

POSITIVE PRESS

A HOME MAY BE YOUR CASTLE BUT IS THE LOT YOUR LAND?

By Burt Dowsett of the London Free Press

THE METAL detector in Rob Stirling's hand emits the tell-tale sound. Steel ... just below the surface. After two or three scoops from Dan Caldwell's shovel, the old steel survey stake is exposed.

Within a few more minutes, two more survey stakes are found by the same method.

Looks easy.

The May sun is shining brightly and it beats pushing a pencil behind a desk.

Stirling, a graduate of the University of Toronto in surveying and Caldwell, a certified survey technician, like their work and enjoy the outdoors. But they also point out that the weather isn't always nice ... and it isn't always easy.

Take the middle of winter, for example, when there is almost a metre of snow on the ground. Boundary lines are often at the edge of driveways. Snow is piled beside driveways. Snow freezes to ice. Sometimes they have to go through a lot of ice and snow and then dig into the frozen earth to find those stakes.

And when they do find them they may not be so valuable after all.

They may be like several of the stakes they have found on and near the property they are surveying on Baseline Road in London - bent.

Bent stakes are suspect, Stirling tells you, explaining "A bulldozer could have dinged the top of it."

The survey team must look further for evidence to determine exact boundaries.

The two men go several lots up and down the street from the lot they are surveying, finding old survey stakes, checking how they conform with "occupation" indicators such as fences and hedge lines.

"How far do you go, Wellington Road?" asks Stirling, and then answering his own question, adds: "You go far enough that you're convinced you've got a good fabric."

If survey stakes are suspect, the problem can be solved by finding two good corners and working from there, measuring the total distance and measuring off the lots. If the block is measured from end to end and every lot conforms, the surveyors are confident that they have a good basis for their opinion on the boundary. Measuring is often done electronically with an electronic distance measuring device (EDM).

The field work in surveying a residential lot takes about six hours, but maybe only a couple of those hours are spent on the individual lot, the rest on nearby properties. Stirling says because a homeowner may only see the surveyor for those two hours he sometimes thinks he is overcharged when he gets his bill, which usually starts from a low of \$450 and goes up from there.

Before the field work begins, the surveyor has picked up notes from other survey firms that surveyed the property or nearby properties several years before. Also, he will have gone to the registry office and searched the property for a description of the land to determine the dimensions of the property, and will have examined all abutting ownerships to ensure that their descriptions conform with others with no overlaps or gaps. He may also have studied plans of the subdivision.

Any conflict must be traced.

After the field work is done, the calculations are made, at least one new survey stake is hammered into the ground in a front corner of the property, a survey plan is drawn up and a report written. The plan will show boundaries, what is on the property, physical features, property dimensions and any encumbrances such as easements or rights of way. Stirling also shows buildings on each side of the property in question, although this is not standard.

Stirling says the demand for an up-to-date survey usually originates from one of three sources.

- The registry office will not store a deed for a property transaction unless it accurately describes the land in question.

- Financial institutions such as banks may ask for a new survey before issuing a mortgage in order to protect their investment. Loans should not exceed the value of the property to be mortgaged. He tells of a case in which a new survey revealed that a garage was on a neighbour's lot, thus de-valuing the property to be sold. In another case a swimming pool was over a utility easement. The utility company had the right to excavate the lands for servicing, even if it meant going through the bottom of the pool.

- The homeowner may want a new survey if he intends to build a fence, garage or an addition.

