprising of:
> >
> > Parcel "A" (land) of some 787 square metres, more or less; and
> > Parcel "B" (water) of some 3,120 square metres, more or less,
> >
> > fronting:
> >
> > 1. Lot 2 Except: Part Highway Statutory Right of Way Plan 68301, District Lot 232 Group I New Westminster District Plan 6403; and
> >
> > 2. Parcel "F" (Reference Plan '1 2466); Except Part Highway Statutory Right of Way Plan 68301 Block E District Lots 232 and 340 Group I New Westminster District Plan 6336,
> >
> > in the City of Port Coquitlam, Province of British Columbia, as shown on Lease Plan No. 2021-136 dated May 27, 2021, a copy of which is attached as Schedule "A" (the "Leased Premises") subject to: …[2]

[2] Ibid. at paras 11-13

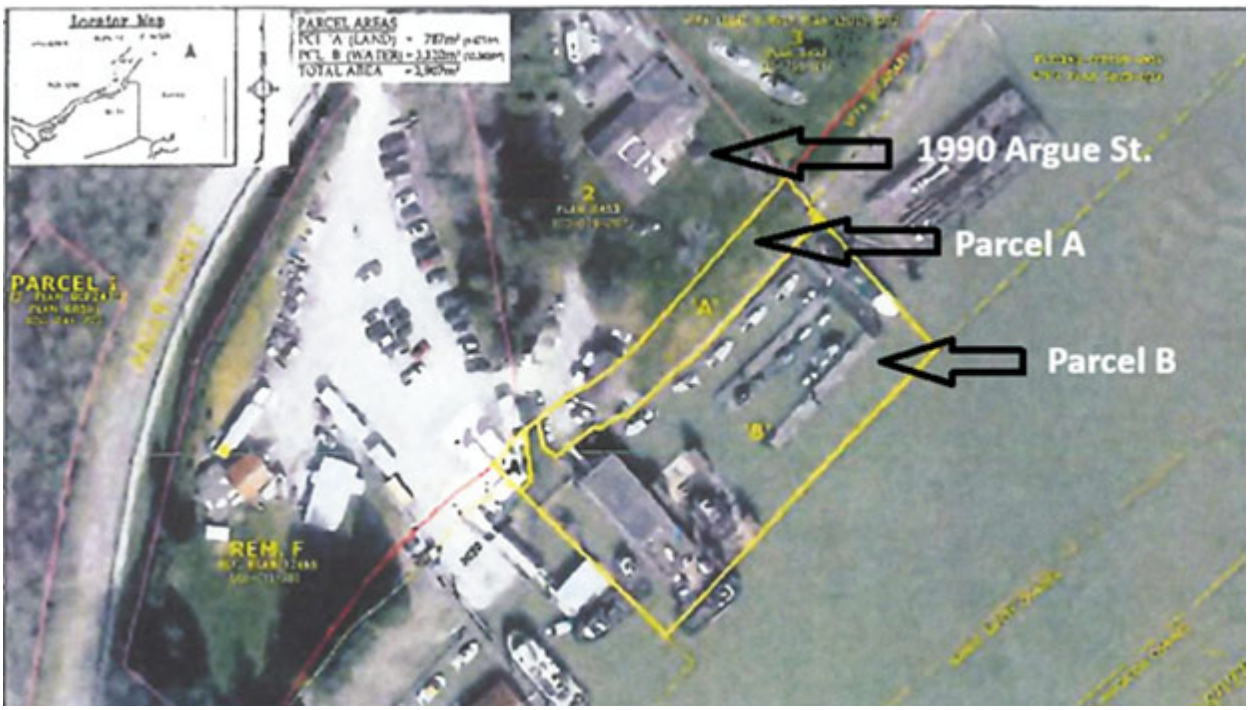


Figure 1. Aerial image of upland parcel owned by plaintiff and the river frontage and water lot parcels leased by the defendants. From the reported decision.[3]

The defendants had constructed a floating office and docks for the moorage of vessels within the water lot (Parcel B), which are visible in Figure 1 above.

