

A PRACTICAL GUIDE FOR SURVEYORS IN MAKING *BOUNDARIES ACT* APPLICATIONS

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PURPOSE

- To equip Ontario cadastral surveyors with the legal framework, practical requirements, procedural steps, and best practices for preparing, submitting, and managing *Boundaries Act* (BA) applications efficiently to bring boundary certainty for clients in a cost-effective manner.

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LEGISLATIVE FRAMEWORK

- The *Boundaries Act* is Ontario's statutory tool for definitively determining the location of a property boundary when uncertainty or dispute exists.
- It is an administrative quasi-judicial process, not a formal court process – meaning decisions are made by the Director of Titles or their delegate, within the statutory framework.
- The Director's authority includes confirming boundaries through a Certificate of Confirmation and a registered BA plan – superseding all corresponding portions of previous registered plans and descriptions.
- Surveyors' research, evidence and professional opinion form the basis of the application – their work becomes evidence in a potential hearing.

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PURPOSE AND SCOPE OF THE *BA* PROCESS

- The *BA* process provides a legally recognized, final determination that eliminates ambiguity for the affected parcels where uncertainty exists – whether due to conflicting surveys, unreliable historical records, unclear physical boundaries, or disagreement between adjoining owners.
- It is not designed to settle ownership or title disputes – its focus is on *location*. Any remaining title issues can be resolved following boundary confirmation.
- The *BA* process can be non-adversarial, provided there are no objections to the Application. Cooperation, early on, is essential to avoid the hearing route.

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WHEN IS A *BA* APPLICATION PREFERABLE?

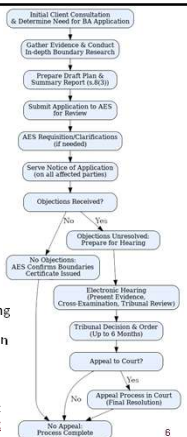
- Situations that call for *BA* application:
 - Uncertainty about a boundary's true location
 - Adjoining owners are willing to cooperate
 - Conflicting survey plans or no reliable record
- Situations that may call for other tools:
 - Pure title disputes – a court application
 - Simple boundary redescrptions where there is no outstanding boundary issue – a reference plan

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OVERVIEW OF PROCESS

1. Client Consultation – Confirm *BA* is appropriate
2. Evidence Gathering & Research
3. Draft Plan & Summary Report
– Per s.8(3) of the Act; plan = “show”, report = “tell”
4. Submit to AES for Review
– Respond promptly to requisitions
5. Serve Notices
– All adjoining owners, interest holders, agencies
6. If No Objections – Boundaries confirmed in 6-8 weeks
7. If Objections – Attempt resolution; if unresolved, hearing
8. Hearing – Electronic, formal evidence, cross-examination
9. Tribunal Decision – Written Reasons and Order
10. Register *BA* Plan – Final step

Full-scale flowchart at
https://4pointlearning.ca/4PL/BA_Process.png



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FACTORS AFFECTING TIMELINES

- Completeness, cooperation, availability
- If no objections, the application can be completed within 6-8 weeks from notice.
- If objections arise and remain unresolved, the matter proceeds to a hearing, which adds months.
- The tribunal's decision can take up to 6 months after the hearing, and appeals to court can extend the process further.

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COMPARISON OF BOUNDARY RESOLUTION METHODS

- *BA Process* – administrative, final, focused on location, faster and less costly than court, but evidence-intensive.
- *Court Process* – judicial determination, often more adversarial and expensive, but can address ownership issues alongside determination of a boundary location.
- *Agreement & Description Amendment* – cooperative and inexpensive, but only works when all parties agree and there is no significant conflict ... and the *Planning Act* can be complied with.
- While the *BA* and Court processes are generally definitive, the Agreement & Description Amendment process may be subject to revision if stronger evidence emerges.

