



Ontario

Ministry of
Consumer and
Commercial
Relations

Legal and
Survey
Standards
Branch

The Boundaries Act

Every surveyor at one time or another has dealt with the very common problem of a misdescription. Quite often the error occurs in the tie to the lot corner which, if measured, probably was not measured by a professional surveyor.

Once this tie was committed to a description, especially in Land Titles, many lawyers tended to regard it as the over-riding premise of the description. When making a requisition on title at the time of conveying the property, the description would be trusted as absolute and the evidence of possession as being in error. The conflict is usually discovered when the property is surveyed.

In the case examined here the boundaries under application were those of Parcel 4680 as shown on the sketch, and are described as being 838.2 feet east of the north-westerly angle of the lot and extending easterly 211.2 feet and southerly 310.2 feet.

The land described in Parcel 4393 owned by "B", the objector in this instance, lies immediately west of the applicant's lands and is described as commencing at the north-westerly angle of the lot and extending easterly 838.2 feet and southerly 204.6 feet. The remainder of the lot is described in Parcel 4681.

From the evidence presented it was established that Parcel 4393 was created in 1935 and transferred in 1949 and hence to the present owner, "B", in 1972.

Parcels 4680 and 4681 were created in 1945 and transferred to separate owners. Parcel 4680 was subsequently transferred to the present owner and Applicant "A", in 1963.

The discrepancy in the tie to the lot corner was discovered by the surveyor when surveying the property for a proposed sale in 1976. To resolve any doubt as to the true position of the property boundaries an application was made under The Boundaries Act.

The surveyor testified that in his survey he found "A's" property enclosed by old fences on the east, west and south sides. A frame house existed on the property as shown. The surveyor stated that the boundaries of the property as defined by the old fences agreed fairly well with the called-for width and dep'h, except that the tie distance to the northwest angle was short by approximately 214 feet, the approximate width of Parcel 4680.

The surveyor acknowledged that the Parcel description tie distance to the lot corner would place the property in a position commencing at the easterly boundary as he had re-established it and would then extend easterly the described width. He testified that he had examined this area and could find no physical evidence of occupation to support a conclusion that the description tie to the lot corner should prevail.

He stated that there is an old fence partially along the southerly boundary of "B's" land which commences at the westerly boundary of "A's" land and extends westerly some distance. There is no evidence that this fence ever extended easterly into or through "A's" land. In concluding his testimony in direct, it was the surveyor's opinion that the boundaries of "A's" land as occupied and fenced constituted the best available evidence of the true position of the boundaries of the land described in Parcel 4680 and that the tie distance to the lot corner in the Parcel Register, was inaccurate.

In cross examination the surveyor was questioned on why he had labeled the fences as 50 years more or less, when the Parcel had not been created until 1945. He replied that the fences were very old but the age shown was only an estimate and offered the opinion that the fences may have existed prior to the actual conveyance of the land.

There was also evidence given at the hearing that a number of trees existed along the front of "A's" property which had been there for a considerable length of time.

The tribunal termed the evidence of "C", who with her husband is the owner of Parcel 4681 to the south of Parcel 4680, as "significant". "C" purchased this property in 1945 and lived across the road since that date. At the time "C" purchased this property, old fences had existed on the easterly, westerly and southerly boundaries of Parcel 4680. These boundaries where they were common boundaries with "C's" property, were renewed at that time. A fence was also erected along the southerly boundary of Parcel 4393, now owned by "B", and "C" stated that she had always considered that the present and prior fences had always defined their ownership and that these fences had always been respected by the neighbours without dispute. "C" also testified that an old house

had existed on Parcel 4680 and that the present house on the property had been erected in 1946.

All parties acknowledged that the descriptions of the three parcels shown were compatible and that from a strict interpretation of the description, Parcel 4680 would be located some 214 feet east of its location on the sketch.

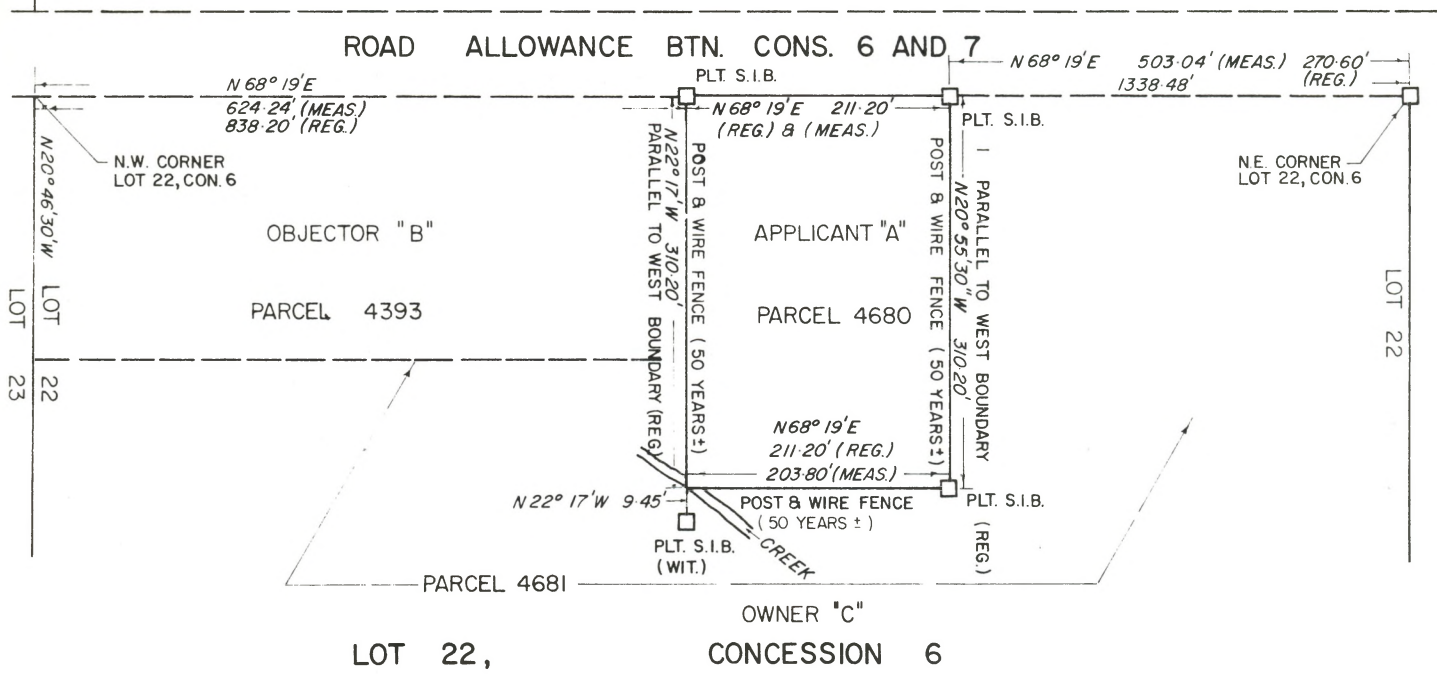
In summarizing the arguments of counsel for both the Objector and the Applicant the tribunal wrote:

