

Educational Corner “Stones”

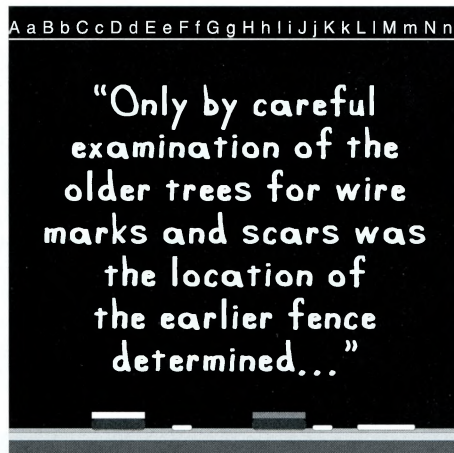
Fences...

By John Middleton, OLS, Consultant, Survey Review Department

A Comprehensive Review can be viewed as an audit, similar to a financial audit, which compares a practice's work with pertinent regulations and accepted common practice. As you can imagine, the style and content of the plans and field notes examined by the Survey Review Department, during Comprehensive Reviews, vary considerably. Data collector output, total station surveys with manually recorded measurements, and conventional field notes showing parallel offsets and closed figures are all encountered regularly. Despite these differences in format, there are often issues common to many surveys.

One such issue relates to fences and how they are dealt with or ignored by surveyors. Railway fences are a good example of the diversity of views held by surveyors about fences as evidence of boundaries. There are instances where railway fences are held as the best evidence of railway boundaries and other instances where railway boundaries are set at deed width from centreline. The latter method is based on the view that many railway fences are fences of convenience, built by the railways entirely on railway lands, to preclude cattle wandering on the lands, and to allow the railways to maintain the fences at their discretion. Additionally, officials of some railways have insisted, when reviewing CTA and LTO First Application reference plans of adjacent lands, that the railways should be given deed width from centreline of track, regardless of the position of the fences. They rely on a provision of the Railway Act which prohibited the alienation of railway operative right-of-way except with the consent of the Privy Council, although that section of the Act appears to have been intended to prevent the disposal of unprofitable branch lines rather than to control the retracement of boundaries. Regardless of the interpreta-

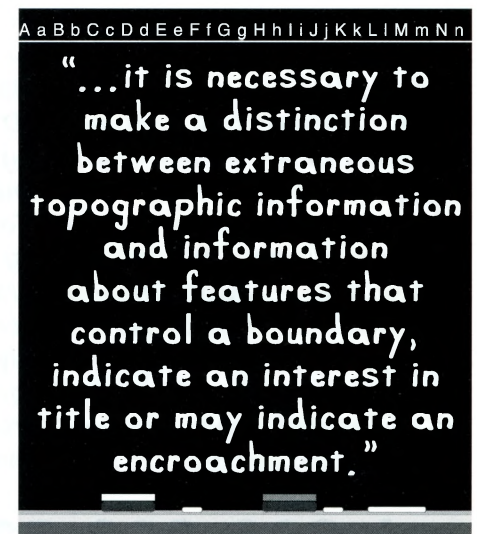
tion of the Act, many surveyors now accept the railways' position and re-establish railway boundaries at deed distance from centreline of track, except in the case of extra lands such as borrow pits and old station grounds. In those cases fences are often adopted as the best evidence of the original limits of the lands.



Railway fences are not the only examples of fences of convenience. Another example is an incident where a surveyor, in the process of monumenting a fence between two lots in a single front township, was stopped by the owner of the lands with the statement that the fence was not on the lot line. It appears that the owner and his neighbour had undertaken to renew an earlier fence and had agreed, due to the trees, shrubs and underbrush along the fence, to rebuild at one side of the tree line. Over time the new fence had become overgrown and gave every impression of being reliable evidence of the original location of the lot line. Only by careful examination of the older trees for wire marks and scars was the location of the earlier fence determined, work that would not have been undertaken without the input of a knowledgeable resident.

