



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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As noted in last month's issue of *TBP*, roads are everywhere. As land surveyors we discover their possible existence from many research activities, but sometimes these can lead to a possible road's questionable existence or location. In Ontario again, we consider a decision which illustrates the result of such a complex situation and how legislative principles continue to apply.

A Road at the Shore is Recognized as Public

Key Words: *metes & bounds description, dedication and acceptance, public highway, exceptions to registered title, road on survey plan, by-law*

In boundary retracement work, surveyors are required to follow the guidance of principles based on court decisions and statute law. In other words, surveyors must, from time to time, apply legal principles in forming opinions¹ on boundaries of properties to which titles apply. An example of the interface of legal principles and boundary determination is illustrated in *Wynn et al. v. Funygin et al.*² The case also illustrates that a metes and bounds description found in a deed can contain errors.

¹ Importantly, the principles that apply to the cadastral work of land surveyors do not include an opinion on title as a real estate lawyer may be licensed and qualified to give, but it does mean that the existence of a legal parcel with boundaries to be retraced may need to be confirmed by land surveyors. The two are not the same.

² *Wynn et al. v. Funygin et al.*, 2026 ONSC 597. The decision is not yet available in CanLII but, for now, has been posted https://4pointlearning.ca/4PL/Wynn_v_Funygin.pdf

Another interesting principle illustrated by this case is the interpretation and application of special provisions of the *Public Lands Act*,³ which purport to provide for the exclusive use of Crown lands to waterfront owners.⁴

The Process for Closing and Transfer of Original Shore Road Allowances

The site of this dispute is on the shore of Georgian Bay, north of Owen Sound, Ontario, where there is a significant slope in the topography of land near the shore. The original township survey plan provided for a Shore Road Allowance (“SRA”).

In the 1950s, when the township lot above the SRA was unsubdivided, the local municipality built a road (now known as Grey County Road 1) *on higher ground somewhat inland from the SRA*. However, there was neither a transfer of title to the municipality, nor was any by-law located that opened the road. Thereafter, the owner of the upland property severed several properties situated between the new municipal road and the lake. The metes and bounds descriptions for the new parcels included the SRA area. To be clear, these descriptions indicated that the lake was the easterly boundary of the various severances, even though the SRA had been neither closed by by-law, nor was there any transfer of the SRA to the upland owner.

Section 26 of the *Municipal Act*,⁵ states (in part):

What constitutes highway

26 The following are highways unless they have been closed:

[...]

4. All road allowances made by the Crown surveyors that are located in municipalities.

[...]

Subsection 4 includes all shore road allowances shown on original township survey plans (if located within a municipality).

In this case, two properties were in question: one owned by the applicants Wynn and Milne; the other (immediately north of the applicants’ property) owned by the respondents Funygin and Funygina. The two properties, as described in Land Registry Office records, are outlined in red and blue, respectively, in Figure 1 below. The SRA is shaded green.

³ *Public Lands Act*, R.S.O. 1990, c. P.43

⁴ This is often confusing to laypersons owning land at the waterfront. Ontario’s *Public Lands Act* contemplates the issue of a Patent (title), a Crown land Use Permit, and a Licence of Occupation – all with different rights and privileges and, of course, with different duties and obligations. The differences can be challenging to understand.

⁵ *Municipal Act, 2001*, S.O. 2001, c. 25, s. 26

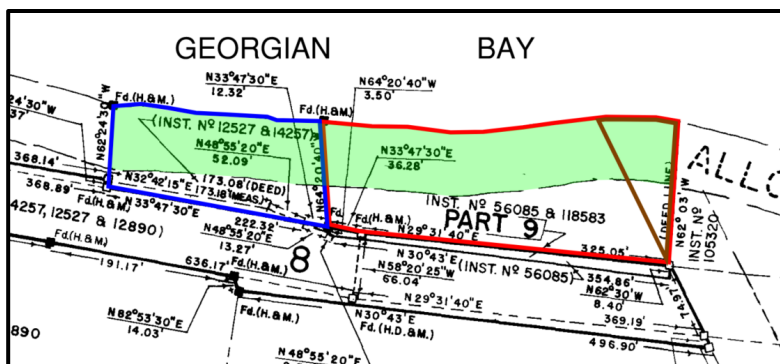


Figure 1 - Annotated portion of Plan 3R-205 Showing Properties owned by the parties

For many years, the metes and bounds descriptions for both parcels enclosed the respective portions of the SRA (shaded in green).

