

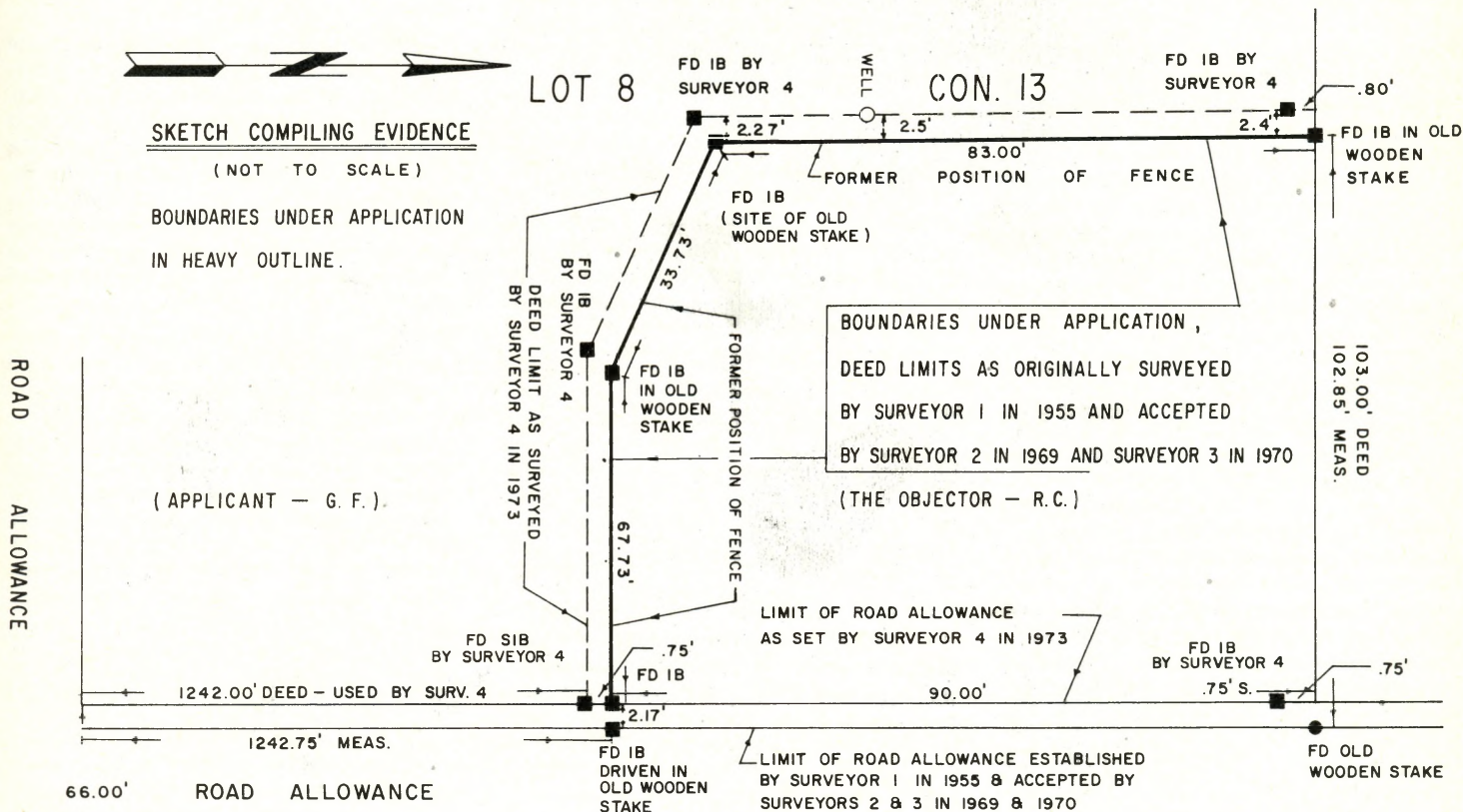


Ontario

Ministry of
Consumer and
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Legal and
Survey
Standards
Branch

The Boundaries Act



DRAWN BY: LEO NG

THE BOUNDARIES ACT decision summarized here came before the Boundaries Act Tribunal in 1976. It is an almost classic case to insufficient research on the part of Surveyor 4, compounded by his lack of a search for evidence in the field.