"Counsel for the Objectors submitted that the registered description should prevail and be adhered to in the location of Parcel 4680, there being no ambiguity in the descriptions of the surrounding lands. Counsel argued that as no evidence was adduced as to when and how the original fences were located, it was a simple case of error in erecting the fences on lands other than as conveyed. Counsel further argued that there would be a grave inequity to the objectors not to give them what their description called for as there was sufficient land to satisfy all descriptions, and it was a simple matter of moving the fences and the house or cottage to their correct location. He submitted that to do otherwise would not only deprive his clients of some of their land but would give to C and her husband a like amount to which they were not entitled.

"Counsel further argued that the subject application and draft plan was an attempt to establish boundaries by reason of adverse possession which has no application under The Land Titles Act.

"It was the submission of counsel for the Applicant that in accordance with the draft plan there were no gainers or losers as all parties are getting what is enclosed by the fences which by the evidence have been accepted by the various land owners with no objection down through the years. Counsel acknowledged that there was no evidence as to how or when the original fences around Parcel 4680 had been located, but they have existed from prior to 1946 up to the present time and have been accepted by the various land owners. This was not a claim to title by reason of adverse possession but an acknowledgement by all parties that the well-settled boundaries were, in fact, the boundaries as originally created. Counsel submitted that there was a discrepancy

CONCESSION 7



in the original title document, which discrepancy had unknowingly been carried forward into all the subsequent descriptions”.

In delivering judgement the tribunal wrote as follows: “The problem before the hearing is to re-establish by the best available evidence the true position of the boundaries of Parcel 4680 as originally created. The argument on one hand being that as there is no apparent discrepancy in the title descriptions and as there is sufficient land to satisfy these descriptions, a strict interpretation of these descriptions should prevail.

“On the other hand, it is argued that a latent discrepancy does and has always existed and it is only when the actual occupation is considered that this discrepancy becomes apparent.

“There was no evidence presented that there ever was an original survey of either Parcel 4393 or Parcel 4680. It was indicated by the testimony that this was not unusual when one considers the date of the original severances, the location and the value of the land. This would appear to be borne out by the original transfer document for Parcel 4393, dated 1935, which indicates that the total consideration was \$20.00.

“In any event, the evidence indicates, in my view, that the parties did locate themselves on the land, erecting

fences to define the limits of what they viewed to be their ownership, and lived peacefully to these fence lines from before 1946 up to the present time.

“It has been held by the courts that “in all actions brought to determine the true boundary line between properties, the burden of proof lies upon plaintiff who seeks to change the possession”. Palmer v. Thornbeck (1877) 27 U.C.C.P. 291 (C.A.).

“In my view the evidence of peaceful settlement of boundaries would estop the objectors from claiming to any other boundary than the originally settled, acquiesced-in boundaries. This principle was upheld in the case of Davison v. Kinsman, (1853) 2 N.S.R. 1, 69 (C.A.). Quoting from the judgement of Haliburton, C.J.:

“In fact, the actual location of those settlers was almost a matter of guess-work; but they did locate themselves on what they supposed to be the lots granted or conveyed to them, and adjusted their boundaries with each other as best they might ... This would have produced a fruitful field of litigation had not the Court upheld the principle that where the parties had mutually established the boundary between them upon the land they should be bound by it... I can see no end to it, but by adhering to the principle that where a line has been

settled and adjusted in good faith upon the land, neither party shall be permitted to dispute it”.

“Further in Kingston v. Highland, (1919) 47 N.B.R. 324 it was said by Barry, J:

“However erroneous may have been the original survey, or even if there were no survey at all, technical speaking, the monuments that were set, the trees that were marked and blazed, must, nevertheless, govern, even though the effect be to give to one proprietor a much greater acreage than his deed would seem to entitle him and give to the adjoining proprietor very much less. In the case of successive purchasers, or owners, they are entitled to no more or less an area than their predecessors in title; for parties buy or are supposed to buy in reference to the earlier lines or monuments, and are entitled to what is within their lines and no more”.

“After due consideration of all the evidence presented, I am satisfied that applicant’s surveyor has correctly re-established the boundaries of the land described in Parcel 4680 as shown on the draft plan before the hearing, and the objection . . . is denied”.

Confirmation and Condominium Section, Legal and Survey Standards Branch.
February, 1981.