Ontario
Ministry of Consumer and Commercial Relations
Legal and Survey Standards Branch

The Boundaries Act

THE BOUNDARIES Act case reviewed here provides a brief look at one of the problems in the history of surveying and settlement in southern Ontario. Due to disputes and litigation arising from differences between the original survey and the location of various road allowances as travelled in the Township of Vaughan, an act of parliament was passed in 1860 directing the survey and establishment of these travelled road allowances as "... true and unalterable Government allowances for Road ..."

The Township of Vaughan was originally surveyed in 1798 in the single front system. The 1860 Act did not propose to change the basic lot structure created in the original survey. However, in the vicinity of the travelled roads the new Act recognized that strict adherence to the originally intended lot pattern would likely not occur. It was expected that the size of many of these lots would be considerably different from the usual pattern in this type of township.

The prevailing method of dividing any parcel of land into aliquot parts in force in 1860, was the area method. Section 16 of 22 Victoria, Chapter 93 (1859), an Act governing the "Survey of Lands", states in part "... any aliquot part ... shall be construed to be a grant of such aliquot part of the quantity the same may contain ..." This provision was to apply whether or not the area was different than the original patent or grant intended.

Section 4 of the new Vaughan Act (23 Victoria, Chapter 102) enacted a method of establishing aliquot parts of lots different than the area method in force at that time. Section 4 states, "The boundaries or limits of any aliquot part of a lot, in any Concession of the Township, shall be determined by giving such portion of the proportionate length and width of the whole lot, as the latter shall have been ascertained in the manner pointed out in this Act." In other words, the aliquot part of lots in Vaughan will be divided into aliquot parts not by area but by proportionate division of lengths or widths as the case dictated.

Since it was anticipated that the size of many lots would be considerably different than the standard pattern in this type of township, it seems likely that the proportionate division method was struck upon to provide an economical way of dividing land into aliquot parts. This method is not a radical departure from the area method when one considers the standard pattern in single front. This system should produce perfect parallelograms or rectangles and given parallel sides a method involving the proportionate division of area will also result in an equally proportionate division of lengths or widths. However, with an existing lot structure where the lot limits consist of settled possession on many different courses, determining the exact area can be a time consuming and costly process.

It is Section 4 of the 1860 Act that we are concerned with in the Boundaries Act case reviewed here. The meaning of the word "aliquot" within Section 4 will also be of note.

In 1960 Pinewood Aggregates Ltd. made application under the Boundaries Act to confirm the position of the easterly boundary of their lands in the west half of Lot 25, Concession 3, Township of Vaughan. Their application was based on a survey by surveyor Y.

The adjoining owner in the east half of Lot 25, J. Chefero Sand and Gravel Ltd., objected to the position of the boundary as established by surveyor Y. Their objection was supported by a survey of the boundary by surveyor M.

