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# "THE FOX WAS NOW AMONGST THE CHICKENS"

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(A RISK TO THE PUBLIC)

BY LORRAINE PETZOLD, O.L.S.

A RECENT COURT case brought home, very clearly, the risk (or threat) a surveyor can pose to the public if he ignores the basic rules for the re-establishment of boundaries. The above quote, forming the title of this article, is from a court case on which the decision was given in June of 1987 regarding the north one-half and south one-half of a Lot in a Land Titles area.

The parcel was divided physically by a road running in an east-west direction with fences on both sides of the road. For approximately eighty years those who occupied the north half of Lot 3 had been physically separated from those who occupied the south half of Lot 3 by this public road. For approximately sixty years it was thought by those concerned that the road in question marked the dividing line between the north and south halves of the Lot.

In 1978, an Ontario Land Surveyor appeared on the scene and theoretically established the limit between the north one-half and the south one-half of the Lot at a considerable distance north of the road. As the judge stated in his decision, "a fox was now amongst the chickens".

The judge went on to indicate that he took exception to the survey undertaken in 1978, as he pointed out the

surveyor gave no indication of finding any original monuments on that line and he disregarded the evidence of possession. Quoting from this case, the judge stated "He appears to have disregarded a sixty year old line fence along the north side of the road, a sixty year old fence running parallel to, but forty-six feet west of what he considered to be the eastern limit of Lot 3, and a forty year old line fence running north and south on the westerly side of the parcel and a sixty year old fence running down a bush line ninety-seven feet to the east of what he considered to be the westerly limit of Lot 3." The judge further went on to point out that the function of the surveyor, in placing new monumentation, is not to define the limits as mathematically described in a deed, but rather to re-establish the original limit. He stated, "If the lawyer or the surveyor fails to acknowledge that distinction, then misery will descend on the land."

Justice Wright then quoted substantially from *Homebank vs. Might Directories Ltd.* He also noted that the field notes of the original survey gave no indication that the line between the north half and south half was laid out at the time of the original survey, and he did not find this unusual as the settlers themselves were often held responsible for the establishment of the interior lines. Occasionally, these were run several years subsequent to the original survey.

The Judge also pointed out, quite emphatically, that the description of Registered Land in Land Titles is not conclusive, any more than it is in the registry system as to the boundary or the extent of the land. He states that "If the description of the land does not match the land as acknowledged on the ground, that it may well be that it is the description that is wrong."

We still have the "foxes amongst the chickens":

— surveyors who insist that they need not consider case law precedents in re-establishing boundaries

— surveyors who insist that evaluation of evidence is different under Land Titles than Registry

— surveyors who insist that the rules of evidence are different in the country than in the city

— surveyors who insist that once the block is established, they can always proportion from end to end.

These "foxes" are wrong in all of their assumptions. To give a professional opinion, one must know the law, the statutes and the standards for surveying and apply them. Otherwise, one is not giving an opinion but rather a professional guess. ●

**Note: This case was reported in the July 17 issue of The Lawyer's Weekly under the heading "Surveyor Used Correct Math But Wrong Method".**

**A copy of this case may be obtained from the Association offices at no cost.**