

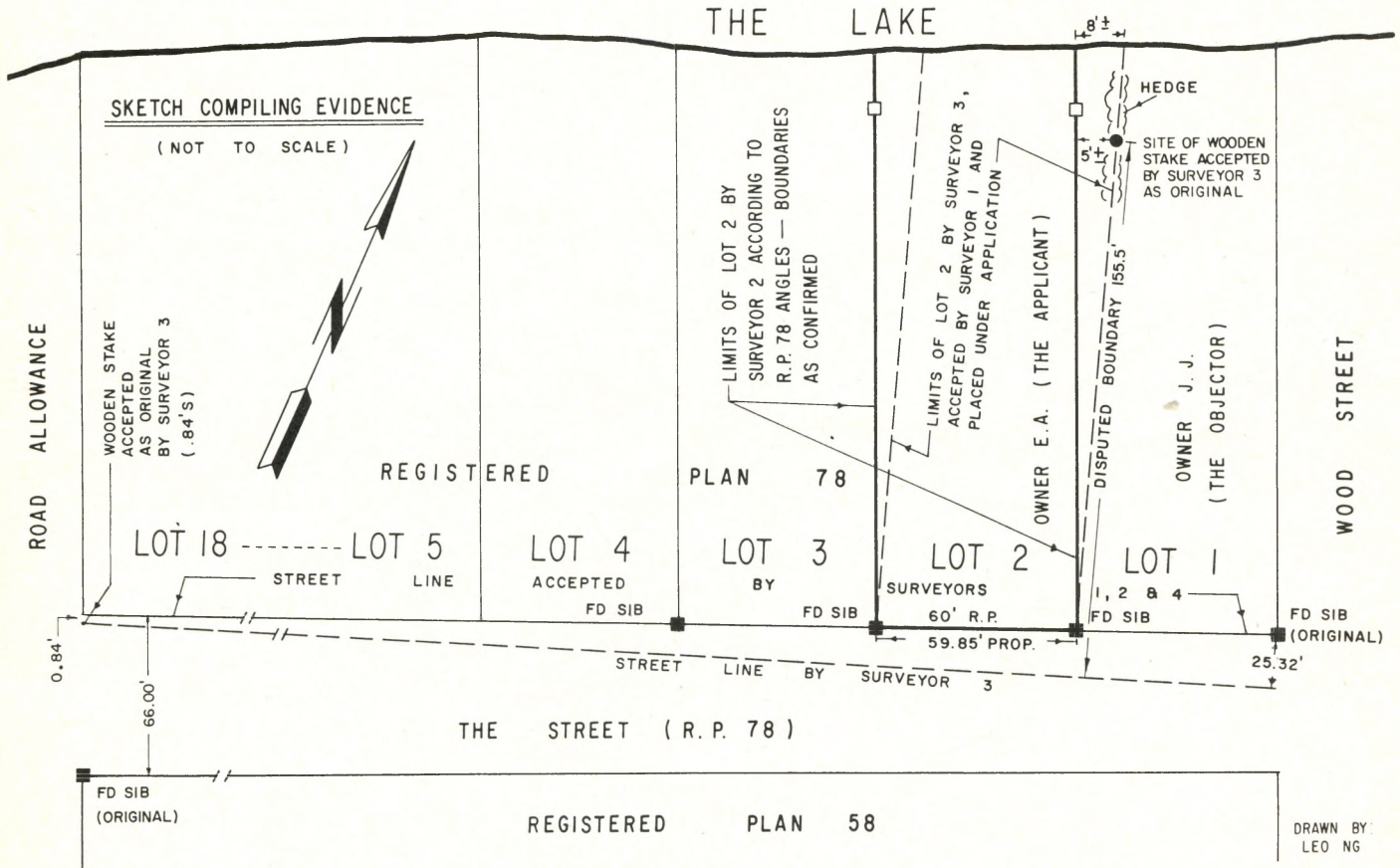


Ontario

Ministry of  
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# The Boundaries Act



**T**HE BOUNDARIES Act decision reviewed here came before the Boundaries Act Tribunal in 1980. Four surveyors were involved in re-establishing various boundaries on a registered plan surveyed some fifty years ago.