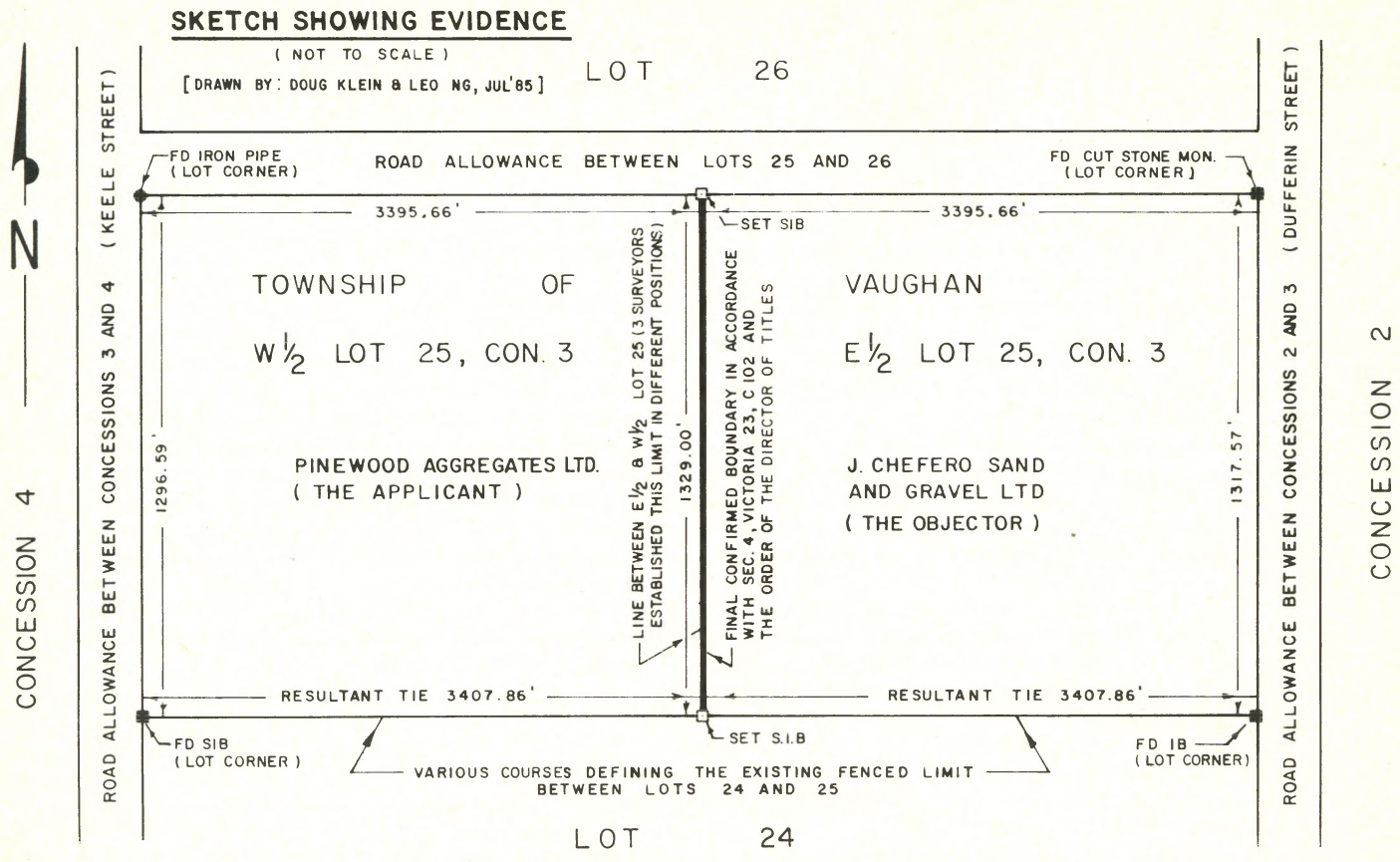
A third position of the disputed boundary was shown on a plan of survey by surveyor C, produced at the hearing. Testimony by surveyors Y and M showed that neither surveyor re-established the disputed boundary on the basis of acceptable best evidence. No fence line was ever established along the disputed boundary nor was there any definite evidence of occupation. All three surveyors appear to have established the boundary from the calls of the deeds of their respective clients. In any event, the Boundaries Act Tribunal did not accept the surveys by surveyors Y or M as the proper re-location of the disputed boundary. The survey by surveyor C was discounted for similar reasons.

At this point evidence of a boundary agreement of the owners was introduced at the hearing. The Boundaries Act Tribunal commented that, "Regardless of what methods were used by (surveyor Y or surveyor M) both surveys would be incorrect if any agreed line had been established by the owners and this line were not reflected in their surveys." Of course, this point is being commented on prior to the date of the landmark case of Bea v. Robinson et al (1978) 18 O.R. (2d), 12. In any event, the Boundaries Act Tribunal refused to rule on the boundary by agreement and directed the applicant Pinewood Aggregates to apply to a Judge of the Supreme Court to have the legal validity of the agreement assessed. The Tribunal reserved the right to rule in the case should the applicant fail to proceed to the court.

