

Knowing Your Limits — Researching Municipal and LRO Boundaries

By Richard Jordan and Ken Greenberg

The boundaries of Ontario's municipalities and Land Registry Offices are not frequent subjects for discussion among surveyors - or just about anyone else for that matter! Those officials whose job it is to administer local governments and LRO's know with fair certainty where their boundaries lie and they rarely face questions about them.

But anyone who has had occasion to actually try to retrace these boundaries can face a bewildering array of documents, dating from the late 1700's to the present day, including proclamations, bylaws, statutes, regulations, Orders-in-Council, Ontario Municipal Board (OMB) decisions and amendments of OMB decisions among others.

And finding those documents is only the beginning. Often the boundary descriptions do not match each other, or contain errors, resulting in overlaps or gaps. Some of these problems have remained hidden and unresolved for decades simply because no one is aware of them.

This article is a work in progress by two students of municipal and LRO boundaries. Between us we have more than 10 years of experience researching them for Teranet Inc. and for some of the municipalities themselves - but we find we are still learning every day. In this article, we will include the historical background of Ontario's municipalities, some tips that might save time and some personal observations as we go along.

There are no text books on this sometimes frustrating and usually fascinating subject and all comments from readers will be most welcome.

Before we begin, we should clarify some terminology. When a municipality is created or has its status upgraded from, say a town into a city, the municipality is said to have been "erected".

When you add land to a municipality it is known as an "annexation". Similarly when you take away land from a municipality, it is called a "detachment", and when a municipality ceases to exist, it is known as a "dissolution".

Municipal Boundaries In the 1800's

Prior to the 1830's, there were no municipal corporations in Upper Canada, only large Districts (first created in 1788) and Counties (created for administrative, not municipal, reasons after 1792). Municipal business, such as it was, was conducted by Justices in the Courts of Quarter Sessions, aided in some places by annual township meetings. A number of towns were granted police status but, despite the name, this didn't refer to law enforcement. The word 'police' in this context meant administrative control. For example, property taxes could be levied for certain limited services such as fire protection. The first two actual municipal corporations in the province were the City of Toronto (1834) and the Town of Kingston (1838), both established by individual statutes of Upper Canada.

In the 1840's, the whole issue of municipalities was tied into the debate about responsible government - remember, in this era William Lyon Mackenzie and the Rebellions of 1837 were still fresh memories. After at least one failed attempt, two pieces of legislation were finally passed in 1849 that laid the foundation for municipal government - and municipal boundaries - in Canada West.

The first, formally known as the *Municipal Corporations Act* (also called the Baldwin Act), allowed for the formation of municipal townships, villages, towns and cities. The old Districts were abolished. The second piece of legislation was the *Territorial*

Division Act, which specified the boundaries of the new Counties for municipalities and the courts.

Apart from its municipal role, the Territorial Division Act was vital for dispensing justice. Territorial boundaries that were set in the middle of the Great Lakes, for example, did not give municipalities powers there. But if a crime were to be committed on one of the lakes, the authorities would have a basis to decide in which jurisdiction the suspects would be tried.

January 1, 1850 marked the beginning of many municipal townships. In this era, the geographic township (as first laid out by the original surveyors) was seen as being the ideal size for a local municipality. The population was large enough to support self-government and, equally important, it was usually less than a day's journey between any two points in the township. However, there were no boundaries specified for these new municipalities and one was left to assume that the limits of the geographic townships, as laid out by the first survey, also formed the limits of the municipal townships. Luckily a majority of townships could be easily divided down the centre line of the original road allowance surrounding them.

Most municipal townships were organized within a single geographic township, but there were exceptions. Some large geographic townships were divided in two for municipal purposes. For example, the geographic Township of Williams became the municipal Township of East Williams and the municipal Township of West Williams. Occasionally, an entirely new municipal township might be created from parts of two or more geographic townships. For example, the most southerly concessions of the geographic Township of Adelaide and the most northerly concessions of the geographic

ic Township of Ekfrid became the municipal Township of Metcalfe. The limits of townships created in this manner were also usually the centre-line of the dividing road allowances.

This leads us to a key principle - a municipal township is not the same thing as a geographic township. The boundaries of a municipal township can be changed like those of any municipality, but almost without exception the limits of a geographic township remain inviolable.

As the counties became established, some populated centres applied to their County Council to become incorporated. The usual process of incorporation began with a County by-law resolving that a certain area - defined with a rough legal description of the lands involved - be granted the status of a village, town or city. This by-law would then have to be approved by the provincial legislature and a separate statute was then passed for each new municipal corporation.