Surveyor 3 did the first re-establishment in the problem area. Working from monumentation he accepted as original, he re-established the boundaries of The Street and of Lot 2, as shown on the sketch. Surveyor 4 in 1976 disagreed with Surveyor 3's streetline by up to 25 feet and although he did not work in Lot 2, his method of re-establishing other lot lines in the area did not produce a pattern similar to that constructed by Surveyor 3.

Surveyor 2 agreed with Surveyor 4 for the streetline. However, he disagreed with Surveyor 3 for the boundaries of Lot 2, rejecting a monument that Surveyor 3 had accepted as original, and instead used registered plan angles to set the side lines.

Surveyor 1 is the surveyor who pre-

pared the survey for the Boundaries Act application. He agreed with Surveyors 2 and 4 for the streetline but accepted Surveyor 3's definition for the line between Lots 1 and 2 (and as a result, the line between Lots 2 and 3). If there is a caution in this decision for surveyors, perhaps it is that we should be properly skeptical of the work of the surveyors who precede us. This is an application made by E. A., the registered owner of Lot 2, Plan 78, for the purpose of confirming the boundaries of Lot 2 in accordance with a draft plan of survey made by Surveyor 1 and dated in 1979.

The objector J.J., is the registered owner of Lot 1 and disputes the location of the line between Lots 1 and 2 as shown on the draft plan by Surveyor 1 and relies on the position of this boundary as shown on a plan of survey by Surveyor 2 in 1978.

The plans and field notes of surveys in the area and the technical evidence in respect to the various surveys presented to the hearing by surveyors 1, 2 and 3, is as follows:

## REGISTERED PLAN 78

Lot 2 is situated on the north side of The Street in a tier of lots numbering from Lot 1, on the east, to Lot 18, on the west. The lots extend northerly to The Lake according to a plan of subdivision dated in 1925 and registered in 1932 as Plan Number 78.

Registered Plan 78 is a subdivision of part of Registered Plan 58 laid out in 1912.

Registered Plan 78 indicated monuments planted to mark the front of southerly corners of Lots 1 to 18 on The Street and monuments planted on the side lines of Lots 2 to 17, back from the water's edge of The Lake, to witness the lot corners on the natural boundary. The witness monuments in the east and west boundaries of Lots 1 and 18, respectively, are indicated on the registered plan as 1 inch square iron bars, 4 feet long.

Surveyor 3, surveyed Lot 2, Plan 78 in 1961 for the then owner, I.B. It was

established from his field notes and his testimony that a 3 inch wooden stake was found in the centre of a cedar hedge along the line between Lots 1 and 2 near the water's edge of The Lake which he believed to be the original wooden stake planted in the original survey from Plan 78. This stake was replaced by a 1 inch square iron bar. From this monument, together with a found wooden stake at the southwest corner of Lot 18, some 800 feet westerly along The Street, the boundaries of Lot 2 were re-established using the registered plan distances and bearings. By laying off the plan distance of 155.5 feet for the south-east corner of Lot 2 from the found wooden stake, the streetline was found to lie well south of the line of occupation and to include the utility poles and road ditch within the lot limits. This positioning of the streetline was found by later surveys to be approximately 22 feet too far south.

Surveyor 3 testified that in 1961 he found limited original evidence in the area and based on evidence found during subsequent surveys he was now of the opinion that subsequent surveyors had a better positioning of the streetline than his survey. Surveyor 3 was still of the opinion that he would hold the position of the found wooden stake on the line between Lots 1 and 2 in the belief that this was an original monument and, as such, would govern the position of the lot line in this location.

A copy of a plan of survey by Surveyor 4 of part of Block C, Registered Plan 58, dated in 1976 was introduced into evidence. This survey, based on found monumentation set for Registered Plans 58 and 78, indicates a positioning of the boundaries of Block C and the south boundary of The Street with resultant measured distances and bearings very close to those indicated on the registered plans.