The decision also included several excerpts from the lease between the VFPA and the defendants which set out the parameters for construction within the water lot. Note the reference to non-interference with riparian rights of any third-party upland owners at clauses 9.08 & 9.09:

> 9.05 Fixtures
>
> Upon cancellation or termination of this Lease, the Authority shall have the option of requiring or compelling the Tenant upon written notice, to remove any or all improvements, buildings, structures, fixtures and chattels located within the Leased Premises, including replacements and repairs thereto, and the Tenant shall be so bound to remove at Its sole cost and expense, regardless of when such improvements, buildings, structures, fixtures and chattels were installed or constructed or by whom, and upon the failure of the Tenant to do so expeditiously, in the sole opinion of the Authority, the Authority may effect such removal at the Tenant's expense, without any right of compensation or reimbursement to the Tenant whatsoever. All costs, charges and expenses that the Authority may incur as a result of such removal or clean-up shall be deemed to be rent, due and owing to the Authority Immediately on demand by the Authority.
>
> 9.06 Improvements

[3] *Ibid*. at para 14

> The Tenant shall not construct, erect or place any buildings, structures, signs or other improvements on the Leased Premises, or make any alterations or Improvements, except with the prior written consent of the Authority and upon such terms and conditions as the Authority may require. Forthwith upon demand by the Authority the Tenant shall remove any improvements in or on the Leased Premises not specifically authorized by the Authority and shall repair any damage caused by such removal, all at the Tenant's sole cost and expense and without any right to seek compensation from the Authority.
>
> …
>
> 9.08 Prohibition Against Riparian Interference
>
> Notwithstanding any other provision contained in this Lease, the Tenant shall not place any improvement on the Leased Premises or carry on any activity within the Leased Premises that creates an interference with the riparian rights of any third party, without the written consent of the holder of the said riparian rights, ("Riparian Consent') and the Tenant shall provide a copy of the Riparian Consent(s) to the Authority in due course.
>
> 9.09 Riparian Consent
>
> If at any time during the Term, the Authority determines, in its sole opinion, that the Tenant should obtain and maintain Riparian Consent from a third party, the Authority may so direct the Tenant. If the Tenant does not for any reason obtain and maintain Riparian Consent within THIRTY (30) days from the date of the direction to do so, the Authority may terminate the Lease forthwith.
>
> [emphasis added.][4]

The court summarized its findings on the evidence related to the development of the towing operations over time as follows:

a) Prior to the 1950s, the river frontage of the Property was in an unimproved or natural condition with a sloping shoreline, as depicted in various aerial photos;

b) At some point in the 1950s, a retaining wall of wooden piles and timbers was constructed riverside at the Property and several docks were installed in the water. A survey made in 1960 (Ex. "B" to the affidavit of Tim Mackenzie) depicts the retaining wall as covering approximately half of the river frontage of the Property. It also depicts several floats within Parcel B;

c) By the late 1970s, the wooden retaining wall had been extended the entire width of the Property, more docks had been installed within what is now Parcel B, and a floating shop barge was moored within Parcel B. Additionally, an office building for use by Harken Towing had been built partly on the southwest corner of the Property and partly on what is now Parcel A;

d) In the mid-1980s, the office of Harken Towing was raised and a new story built underneath it such that it became a two-story building; and

[4] *Ibid*. at para. 16

e) In the mid-1990s, a new retaining wall constructed of 36" steel piles and steel facing was constructed on the outside (riverside) of the existing wooden retaining wall. This new retaining wall extended along the entire river frontage of the Property. In conjunction with the re-building of the retaining wall, Parcel B was dredged and the dredged material was deposited as backfill behind the retaining wall within what is now Parcel A. It is unclear from the evidence exactly how much backfill was deposited within what is now Parcel A.[5]

The property had transferred ownership to various family members over the decades, and evidence was unclear as to when and whether the plaintiff's predecessors in title were compensated by the towing company for the use of the land. There was some suggestion that property taxes paid by the plaintiff's predecessor in title had been paid or at least compensated by the towing company on at least one occasion. When the plaintiffs took title to the property in 2016, they sought to enter into a formal lease agreement with the towing company, but were unsuccessful. Tensions grew as the plaintiffs objected to the towing company's use of the land for the office building and other alleged trespasses, alleged interference with the plaintiff's riparian rights and a shareholder dispute between the plaintiffs and defendants. While the office building was removed, a barrier was constructed without the plaintiff's permission that blocked their access to the shore.

The court summarized the parties' positions with respect to the issue of riparian status and riparian rights as follows:

> In summary, the plaintiffs submit that the Property is riparian in nature because it has always bordered on the Pitt River and the foreshore of the Pitt River. They say that the building of the retaining wall and the depositing of backfill into what is now Parcel A did not alter the riparian nature of the Property. Accordingly, they submit that as owners of a riparian property, they enjoy riparian rights of access to the Pitt River and its foreshore and that the construction of the barricade and installation of no trespassing signs have interfered with their rights of access.
>
> The defendants submit that the Property is not riparian because it does not border on water. They accept that the Property was riparian until the construction of the retaining wall in the 1950s. Since then, they say that Parcel A sunders the Property from the water of the Pitt River such that it is landlocked and not riparian. They therefore say the plaintiffs have no riparian rights whatsoever.[6]