Surveyor 1 was first on the scene and in 1955 did the original survey for the property now owned by the Objector, R.C. Surveyors 2 and 3 accepted Surveyor 1's work in 1969 and 1970 and, in fact, Surveyor 3 drove his iron bars

annual dinners regularly for many years, and could be depended upon to give a practical turn to the discussions.

In 1901, he was elected President of the Association, and presided at the Annual Dinner in 1902. He attended the Veterans' Luncheons on February 26th, 1919, also on February 24th, 1921, which was his last appearance at the Association meetings. When unable to attend any of these functions, he invariably wrote an interesting letter of greeting to his veteran brethren.

through the wooden stakes originally set by Surveyor 1. In 1973 Surveyor 4 attempted to re-establish the same deed boundaries as the other surveyors. However, he established the road allowance limit some 2 feet west of the limit used by other surveyors. Surveyor 4 was unaware that Surveyors 2 and 3 had done surveys of these boundaries subsequent to the first survey by Surveyor 1 and that in 1970 Surveyor 3 had re-staked the property using iron bars. Since his survey followed Surveyor 1's by some 18 years, Surveyor 4 felt that no evidence would remain and didn't even bother to look for Surveyor 1's stakes. Instead he used the calls of the deed for his layout. The application involved the deed limits as shown in heavy outline on the sketch. The Applicant G.F. retained Surveyor 3, who had also surveyed the property in 1970, to prepare the survey for application. The objector, R.C. relied on the 1973 survey by Surveyor 4 as the basis of his objection.

From the testimony the relevant facts emerged as follows:

In 1955 J.J., the owner of the north

half of the south half of Lot 8 in Concession 13, severed part of his lands and deeded it to his son, C. J. It was the testimony of J.J. that he planted a stake at the south-west corner of the parcel of land to be severed, as a starting point for the surveyor. Subsequently, Surveyor 1 on the instructions of J.J., surveyed and planted wooden stakes at the five corners of the parcel. The parcel was 90 feet wide fronting on the Road Allowance between Lots 8 and 9, and 103 feet deep. The plan of survey by Surveyor 1 was prepared in 1955.

Instrument 113277, registered in 1955, conveyed the property from J.J. to C.J. The description in the conveyance followed the courses shown on the Surveyor 1's survey, and referred to wooden stakes at all the parcel corners.

From the testimony of J.J., it was established that sometime between 1955 and 1961 a well was located as a joint project by he and his son. The location of the well with respect to the property boundaries was not deemed significant at that time. Both father and son had water

lines running from the well to their respective dwellings. In 1961 C.J., erected a fence around his property which from the testimony of J. Sr., was for the purpose of protecting his son's children from trucks travelling over the properties. J. Sr. stated that the fence was erected along the boundaries as set by the old survey stakes, except at the south west corner of the property where the southerly fence post along the westerly boundary was set 9 feet north of the surveyed corner to provide easier access for trucks travelling to the rear of his property. The previously drilled well was found to be on the property of J. Sr., approximately 2 to 3 feet west of the rear fence line.

By the testimony of Surveyor 3, not rebutted, the C.J. property was re-surveyed by Surveyor 2, in July of 1969, presumably for the purposes of a mortgage. Surveyor 2 found wooden stakes previously planted by Surveyor 1 and tied in the existing dwelling to the property boundaries. In January of 1970 Surveyor 3 was commissioned to survey part of the property of J. Sr. to illustrate and define a further severance to G.F., the current Applicant, which included lands lying to the south and west or rear of the first severance to C.J. In the course of this survey, Surveyor 3 found evidence of the Surveyor 1 survey at all angles of the first severance, except at the south-westerly angle. Steel bars were then driven in the centre of all found stakes. Surveyor 3 also by deduction verified the position of the boundaries shown on the Surveyor 2 survey and agreed with his ties to the building. The Surveyor 3 survey supported the testimony of J. Sr., that the existing fences followed the surveyed lines, except at the south-west corner. Instrument 468974, registered in 1970, is a deed from J.J. to G.F., and contained a covenant to the effect that G.F. was to supply water from the well situated on his property to the owners from time to time of the property originally conveyed to C.J. This property was then owned by L.H. These owners were in turn required to pay \$50 per annum for the supply of water and maintenance of the pumping equipment. It was the evidence of G.F. that the annual fee was paid up until the C.H. property was transferred to the present owner, R.C. In 1973 L.H. sold the property to R.C. by Instrument 562436. At this time R.C. commissioned Surveyor 4, to resurvey the property being purchased. His survey was illustrated on a plan dated in 1973. The Surveyor 4 survey does not agree with the boundaries as originally fenced, and accordingly does not agree with the Surveyor 2 survey, or the Surveyor 3 survey.