The applicant Pinewood did not proceed to the courts on this point and the claim for a boundary by agreement was abandoned. The tribunal had previously examined the documentary evidence in the chain of title of both Pinewood and Chefero. The Tribunal ruled that the boundary in dispute was, in fact, the boundary between the east and west halves of Lot 25, Concession 3, wherever it might be located. Since there was no physical evidence of the boundary, the Tribunal ruled that it must be established in accordance with the law governing un-run lines in such cases.

The Tribunal therefore directed that the boundary in question be surveyed in accordance with Section 4 of 23 Victoria, Chapter 102 (the 1860 Vaughan Act). The survey instructions stated that " ... the subject boundary is to be laid down as a straight line joining the mid-point of the northerly boundary of Lot 25 with the mid-point of the southerly boundary of Lot 25 ..."

Due to the death of W. Marsh Magwood, Director of Titles, who acted as the Boundaries Act Tribunal in the original hearing and to give both parties to the original hearing a right to appeal survey instructions, a rehearing was held in 1963. Counsel for the applicant Pinewood Aggregates Ltd. objected to the survey instructions directing the joining of the mid-points of the northerly and southerly boundaries of Lot 25.



The new Tribunal reviewed the facts and arguments presented, as follows:

"The Act in question, 23 Victoria, Chapter 102, of May 19, 1860 is stated as being 'An act to confirm certain side roads in the Township of Vaughan, and to provide for the defining of other road allowances and lines in the said Township.' The preamble of the Act states in part:

'Whereas ... it has been discovered ... that few, if any of the side roads ... are upon the true original allowances ..., and also in consequence of the peculiar difficulties and uncertainties attendant upon the litigation of the question of Highways and road allowances; ... it is most desirable, therefore ... to enact as follows:

Surveys of Aliquot Parts of Lots — (4)The boundaries or limits of any aliquot portion of a lot, in any concession in the Township, shall be determined by giving such portions the proportionate length and width of the whole lot as the latter shall have been ascertained in the manner pointed out in this Act.'

"Upon reading the Surveys Act as it existed at the time 23 Victoria was introduced and after reading this special act itself, it appears quite obvious that 23 Victoria was an act to resolve problems. It set up methods for establishing lot lines and side roads, which methods are at variance with the original Surveys Act, but are simple to survey. It established a very sound common sense method of surveying in that particular township. In Section 4, in my opinion, the Act is quite clear in directions and sets up the method of proportionate length and width for the determination of an aliquot portion of a lot.

"Counsel for the applicant stated that Section 4 can only mean that the lot should be divided so that the aliquot parts are determined on an area basis. To give effect to this suggestion would cause Section 4 to be completely meaningless, as at the time this Act was created, the Surveys Act already stated that aliquot parts of lots were to be determined on an area basis. This method of surveying aliquot portions by area is a very time consuming and very expensive procedure. It appears to be reasonable to believe that as the new Act was intended to reduce costs that a new, more practical method of aliquot part division would be introduced. In my opinion, this is exactly what Section 4 does.

"I find many flaws in the suggestion that Section 4 refers to an area division. If the lot is intended to be divided by area, then in what direction is the dividing line to be run? There are no instructions given for the direction of the division line; it could conceivably run diagonally from corner to corner. Analyzing this suggestion from a mathematical standpoint, I find that only when the opposite sides of a four sided figure are parallel can a line dividing the figure into equal areas result in proportionate lengths or widths.

"I reject the suggestion that proportionate length and/or width can be associated with survey instructions which are dependent upon area. The Section provides a method for establishing aliquot lines on the basis of proportionate length and width. It is perhaps of interest to note, that the method prescribed by Section 4 was later adopted by the Surveys Act itself, so that at the present time all regular lots in all sectional systems throughout the province must be divided into aliquot parts **without** reference to area and in accordance with the principal of proportionate length or width.