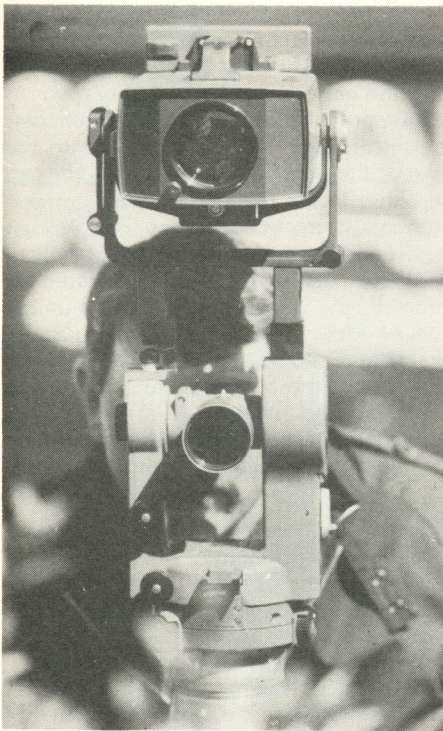
John Bishop, mortgage manager of the City Centre Canadian Imperial Bank of Commerce, says his bank's position is if you protect the customer's interests you are also protecting the bank's interests.

He says he won't always ask for a new survey, but will ask the lawyer if he is satisfied that the title is clear and the survey is correct, that there are no buildings or fences infringing on property lines. Sometimes the lawyer will ask for a new survey.

Bishop says non issues sometimes become issues when properties change hands. "If somebody has built a fence and it's on his neighbour's lawn, that may be fine as long as the two of them are there and get along. But the new owners may not be compatible."

Lawyer Stewart Thomson of Haskett, Wolfe, Chinneck and Thomson in London, says that generally a lawyer will accept an old survey (if it is not too old) and use it provided it does not show problems such as encroachments or zoning problems. If it shows a problem he will ask for a new survey, which may clear up that problem.

But the survey is critical in determining the actual property boundaries. Explains Thomson: "I can certify to you that you own a chunk of land. But as a lawyer it is hard for me to say what that chunk of land is."



Dan Caldwell sights a line on a theodolite.

This is where the surveyor comes in.

John Boyd, deputy director of the Association of Ontario Land Surveyors, looks at the surveyor's role this way: "The doctor tends his patients and the lawyer is responsible to his clients. But the surveyor has a broader scope. The boundary does not affect just you but you and your neighbour."

Boyd says there are 675 licensed surveyors in Ontario. He says requirements for licensing have changed over the years. Once, high school graduation plus four years of apprenticeship under a surveyor, during which time the applicant had to write association-administered examinations, would qualify a person as a surveyor. Then some courses from a community college were required before apprenticing. Finally, in the early 1970s, it became mandatory to graduate with a bachelor of survey science degree from the University of Toronto, the only university offering this course.

Boyd says there seems to be more awareness on the part of the public "in verifying what they're buying."

Stirling explains it this way: "A square foot of land wasn't worth much a few years ago. Today it is."

Since graduating from Toronto in 1978, Stirling has worked with other survey firms until he and Caldwell started out on their own with R. D. Stirling Surveying Ltd.

Back on the site, Stirling and Caldwell are continuing their work.

Apart from the use of the metal detector, the shovel, the tape measure, the EDM and the theodolite (a device for sighting down lines and reading angles) there is people contact.

A man walks over while they are unearthing a survey stake on his property just beside a hedge. He tells them that he was always told the hedge was on his neighbour's property and the old stake backs it up. Things are starting to match up.

But old survey stakes - "original survey monuments" as they are called - are just one factor. In fact, they rank second behind natural boundaries in the "priority of evidence".

Says Stirling of natural boundaries: "If a deed says a person's property stretches to that rock cliff over there, then there's no mistake."

Third on the priority of evidence list is "occupation" such a fence lines. "If you can see a pattern (of fence lines) evolving ... they're all matching," this is good evidence that they are all matching the deed lines, Stirling explains.

The fourth item is dimensions of properties.

Stirling says a surveyor's finished product is just his "opinion" on where the boundary is.



R. D. Stirling, O.L.S.

Appeals, when there are two conflicting surveys, go before a Boundaries Act hearing. When this happens it usually involves expensive commercial properties, because costs of such actions usually discourage homeowners from settling differences this way.

However, interesting disputes do develop.

Stirling recalls an instance when a homeowner saw red because he felt his neighbour's house encroached on his property by five inches.

Suddenly that side of the neighbour's house and five inches around each corner got a new coat of paint - pink. ●



Above is an electronic distance measuring device which is mounted on the theodolite.