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KEY ROLES AND PARTICIPANTS IN *BA* PROCEEDINGS

- *Applicant surveyor* – Prepares the application, evidence, and often testifies
- *Objector surveyor* (if available) – Reviews and challenges applicant's evidence (the process works best if objector retains a surveyor)
- *Lawyers* for each side – Represent parties, lead evidence, handle procedural matters
- *Assistant Examiner of Surveys* (AES) – Reviews submissions for compliance
- *Member of the tribunal* – Exercises the decision-making power under the *BA*

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ELEMENTS OF A COMPLETE SUBMISSION

- *Draft Plan* – compliant with s.8(3) requirements, including appropriate monumentation and certificates
- *Summary Report* – presentation of the applicant surveyor's fact and opinion evidence
- *Supporting Evidence* – title searches, affidavits, field notes, prior surveys, relevant correspondence
- *Submission Format* – both paper (tabbed binder) and digital (all hearings are now electronic)
- The more complete the initial submission, the greater the chance of resolving objections early

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RESEARCH REQUIREMENTS & BEST PRACTICES

- In-depth research is disclosed at the outset in *BA* applications.
- Full early disclosure facilitates resolution, for both applicants and objectors:
 - Reveal all relevant facts – even unfavourable ones
 - Organise evidence logically so it can be followed by non-surveyors
 - Document agreements and disagreements in evidence
 - Anticipate opposing interpretations and address them in the Summary Report

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WRITING THE SUMMARY REPORT

- Prepare for hearing-level scrutiny from the start.
- The plan is the “show”; the report is the “tell” – in a hearing, the Report becomes the root of your testimony, and you will be cross-examined on it.
- Write so a layperson – or tribunal member – can understand the Report without prior knowledge.
- Narrate the retracement method, step-by-step.
- Identify and explain what is the “boundary-creating event”.
- Justify accepted and rejected evidence.
- Include appendices for all referenced documents.

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ASSISTANT EXAMINER OF SURVEYS' REVIEW PROCESS

- AES checks for:
 - Compliance with statutory requirements
 - Adequate monumentation
 - Consistency with the current Client Guide
 - Coherence between *BA* plan and Summary Report
- Common problems include: unclear evidence resolution, slow responses to requisitions, and incomplete disclosures
- Respond quickly, professionally, and fully – this keeps the process moving.

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NOTICES & SERVICE REQUIREMENTS

- Notice goes to:
 - All adjoining owners and interest holders touching the boundary
 - Crown, MTO, municipalities, lawyer, relevant agencies
 - Surveyors who prepared draft plan and those whose surveys are disputed
- The Director can expand the notice list if they believe others may be affected.
- Service must be done correctly and on time – failure here can cause costly delays.

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HANDLING OBJECTIONS

- Early, open **digital** exchange of evidence is the best way to remove objections without proceeding to a hearing.
- Sometimes, the objector's concerns can be addressed with clarification rather than confrontation.
- Try negotiation and resolution first.
- Consider amending the plan or report.
- Withdraw the application if necessary.

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AES' ROLE IN MANAGING OBJECTIONS

1. Collects counter-report from objector's surveyor, if submitted.
2. Reviews and requests amendments to counter-report.
3. Distributes amended counter-report to Applicant.
4. Determines whether Applicant wants to amend or withdraw application.
5. If hearing required, asks parties to propose 3 possible dates.
6. Confirms a date when all parties and Hearing Officer are available.

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PREPARING FOR A HEARING

- Hearings are now conducted electronically, so ensure all exhibits are digital and organised.
- Treat Summary Report as your presentation script.
- Anticipate cross-examination questions.
- Work closely with your lawyer to align technical evidence with legal arguments.
- For objectors: prepare a report that clearly addresses agreements, disagreements, and alternative interpretations.

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HEARING PROCEDURES

- Step by step:
 1. Opening statements
 2. Applicant's case – surveyor testimony, cross, re-direct
 3. Objector's case – same sequence
 4. Other witnesses – lay or expert
 5. Closing submissions and costs
- The tribunal will usually reserve its decision, to prepare written Reasons and Order.