"Counsel for the applicant made the following statements which I will deal with separately.

> 'Aliquot' by a dictionary definition is a designation of a quantity which will divide into the whole without a remainder. The expression 'aliquot portion of a lot' is further defined in C.S.C. 1859, Chapter 77, Section 68, which reads as follows: etc.

"The definition of aliquot by C.S.C. 1859, Chapter 77, is in my opinion, of no significance at this particular time. Section 4 of 23 Victoria defines aliquot as meaning an area of the lot determined by proportionate length and/or width.

"This Act is designed to wipe out the existing survey methods and definitions and to introduce by statute the methods and principles outlined. Counsel's reference to Babaun v. Lauson, 1868, 27 U.C.Q.B. 399 'C.A.' is in my opinion once again of no significance when dealing with a specific statutory principle.

"Counsel stated:

> 'The phrase 'aliquot part of a lot' having been the subject of judicial interpretation and as Section 4 deals with any aliquot portion of a lot it would seem unwarranted to give to the words which follow that phrase an interpretation which contradicts the judicial interpretation unless the words are incapable of consistent interpretation.'

"I am not aware of any judicial interpretation of the phrase 'aliquot part of a lot' that has been made for lots in this Township based on the Act of 1860. It is not reasonable to assume that the judicial interpretation given for any particular instance can be adopted for another instance unless the terms of reference are identical. To apply such a judicial interpretation to 23 Victoria, Chapter 102, Section 4 would be to contradict specific instructions which are given there.

"Counsel stated:

> 'Section 4 provides that the aliquot portions be given the proportionate length **and** width of the whole lot. It does not say the proportionate length **or** width. Broadly speaking the area of a quadrilateral is determined by the product of its length times its width and it is submitted that only by aportioning equal areas can one be assured that the proper proportion of both length and width has been alloted to each portion.'

"To change the word 'and' to 'or' in Section 4 between the words 'length' and 'width' so that the Section reads 'the proportionate length or width' rather than the 'proportionate length and width', would have the effect of restricting the scope of the Section to aliquot half lot parts. I agree with counsel for the applicant to the extent that when determining north and south aliquot parts, only proportionate widths would be used, and that when determining east and west aliquot parts only proportionate lengths would be used. In these cases either the length or the widths would have to be used. However, in the determination of any aliquot portion smaller than a half lot such as the quarter of a lot or an eighth of a lot or a sixteenth of a lot, then quite obviously length and widths must be used. If Section 4 had used the word 'or' then it would not be possible to determine aliquot parts of a smaller size than a half lot. In its present state with the word 'and', Section 4 provides methods for determining **any** aliquot portion of a lot, which I am of the opinion was the original intention.

"Counsel stated:

> 'In interpretation of the Statute one is under obligation to avoid an absurdity, and with great respect there seems to be some suggestion of absurdity in a proposition that the legislature of 1860 intended the law of the Township of Vaughan to differ from the law of the rest of Upper Canada with regard to the determination of aliquot parts of Township Lots."

"I reject this suggestion that for this special act to differ from the rest of the law an absurdity is created. One has only to read the Act itself to realize that the legislature of 1860 most certainly did intend to alter the existing law. If the existing survey law of 1860 had been satisfactory there would have been no necessity for this special act itself.

"If as suggested by counsel, Section 4 creates an absurdity be differing with the established law of the time, then all the other sections of the Act must also create absurdities; they most certainly do not agree with the existing survey law of that time, but set up new principles and new methods to establish lines in the township.

"Counsel states:

> 'We respectfully submit that the words 'any aliquot portion of a lot' are the controlling words of Section 4, and the words having been defined by Statute, and the Statute having been subject to judicial interpretation, the surveyor ought to be instructed to follow the principle enunciated by Mr. Justic Morrison in Babaun v. Lauson when making his survey according to the Statute of 1860, Victoria 23, Chapter 102.