In 2007, the respondents' property was surveyed as shown on a Reference Plan (3R-9222), which identified two "Parts." "Part 1" was the land between the municipally-built road and the SRA; "Part 2" was the portion of SRA between "Part 1" and the lake. "Part 2" was subsequently the subject of a road closing by-law and this was followed by a transfer from the municipality.

There was no survey of record for the applicants' property—it appears that the title may have been based on (a) the metes and bounds description that enclosed the portion of the SRA as shown in Figure 1, and (b) a possible misunderstanding of the extent of a quit claim at the south end of their property that applied to a portion of a sideroad and the portion of the SRA in front of the sideroad (the brown outline in Figure 1).

The question then became one of determining the east boundary of the applicants' property: was it the upper limit of the SRA pursuant to the *Municipal Act* provisions? Or was it the edge of the lake as described by metes and bounds in the most recent deed?

The court concluded that there was

"... no evidence to support the Applicants' contention that they have acquired ownership of the SRA in front of their property. It is open to them to pursue the much more straightforward approach of seeking a quit claim deed from the Township and a by-law closing the SRA."

The fact that the metes and bounds description of the applicants' property enclosed the adjoining portion of the SRA for many years was considered insufficient to override the statutory provision of municipal ownership. This principle is also supported by s. 140(2) of the *Land Titles Act*,⁶ which states:

"(2) The description of registered land is not conclusive as to the boundaries of extent of the land."

⁶ *Land Titles Act*, R.S.O. 1990, c. L.5

Rights of Waterfront Owners Pursuant to the Public Lands Act

In addition to claiming ownership of the SRA adjoining their upland property, the applicants also claimed the right, as members of the public, to use “an area of Crown land that creates a sheltered harbour in front of the [respondents’] property.” The “sheltered harbour” can be seen in a Google Earth image in Figure 2.



Figure 2 - Annotated Google Earth Image of Subject Site.⁷

The court cited several portions of the *Public Lands Act*,⁸ specifically, s.21.1, subsections (1), (2), (3), (5), (6), (13) and (14). It also referred to s.1 of *Public Lands Act Regulation* 161/17.

The evidence demonstrated that prior owners of the respondents’ property had “built an erosion control structure, and the area was dredged periodically with permits from the Ministry of Natural Resources.” The respondents had “installed a steel dock with an electric boat lift in 2013”—work that was approved by the “Grey Sauble Conservation Authority, the Township of Georgian Bluffs, Fisheries and Oceans Canada, and the Ministry of Natural Resources.” Even though it was on Crown land, the dock was intended to be used privately and not by the public.

The court noted that the same principle applied to the boat lift and the breakwall; but it did not apply to the Crown lands leading to the installed structures. That is, the public can still go onto the Crown land, as long as they can avoid the structures. However, because the applicants had never acquired a survey of their property, they could not prove the ability to avoid crossing the

⁷ All rights reserved. Note that the sheltered harbour did not appear on the survey Reference Plan in Figure 1.

⁸ *Public Lands Act*, R.S.O. 1990, c. P.43

breakwall that was near the easterly extension of the boundary between the two properties. The court concluded:

“This order is justified not because the Respondents have any right to exclude anyone from any remaining public lands, apart from the footprint of the breakwall, dock and boat lift. It is because on the evidence, I find that the public lands cannot be accessed without traversing the breakwall and the Respondents do have the right to exclude persons from entering on to the breakwall.”

The case illustrates two significant principles affecting land surveyors.

First, to be able to provide an opinion on the spatial extent of a parcel of land, the surveyor must from time to time refer to statutory provisions that may appear to conflict with descriptions in deeds that may have existed for decades.

Second, if the applicants had obtained a survey of their property, they may have been able to prove the ability to access the Crown land in front of the respondents’ property without crossing the breakwall.

There are many, sometimes unintended, benefits to obtaining an up-to-date survey plan.

Editor: Izaak de Rijcke

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

An entire chapter on *Boundaries of Public Roads* can be found at page 221.

FYI

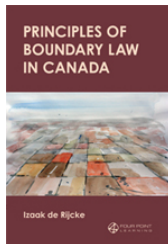
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⁹ Please note that the designation of CPD hours is based on the estimated length of time for the completion of the event. The criteria used are those set out in GeoEd’s *Registered Provider Guide* for Professional Surveyors in Canada. Other professions 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.

Course: *Survey Law 1*

Survey Law 1 provides a foundation for professional surveyors to integrate legal principles, legislation and regulations within the overall framework of property boundary surveys. This course will be taught online Wednesday evenings by Izaak de Rijcke, starting September 9th. For more information, consult the [syllabus](#). Please go to Four Point Learning to [register](#).

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.

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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