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Hearing Type	Boundaries Act (BA)	Land Titles Act (LTA) – LT Absolute
Legislation	<i>Boundaries Act</i> , R.S.O. 1990, c. B.10	<i>Land Titles Act</i> , R.S.O. 1990, c. L.5
Purpose	To resolve uncertainty or dispute about the location of a boundary line	To confirm title and bring land under the Land Titles system with certainty
Applicant	Owner or surveyor with a written consent from the owner	Usually initiated by the owner or their solicitor
Scope of Hearing	Limited to boundary line location only	Broad, reviews the chain of title, rights affecting the land, and adverse claims
Decision-Maker	Director of Titles or delegate	Director of Titles (Legal Services Branch)
Evidence Considered	Survey plans, physical evidence, historical evidence including occupation, expert testimony	Documentary title, surveys, historical instruments, adverse possession claims
Adv. Possession	Adverse possession claims are not addressed	Adverse possession claims are evaluated

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Hearing Type	Boundaries Act (BA)	Land Titles Act (LTA) – LT Absolute
Effect of Decision	Results in a confirmed and fixed boundary; does not affect ownership	Results in registration of property under Land Titles Absolute, title guaranteed
Outcome	Boundary is fixed, new plan of confirmed boundary is registered on all affected parcels. Confirmed boundary note added to PIN	Title converted to Land Titles Absolute, subject to exceptions (e.g., easements)
Notice	To all adjoining owners and other parties not limited to the upper/lower tier municipality, affected easement owners, etc.	To all affected parties, adjoining owners, and interest holders
Role of Surveyor	Provide the report, sign proposed <i>Boundaries Act</i> plan, act as expert witness	Prepare reference plan to illustrate the situation
Impact on Title	Does not impact title or ownership, only boundary placement (may affect assumed ownership e.g., if fence was in wrong place)	Converts title to Land Titles Absolute (title guaranteed by the government, subject to exceptions)

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CASE LAW, PAST BA DECISIONS & PRECEDENT USE

- The *BA* process is administrative in nature. Legal principles are identified, applied to the facts of the case, and used to reach a decision.
- Past decisions are often considered for guidance and consistency *only*. Unlike the courts, past *BA* decisions are not binding on the decision maker.
- Nonetheless, citing prior *BA* decisions can help frame your argument and show that your approach aligns with established reasoning.

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WORKING WITH LAWYERS

- While not a mandatory, proceeding with a lawyer is strongly recommended when:
 - There is an objection
 - There exist title issues, easements, or a complex history is involved
 - The decision is appealed to Divisional Court
- Lawyers can help structure your evidence presentation and manage procedural matters, leaving you to focus on the technical evidence.

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COSTS – BA VS. COURT PROCEEDINGS

- BA application fees: \$410 + \$1 per adjoining parcel
- Court proceedings are far more expensive – both in legal fees and in time,
- Even with lawyer involvement, the BA process is generally the more cost-effective approach and is a time-efficient method when applicable.

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PROFESSIONAL RESPONSIBILITY, ETHICS & INTEGRITY

- Present your evidence impartially, even though you are retained by a client.
- Disclose all relevant facts, even if unfavourable.
- Maintain credibility with AES, tribunal, and peers by your objectivity and thoroughness.

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PRACTICAL ADVICE

- Organisational tips for evidence and exhibits:
 - Organise your evidence early – both physically and digitally
 - Respond promptly to AES requisitions
 - Anticipate objections – even before they are raised
- Common missteps that slow or derail applications:
 - Submitting incomplete evidence
 - Letting disputes become personal between surveyors
 - Overlooking service requirements

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KEY TAKEAWAYS

- The BA process is evidence-driven from the outset.
- A well-prepared Summary Report, aligned with the plan and supported by complete, organised evidence, is your best chance at resolving disputes early and avoiding a hearing.
- The best outcomes happen when surveyors prepare as though objections are inevitable.
- Professional integrity, attention to detail, and proactive communication with AES, clients, and opposing parties are critical to success.

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QUESTIONS?

- If questions come to mind, contact
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- Consider also the resource: *The Boundary Point*
All issues going back to almost 13 years are available at
<https://4pointlearning.ca/course/view.php?id=8>

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