"The principle enunciated in this particular court case can not be reconciled with the principle provided in Section 4 of 23 Victoria. If the aliquot portion of the lot is to be the aliquot portion of the area of the lot then specific instructions must be given for the determination of the boundaries of such parts. Without such instructions or rules to follow, obviously an infinite number of determinations of the division line is possible where the whole is not a parallelogram. The words 'proportionate length and width of the whole lot' in Section 4 do give the necessary instructions to follow in determining the boundaries of any aliquot part, and are in my opinion, without ambiguity and quite clear in the survey method they prescribe."

The Tribunal reaffirmed the order of the original Tribunal stating: "The subject boundary is to be laid down as the straight line joining the mid-point of the northerly boundary of Lot 25 with the mid-point of the southerly boundary of Lot 25 ..." The final confirmed boundary is shown in heavy outline on the sketch.

APPEAL

The case did not rest there. Pinewood Aggregates Ltd. appealed to the High Court of Justice. At appeal counsel for Pinewood argued that the two aliquot parts of Lot 25 must be equal in area and cited the Consolidated Statutes of Canada, 1859, c.77, s.68, which

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provide for this method and the case of Babaun v. Lauson 1868), 27 U.C.Q.B. 399, which upheld it. Counsel further argued that Section 22 of the Surveys Act, R.S.O. 1960, c.390, overides Section 4 of the 1860 Act.

Counsel for Chefero argued that the Act of 1860 must prevail by reason of it having a particular rather than a general application directed to the special circumstances arising in the Township of Vaughan and by virtue of the fact that it was enacted subsequent to C.S.C. 1859, s.68. Counsel for Chefero therefore agreed with the method laid down by the Boundaries Act Tribunal joining the mid-points of the northerly and southerly boundaries of Lot 25.

The court focused on the question before it stating, "The issue in this appeal is plain. Was the Director of Titles justified in basing his instructions as to survey on s.4 of the Act of 1860 as contended for by Chefero, or should he have adopted the principle established by s.22 of the Surveys Act as contended for by Pinewood?"

The court provided its answer in the following summation and judgement:

> "I am of the opinion that this appeal must fail and the application must be dismissed. Looking at the Act of 1860 as a whole, it is clear that a permanent and prevailing scheme was adopted for the special situation arising in the Township of Vaughan. It deals specifically in s.5 with the validity of surveys made prior to its own enactment and it was not argued before me that its effect was exhausted by the completion of the survey which was required within twelve months of its passing in s.2. In any event, I find that the necessary intendment of s.4 was to lay down a system of determining aliquot portions for the future because it would be absurd to suggest that such a departure from the normal practice would be confined only to aliquot parts established prior to its enactment and here perhaps I should mention that the west and east halves of Lot 25 were patented in 1831 and 1840 respectively. It remains to be seen whether the effect of s.22 of the Surveys Act is such as to repeal the special Act of 1860.
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> "The principle of generalia specialibus non derogant is dealt with in Maxwell on Interpretation of Statutes, 11th ed., pp. 168-9 in inter alia the following words:
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> > It is but a particular application of the general presumption against an intention to alter the law beyond the immediate scope of the statute ... to say that a general Act is to be construed as not repealing a particular one, that is, one directed towards a special object or a special class of objects. A general law does not abrogate an earlier special one by mere implication ... Having already given its attention to the particular subject and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language, or there be something which shows that the attention of the legislature had been turned to the special Act and that the general one was intended to embrace the special cases provided for by the previous one, or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act. In the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for by the special one.
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> "None of the tests here provided are present in s.22 or as far as I can see in any other section of the Surveys Act and one may go further and say that the whole tenor of the Act of 1860 shows that the Legislature was conscious of the departure being made in the case of the Township of Vaughan from the general principles of c.77 of the Consolidated Statutes of 1859. Consequently, I think that the learned Director of Titles was correct in his application of s.4 of the Act of 1860 to the situation of Lot 25 and that his instructions for survey should stand." [1964]/O.R. 83 at pp. 86-88.

Confirmation and Condominium Section
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