A plan of survey of parts of Lots 3, 4 and 5, Plan 78 by Surveyor 4 dated October 18, 1976, was also introduced into evidence. The position of the north boundary of The Street, the south-east corner of Lot 1 and the south-west corner of Lot 18 were based on the earlier survey by Surveyor 4 in the same month. The measurements along the north boundary of The Street agreed with registered Plan 78 and an S.I.B. was planted by Surveyor 4 to mark the south-east corner of Lot 4 and the south-west corner of Lot 5.

This plan also indicates the previous positioning of the limit of The Street by Surveyor 3; found to be 25.32 feet south of the Surveyor 4 streetline at the south-

east corner of Lot 1 and 0.84 feet south at the south-west corner of Lot 18.

Based on the testimony of Surveyor 2, supported by copies of his plans of survey of Lot 1 in 1978, Lot 3 in 1977 and the field notes of the 1978 survey, it was established that these surveys were based on the earlier surveys by Surveyor 4 and found original plan monumentation. Surveyor 2 testified that as the measurements between original monumentation closely agreed with the plan dimensions, he proportioned the distance between found monumentation for the front corners of Lots 1 and 18 to re-establish the other front corner of Lot 1 and the front corners of Lot 3 and turned plan angles for the sidelines of the lots. On the line between Lots 1 and 2 an I.B. was set at the plan distance and the line was extended some 17 feet more or less to the water's edge of The Lake. A cedar hedge was tied into the lot line which was in agreement from the front of the lot to the north edge of the cottage on Lot 1 where the hedge bent to the east and was approximately 5 feet east of the lot line near The Lake.

Surveyor 2 testified that he believed his streetline was correct as it agreed with the occupation and kept the ditches and asphalt within the road limits.

Surveyor 2 was aware of the previous survey by Surveyor 3 and although he did not find Surveyor 3's bars near the rear corner of Lot 2, Surveyor 2 chose to ignore this survey in the belief that it was incorrect.

Upon cross examination, Surveyor 2 testified that he did not find any 3 inch square wooden stakes claimed by Surveyor 3 to be original monuments and also that he doubted that the one found by Surveyor 3 on the line between Lots 1 and 2 was, in fact, an original monument. Surveyor 1's survey in support of this application was done in 1979. Surveyor 1 testified that in his survey of Lot 2, Plan 78, he had copies of all the previous surveys herein mentioned with the exception of the Surveyor 3's field notes. Based on these previous surveys and his measurements taken in the field, he accepted the north limit of The Street as re-established by surveyors 2 and 4 and the south-east and south-west corners of Lot 2 as previously set by Surveyor 2. For the direction of the sidelines of Lot 2, he joined the front corners of the Lot to the iron bars set by Surveyor 3 in 1961 on each lot line near the natural boundary of The Lake and these lines were produced to the water's edge. Although Surveyor 1 did not see or have a copy of the Surveyor 3's field

notes, he accepted his definition of the lot line 1/2 in the belief, as indicated, that it had been set using an original plan monument and, as such, would govern the position of the lot line. The Surveyor 3 S.I.B. on the lot line 2/3 was accepted as it had been set the plan distance west of the wooden stake.

Surveyor 1's positioning of the boundaries of Lot 2 at The Lake are from 5 feet to 8 feet east of Surveyor 2's positioning of the same boundaries.

It was brought out in evidence that the wooden stake claimed by Surveyor 3 to be an original monument was 21.78 feet south and approximately 4.5 feet east of its position as indicated on Registered Plan 78.

## EVIDENCE OF LAY WITNESSES

The evidence of E.A., the applicant in these proceedings, was that the cedar hedge along the line between Lots 1 and 2 was, and has always been, considered by her mother, Mrs. B., and herself, since 1949, to be on the property boundary and that in the reconstruction of their residence on the property they had relied on Surveyor 3's survey. Mr. J. the owner of Lot 1 and objector to the present application, testified that in the reconstruction of his cottage to a residence on Lot 1, he had relied on the Surveyor 2 survey, and that the Surveyor 1 line would cause a concrete pad adjoining the residence to encroach from 0.95 feet to 1.3 feet on Lot 2.