Carrying this deduction further, the Surveyor 4 survey also disagrees with the original survey by Surveyor 1. This difference is approximately 1 foot in the positioning of the northerly and southerly boundaries and approximately 2.5 feet in the positioning of the easterly and westerly boundaries.

It was the evidence of Surveyor 4 that he did not attend on the ground himself, but relied on the judgement of his party chief. Surveyor 4 testified that the discrepancy between his survey and the other surveys stemmed from the discrepancies in the positioning of the westerly limit of the Road Allowance between Lots 8 and 9.

The westerly boundary of the R.C. property as re-established by the Surveyor 4 survey is approximately two and one half feet west of the existing fence along the rear of the property and places the well partly on both the R.C. and G.F. properties. The difference between the surveys by Surveyors 3 and 4 precipitated the present application under the Boundaries Act.

Surveyor 3 acknowledged the difficulty in correctly positioning the westerly limit of the Original Road Allowance and does not purport to fix that limit. In spite of this difficulty, he stated that it was possible to re-establish the boundaries of the R.C. property in their original position in accordance with evidence of or descended from the original Surveyor 1 survey, which he did in the survey plan in support of the present application.

Surveyor 4 did not look for nor find evidence of the Surveyor 1 survey, testifying that he would not expect to find that evidence after the elapse of 18 years. Surveyor 4 also testified that at the time his survey was performed in 1973, he was not aware of the previous surveys by Surveyor 2 in 1969, nor the Surveyor 3 survey in 1970.

In rendering its decision the Tribunal stated:

"The problem before the Hearing is to determine by the best available evidence the true position of the westerly and southerly boundaries of that parcel of land originally conveyed to C.J. in 1955. It is a contest of evidence of the present Surveyor 3 survey, supported by the previous survey by himself and those of Surveyors 1 and 2, relied on by the Applicants, and the survey by Surveyor 4, relied on by the Objectors.

It is a well established principle in real estate law that the limits of a parcel must be controlled by the evidence of the original survey which created those lines. This principle was upheld in *Cain v. Copeland* (1922) 67 D.L.R. 581; and

Kristiansen v. Silversen, (1929) 4 D.L.R. 252.

"Further, quoting from *Grassett v. Carter* (1884), 10 S.C.R. 105 at p. 114 and 115:

"When lands are described, as in the present instance, by a reference, either expressly or by implication, to a plan, the plan is considered as incorporated with the deed, and the contents and the boundaries of the land conveyed, as defined by the plan, are to be taken as part of the description, just as though an extended description to that effect was in words contained in the body of the deed itself."

"In construing the description contained in the deed, in cases where land is conveyed by a private owner, and where no statutory regulations apply, but the deed has to be interpreted according to common law rules of construction, extrinsic evidence of monuments and actual boundary marks found upon the ground, but not referred to in the deed, is inadmissible to control the deed, but, if reference is made by the deed to such monuments and boundaries, they govern, although they may call for courses, distances, or computed contents which do not agree with those stated on the deed."

"After considering all the evidence presented before the Hearing, I can come to no other conclusion that the Surveyor 3 correctly re-established the boundary under Application and Surveyor 4 is incorrect in this regard."

Confirmation and Condominium Section,
Legal and Survey Standards Branch
January, 1983

PRESIDENT'S PAGE

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cedures, the effect of the recently approved standards of surveying, communication with other professions, the public and ourselves, and above all the future of the surveyor in a rapidly changing industry.

I am a champion of ACSTTO and I believe that this is the year that the Association of Ontario Land Surveyors must take a long, hard look at the organization we established over fifteen years ago and decide if we may not have unwittingly abdicated our responsibility to what should be a strong, supportive para-professional association beneath the umbrella of our Association.

I consider myself privileged to be able to serve you as your President and I look forward to the coming year with anticipation, confident of the support of a very concerned and competent Council, a professional office staff and having the example of the Presidents who have gone before.