The manner in which surveyors evaluate and record the details of fences, hedges and retaining walls is also a common

issue noted during Comprehensive Reviews. In discussing this matter, it should be noted that O.Reg. 42/96, S.21 (1) (a) and (b) requires that all topography that forms, controls or marks a boundary, that may indicate an interest in title, or that indicates an encroachment, shall be shown on a plan, and that survey data necessary to define the position of the feature is to be shown. As defined by S.16 of the Interpretive Guide to O.Reg. 42/96, this section of the Regulation means that all fences, hedges and retaining walls, other than those dividing the interior of a parcel, are to be shown on every plan with ties from the feature to the limits of the parcel or with a note indicating the feature is on line, if such is the case. This does not preclude showing the full details of a fence enclosing a pool on a Surveyor's Real Property Report, as that information may be important to show compliance with municipal by-laws.



Occasionally there is confusion regarding the illustration of topographic information on plans to be deposited or registered in a Land Registry Office. Files under review often include a Surveyor's Real Property Report and a reference plan of a site, the SRPR showing fences

not illustrated on the reference plan. This variance in presentation of salient features may stem from an incorrect interpretation of O.Reg. 42/96, S.21(2), which states that topographic information not required under clause (1)(a) of the regulation shall not be shown on plans to be deposited or registered. Here it is necessary to make a distinction between extraneous topographic information and information about features that control a boundary, indicate an interest in title or may indicate an encroachment. The latter features need to be clearly shown on every plan of survey, including their dimensional relationship to the boundary.

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Another circumstance in which the significance of the position of a fence could be misconstrued is in old town plots or subdivisions where there are long-standing fences and little remaining evidence of the original survey. In those cases considerable research is often undertaken, coupled with good local knowledge, to determine whether the fence is evidence of the original limit or just an old fence. Unfortunately, few surveyors' reports or field notes adequately detail the extent of research made, or persons interviewed, in connection with such old fences or other conflicting long-standing occupation. This information, which directly relates to the evidence used to retrace the boundary, should be recorded for future reference.

It should also be mentioned that occasionally surveyors adopt old fences as boundaries simply because they are old. The assumption here, and it is a dangerous assumption, is that adverse occupation has established a boundary in the location of the fence and that the extent

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of title is the fence, regardless of the extent of paper title. An example of the erroneous adoption of a fence as a boundary occurred where a ten acre parcel, severed sometime around 1975 by metes and bounds from a farm, was surveyed. The sidelines appeared to be fenced in conformance with title, but the rear fence, adopted by the surveyor as the best evidence of the rear of the property, was significantly less than deed distance from the front of the property. Subsequent investigation of the fence at the rear of the property revealed that it was a pre-existing farm fence left in place after the severance. Effectively, the fence had no significance as evidence, despite the fact that the adjacent owner, the vendor of the ten acre parcel, continued to cultivate the lands beyond the fence. In this case, the plan of survey should have shown the boundaries as described in the deed as well as the position of the rear fence and extent of cultivation. The fact that the owner of the ten acre parcel did not use the land beyond the fence near the rear of the property did not mean the fence was evidence of the original position of the rear limit of the property. Further, the cultivation of the land beyond the fence by the adjoiner, possibly for an extended period of time, did not automatically convey title to the adjoiner.

Fences etc., whether they are accepted or rejected, need to be researched to ascertain their status and how they came to exist, and to determine their significance to the retracement. These research efforts and survey decisions should be well documented, while the relative location of the feature is fully illustrated on the resultant plan.



Upcoming Events

August 12

Articled Students Workshop

September 10

South Central Golf Tournament

September 14 and 15

AOLS Council Meeting

September 16 - 18

AMLS AGM, Winnipeg

September 19 and 20

CCLS Director's Meeting,
Winnipeg

September 23 and 24

Articling Students
Lecture Course

October 23

Geodetic Picnic

October 29

South Central Regional Group
Meeting

October 29 - 31

ANSLS AGM, Halifax

November 16 - 17

AOLS Council Meeting

November 26 - 27

Professional Exams

December 3

Construct Canada Seminar
"A Team Approach to Avoiding
Costly On-site Construction
Errors"

**Check the AOLS website for
details and more listings.
www.interlog.com/~aols**