It was established in evidence that the mid-section of the cedar hedge along the lot line 1/2 had been removed during construction of one or other of the buildings.

The Objector disputed the alleged exclusive occupation by the Applicant to the hedge and claimed that he and his family had used certain lands lying west of the hedge in the maintenance and enjoyment of Lot 1.

In delivering judgement the Tribunal wrote as follows:

“With respect to the position of the north boundary of The Street, being the south boundary of Lot 2, and the south-east and south-west corners of Lot 2, Surveyors 1, 2 and 4 agree and as this boundary and these lot corners have been re-established from original evidence of registered Plan 78 and in accordance with the provisions of Section 55 of The Surveys Act, R.S.O. 1970, Chapter 453, I am satisfied that this method is appropriate

and the boundary and corners have been re-established in accordance with the best available evidence of their original positioning.

“With respect to the line between Lots 1 and 2, the opinions of the expert witnesses and the submissions of counsel all agree that nothing is more inflexible in real estate law than that monuments planted in an original survey, found in their undisturbed positions, govern the re-establishment of those original boundaries and must be adhered to. I agree with this statement of principle and the question to be answered, in my view, is whether or not the 3 inch square wooden stake found by Surveyor 3 is an original monument planted in the original survey for registered Plan 78, or possibly a replacement of that original monument.

“I have come to the conclusion based on the technical evidence presented and find as a matter of fact that this wooden stake was not an original monument, nor was it placed in the site of an original monument.

“I have come to the conclusion based on the relative mathematical integrity of Registered Plan 78 as found by surveyors 2 and 4 and the wide variance of the location of the wooden stake with the location of the original monument as reflected on Plan 78.

“With respect to the location of the boundary between Lots 2 and 3 and based on the finding of fact above, I also find that the S.I.B. set by Surveyor 3 in 1961 on this lot line at the plan distance from the wooden stake is incorrect. I make this finding cognizant of the fact of the lack of an objection by the owners of Lot 3 of the location of the line between Lots 2 and 3 as shown on the Surveyor 1 survey. Also, no evidence was presented that the said owners objected to the Surveyor 2 location of this boundary in a survey of their property in 1977. Section 55 of The Surveys Act states:

*“A surveyor in re-establishing a line, boundary or corner shown on a plan of subdivision shall obtain the best evidence available respecting the line, boundary or corner, but if the line, boundary or corner cannot be re-established in its original position from such evidence, he shall proceed as follows:*

*“1. If a part of a line or boundary is obliterated, he shall re-establish it by joining the nearest ascertainable points thereof in the manner shown on the plan of subdivision.*

*“2. If a corner on a line or boundary is lost, he shall re-establish it by the method that accords with the intent of the survey as shown on the plan of subdivision and if it is consistent with the*

*intent of the survey as shown on the plan of subdivision, he shall determine the distance between the two nearest undisputed corners, one being on either side of the lost corners, and he shall re-establish the corners by dividing the distance proportionately as shown on the plan of subdivision having due regard for any road allowance, highway, street, lane, walk or common shown on the plan of subdivision.”*

“Failing any evidence of the original position of the sidelines of the lots on Plan 78 north of The Street, The Surveys Act directs that these boundaries shall be re-established by a method that accords with the intent of the survey of the subdivision and, in my view, the bearings shown on Registered Plan 78 for the sidelines of Lot 2 are the only available evidence that accords with that intent. This is the method used by Surveyor 2 in his surveys of Lots 1 and 3.

“Accordingly, the sidelines of Lot 2 shall be run from the monuments found or set by Surveyor 1 for the front corners of the Lot at Plan 78 angles from the south boundary of Lot 2 to the boundary of The Lake.” ●

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