The court succinctly established that the property was, at least initially, riparian in nature:

> I have little hesitation in concluding that the Property was initially riparian in nature. As noted, the original grant of District Lot 232, of which the Property forms a part, defined the southeast boundary of the lot as the northwest limit of the Pitt River and there is no evidence that this boundary was ever altered. Moreover, Harken Towing does not challenge

[5] *Ibid.* at para. 20
[6] *Ibid*. at paras 49-50

> that the Property originally bordered on the foreshore of the Pitt River. In fact, at paragraphs 15(e) and (f) of Part 1 of its amended response to civil claim it specifically pleads the retaining wall was backfilled and that the area between the southern boundary of the Property and the retaining wall corresponds to the foreshore of the Pitt River.
>
> > (e) the retaining wall was backfilled generally to the north of the retaining wall by filling in the area between the retaining wall and the generally southern boundary of the 1990 Argue Street property;
> >
> > (f) the area between the retaining wall and the generally southern boundary of 1990 Argue Street corresponds to the "1990 Foreshore" as described in paragraph 14 of the Further Amended Notice of Civil Claim, and is dry land.[7]

The issue though, as noted above, was whether the property had lost its riparian status as a result of the retaining wall construction. While the law on whether land can potentially lose riparian status due to *natural forces* is a clear affirmative, the court needed to focus on whether *human intervention* could alter its status in the same way. To this end the court reviewed a range of caselaw distinguishing natural and artificial processes, some of which is included below:

> Although natural forces can alter the riparian character of a property, the same cannot be said of human forces or intervention. The plaintiffs have referred me to several case authorities in support of the proposition that human intervention, such as by infilling a water lot or foreshore, cannot alter property boundaries or defeat the riparian rights of upland owners.
>
> In *Southern Nigeria (Attorney General) v. John Holt & Co. (Liverpool),* 1915 A.C. 599, at p. 452 [*Southern Nigeria*], the Privy Council observed that there was a great distinction between natural accretion to land and artificial reclamation and held that artificial reclamation did not alter boundaries.
>
> > Artificial reclamation and natural silting up are, however, extremely different in their legal results; the latter, if gradual and imperceptible in the sense already described, becomes an addition to the property of the adjoining land; the former has not this result, and the property of the original foreshore, thus suddenly altered by reclamatory work upon it, remains as before – ie, in cases like the present, with the Crown.[8]
>
> […]
>
> *Attorney-General of Canada v. Higbie,* [1945] S.C.R. 385, 1945 CanLII 237 (SCC) [*Higbie*], is to a similar effect. *Higbie* concerned a claim by the Crown for possession and mesne profits of the foreshore of a lot in Coal Harbour. One of the issues in the case was whether the building of a substantial structure and the depositing of fill affected the riparian rights of the upland owner. The court held that it did not. […]

[7] *Ibid.* at para 57
[8] *Ibid.* at paras 60-61, 63

Further, at p.436, Justice Rand wrote:

> There remains the question of riparian rights. The issue is as to the legal possession of the land. Riparian rights, as the name indicates, do not carry exclusive possession; they exist as incorporeal rights arising from ownership, in the nature of servitudes, among other things, over foreshore. They are not, therefore, a defence to a claim for possession. The trial judge held the land of the respondents, by reason of an artificial fill made on the foreshore, to be no longer riparian but I cannot draw the inference from what was shown that by any act of this nature the respondents intended to surrender rights attaching to their upland property. What was done was rather to facilitate the exercise of those rights.

[…]

More recently, in *McLeay et al v. City of Kelowna et al*, 2004 BCSC 325, at paras. 20-21, Justice Ross re-affirmed that reclamation work does not alter existing foreshore boundaries:

> [20] It is common ground that the disputed land on which the Greenbelt walkway was constructed was created by the diking, the result of a process of artificial reclamation. The parties are in agreement with respect to the applicable common law doctrines concerning ownership of lands created through artificial reclamation. The doctrine was stated in *Attorney General of Southern Nigeria v. John Holt and Company (Liverpool) Limited,* [1915] A.C. 599 at 613 and 615 (Privy Council). Where land is gained either by alluvion, the washing up of sand and earth, or by dereliction, the shrinking back of the water from the high-water mark, if that gain is little by little in small and imperceptible degrees, it shall go to the owner of the adjoining land. Where, however, the gain is the result of artificial reclamation, the property of the original foreshore thus suddenly altered remains as before. [emphasis added]
>
> [21] As Rand J. stated in *A.G. (British Columbia) v. Neilson*, 1956 CanLII 62 (SCC), [1956] S.C.R. 819 at 826:
>
> > A sudden reliction of the water or displacement of land leaves the boundary as it was.

In the alternative, the defendants relied upon *Mihaylov v. Long Beach Residents' Association,*[9] as supporting its submission that the Property ceased to be riparian with the construction of the retaining wall.[10] However, the case was distinguished from the present matter because while in *Mihaylov*, the claim to riparian status had been rejected, the court had done so not by the impact of the wharf that had altered the accretion on the shoreline but rather the survey that had been registered that did not include the disputed accreted lands:

---

[9] *Mihaylov v. Long Beach Residents' Association,* 2018 ONSC 14, https://canlii.ca/t/hpj37
aff'd. 2018 ONCA 871, https://canlii.ca/t/hvzz8, application for leave to appeal dismissed 2019 CanLII 32865 (SCC), https://canlii.ca/t/hzv82

[10] *Ibid*. at para 67

Justice Morgan next addressed whether the applicants enjoyed riparian rights. At para. 42 he noted that the applicant's predecessor in title enjoyed riparian rights but, at paras. 49-50, he held those riparian rights had been extinguished by virtue of a survey of their lands that the applicants had commissioned and registered and which did not include any portion of the disputed lands.

[…]

> [45] Courts across Canada have held that where the owner of property registers a survey, the pubic is deemed to be on notice of the boundaries of the property. The upshot of this is that the owner is considered to have agreed to the boundaries depicted in the survey and cannot later assert that the boundaries are other than as shown: *Spearwater v Seaboyer*, [1984] NSJ No 455, at para 33 (NS SC).
>
> [48] As a consequence of doing so, the Applicants are estopped from now asserting that the boundaries of the Property are other than as shown in the 2012 survey. They do not own the Disputed Lands; and, moreover, the Property that they do own is not adjacent to the lakeshore. While the Applicants do own the "Secondly" portion of the Property east of Long Beach Road, the Property ends at the surveyor's monuments and does not include the Disputed Lands which now are adjacent to the new water's edge. [emphasis added]
>
> […][11]

An appeal from the decision of Morgan J. to the Ontario Court of Appeal was dismissed. The Court of Appeal agreed that the shoreline of the lake had been moved further east by the deposit of fill and that any claim of riparian rights was limitation barred.

> […]
>
> [3] Central to the appellants' submission is that the application judge erred in concluding that the lake's shoreline has been moved further east by depositing landfill on parts of what is now Long Beach's lot. Specifically, the application judge found that Long Beach's property was originally a water lot conveyed by the province to the federal government and that fill was deposited thereon to construct a wharf. In our view, the application judge's factual finding is well-grounded in the evidence and we see no basis upon which to interfere.
>
> [4] We note further that several surveys of the property – including the survey commissioned by the appellants – rely on existing survey monuments and indicate that the boundary lies where the application judge determined it to be.
>
> [5] The appellants also argue that the application judge erred in dismissing their claim for interference with riparian rights. Assuming without deciding that riparian rights attached to the appellants' property in 1946 – the conveyance predating the conveyance of the water lot to the federal government and upon which the appellants rely for their claim to riparian rights – any such riparian rights would now have been

[11] *Ibid*. at para 69

> extinguished pursuant to ss. 4 and 15 of the Real Property Limitations Act, R.S.O. 1990, c. L.15. This follows from the application judge's finding that the property acquired by the appellants could not have abutted the lake due to the landfill that has been present on the adjoining lot since at least 1999. Any possible claim against the Crown has therefore long been extinguished.[12]

Mihaylov was distinguished on the basis of its focus on the issue of estoppel that was created by the survey plan as well as other issues related to the expiry of the limitation period. The case did not stand for superseding previously established principles around riparian status and human initiated changes to the shoreline. Rather, it focused on the certainty that is created where a survey is created, registered and relied upon as indicative of boundaries in future transactions. No such issues were before the court in the present case:

> I am of the view that the building of the retaining wall and the infilling of what is now Parcel A did not alter the riparian nature of the Property and did not extinguish the riparian rights of the plaintiffs' predecessors in title or of the plaintiffs. The authorities clearly establish that the infilling of a foreshore or water lot does not alter the ownership of the foreshore or the boundaries between the foreshore and the upland property. The area under what is now Parcel A is and remains the foreshore of the Pitt River, notwithstanding that the height of that land has been raised by the infill and extends more towards the Pitt River.
>
> Additionally, there is no evidence before me that the riparian rights enjoyed by the plaintiffs' predecessors in title were ever abandoned. To the contrary, the evidence is that those rights were enjoyed and exercised by the plaintiffs' predecessors in title and by the plaintiffs up to the time the barricade was built and the no trespassing signs were erected.
>
> Finally, and significantly, the VFPA lease, which was entered into in 2015, long after the retaining wall was built, recognizes that the Property remained riparian. Clause 9.08 prohibits Harken from carrying on any activity "within the Leased Premises that creates an interference with the riparian rights of any third party". Clause 9.09 empowers the authority to require Harken to obtain riparian consent. These clauses would be completely unnecessary if the Property was not riparian.[13]

Having established that the property was riparian, the question then became whether the associated riparian right of access was being interfered with by the defendants. This was answered in the affirmative.

> I observe that the right of access of a riparian owner includes the right to use docks as a means of access to the water but does not include the right to moor a vessel except as is necessary to load or unload them. Additionally, the right of access does not include the right to build a structure on the foreshore.
>
> Given my determination that the Property is riparian in nature, I have little hesitation in concluding that the plaintiffs' right of access to the Pitt River, as riparian owners, is being

[12] *Ibid*. at para 71
[13] *Ibid*. at paras 73-75

> interfered with by Harken. The erection of the barricade and the posting of the no trespassing signs have prevented the plaintiffs from accessing both the foreshore in Parcel A and the water of the Pitt River in Parcel B.[14]

Another minor, but interesting element of the decision concerned the treatment of a land surveyor's report. The report had been admitted into evidence without objection. However, the surveyor did not testify at the trial itself. The surveyor had been retained to provide opinion evidence on a) whether Parcel A was a product of natural accumulation, human intervention or both; b) the location of natural boundaries of the property at various points in time; and c) whether the property had physical characteristics of a riparian parcel. The report ended up being given little weight and the court held that much of the opinion evidence contained within the report was either inadmissible or irrelevant. This may be a reminder of the importance of clearly defining the scope of an expert's opinion evidence to ensure that their report is useful in its primary function of assisting the court.[15] In explaining this position, the court noted the following issues with the opinion evidence contained in the surveyor's report:

- His opinion that Parcel A is the result of natural accumulation or human intervention is irrelevant and unnecessary. It is undisputed that the retaining wall marking the boundary between Parcel A and Parcel B was constructed by Harken Towing and backfilled using material dredged from Parcel B. It is not argued that Parcel A is the product of a natural accumulation of sediment or other material; and
- His opinion that the Property has all of the physical characteristics of a riparian parcel is inadmissible as a legal opinion and is precisely the issue before me. I note that he derived his required physical characteristics from various decided cases.[16]

While much of the opinion evidence was considered inadmissible or irrelevant, the court did note a number of factual aspects of the report that were helpful, in particular:

- The Property was first conveyed in 1875 as part of District Lot 232 to Jacob Hunter Todd and that the southeast boundary of the lot was defined by the northwest limit of the Pitt River; and

[14] *Ibid.* at 80-81

[15] From a learning perspective, it would be interesting to review the report in its entirety to better understand the context of the court's rationale in giving portions little weight.

[16] *Ibid.* at para. 46

- Between 1910 and 1932, District Lot 232 was subdivided a number of times but the southeast boundary continued as the natural boundary between the upland and the Pitt River.[17]

In summary, the decision gives us a further reiteration of the developing understanding of the riparian right of access. It is also an interesting one for land surveyors in particular – readers may wonder what might have occurred with regard to the expert evidence had the scope of the report been different or if the surveyor had testified at the trial. In its discussion (and distinguishing) of *Mihaylov* the decision also reminds readers of the potential opportunity to create certainty in boundary location in an otherwise dynamic and ambulatory scenario at the waterfront.

Editors: Megan E. Mills and Izaak de Rijcke

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

A discussion of riparian rights and boundaries can be found in Chapter 8.

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.[18] 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: *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.[19] Cadastral surveyors will learn about the legal framework, procedural steps, practical

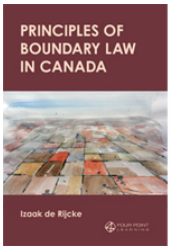
[17] *Ibid.* at para. 48

[18] 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.

[19] This course qualifies for 5 *Formal Activity* AOLS CPD hours.

requirements, and best practices for preparing and submitting applications under *Boundaries Act* as professionally and cost-effectively as possible.

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.*)

If you wish to contribute a case comment, email us at TBP@4pointlearning.ca.

If you wish to unsubscribe, please email us your request. To receive your own issues of *The Boundary Point*, complete a sign-up form at the Four Point Learning site.

ISSN: 2291-1588