There was another class of settlement that wasn't a municipal corpora-

tion at all - the police village. Again, the word 'police' meant administrative control not the hiring of a village constable. Police villages were given limited self-governing powers, for example the ability to raise separate tax monies to support a water or sewage system, but nevertheless, for all other purposes they remained part of the surrounding municipal township.

Once municipalities were established and growing, it sometimes became necessary to expand their boundaries by annexing more land. This would generally be done by statute but it could also be accomplished by an Order-in-Council published as a proclamation in the (Province of) *Canada Gazette* prior to Confederation or the *Ontario Gazette* after Confederation.

Some municipalities grew too quickly, absorbing surrounding lands in the expectation that the building of a railway, for example, would lead to rapid growth. If the growth didn't happen, property owners in the annexed

land might balk at paying their taxes at town or city rates and could lobby to rejoin the surrounding township municipality. The mechanism to do this was the detachment statute, a piece of legislation similar to an annexation statute, but it had the effect of taking lands out of a municipality.

Ontario even has a municipality that was established under the legislation of another province. The Township of Rat Portage, named for the abundance of muskrat in the Winnipeg River Basin, was established under the Manitoba *Town Corporations Act* in 1882. It was renamed the Town of Kenora in 1905 (taking the first two letters of Keewatin, Norman and Rat Portage). When the boundaries of the province of Ontario were finally extended after much debate in 1912, Kenora officially became an Ontario municipality.

Municipal Boundaries

After 1900

During the last years of the nineteenth century and first years of the twentieth century, the trend towards urbanization

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in Ontario accelerated. As a result, the Ontario government established the Office of the Provincial Auditor in 1897 to supervise municipal account keeping. The Ontario Railway and Municipal Board (later called the Ontario Municipal Board or OMB) followed in 1906 to help guide urban growth.

Under the *Municipal Act*, one of the duties of the OMB involved supervising municipal annexations and detachments. Although the creation of municipalities was still done by statute, legislation was no longer mandatory for changing municipal boundaries.

The OMB process had several steps. First, a municipality or group of municipalities would make a request for a boundary change and the OMB would open a Procedure File with a tracking number such as P.F.M. 123. A notice of a hearing would be published with a legal description of the affected lands. (The novice researcher must be careful not to confuse the proposed boundary with the final boundary described in the Board decision - they may well be different.)

The second step involved a hearing to get input from all the municipal officials and affected residents. Becoming part of an urban municipality generally meant higher land values and better services but it also meant higher taxes, so some residents might object to being included in an annexation while other landowners might object to being excluded.

The final step was the decision of the Board on the annexation complete with a legal description of the lands involved. Again the researcher must exercise care because there are many cases where an apparently 'final' decision was subsequently reviewed and the boundary of the lands in question was amended.

During another period of great municipal growth - the 1960's - Ontario's Ministry of Municipal Affairs (now the Ministry of Municipal Affairs and Housing) began to review all the municipal boundaries in the

province in a systematic manner. Municipal boundary history maps were drawn up at a scale of 1:50,000 for each county showing (in a coarse way) the municipal boundaries of all incorporated villages, towns and cities and listing all the documents which created them. These maps were kept up to date until about 1980 and are no longer available.

In addition, John E. Jackson O.L.S. was hired by the Ministry to write complete legal descriptions for hundreds of municipalities to help them better define their boundaries. He wrote dozens of excellent descriptions for smaller municipalities and made great progress in resolving problems in areas of the province that had uncertain boundaries such as some parts of Eastern Ontario.

Jackson's work was used extensively in conjunction with two pieces of new legislation. The *Municipal Corporations Quieting Orders Act* could confirm or change boundaries between municipalities and the *Municipal Boundary Negotiations Act* could be used to negotiate most annexations in place of an OMB hearing. In this era, the Ontario Municipal Board only held hearings for major boundary changes in large municipalities or counties.

Although many problems in municipal boundaries were resolved by the first-mentioned legislation, we have uncovered (so far) no less than three examples of pairs of apparently valid Quieting Orders for adjacent municipalities, which disagree with each other!

In the 1960's, Ontario Regulations under the *Municipal Act* became the vehicle for most annexations and detachments but you can also find Ontario Regulations made under the *Municipal Boundary Negotiations Act*. The legal descriptions they contained were of a higher standard than that of the earliest documents, however many were written by technical personnel rather than Ontario Land Surveyors and they oftentimes contain errors, uncertainties and ambiguities.

Beginning in the late 1960's, several counties were given regional government. Each new Region had a statute, which overhauled the number, the names and the boundaries of its constituent municipalities. Any subsequent change in the boundaries of municipalities within a Region was done by an amending statute.

The most recent round of changes in municipal boundaries took place in the mid-1990's when many smaller (and not so small) municipalities were amalgamated. Many of the minor changes were made by Minister's Order, which appeared in the *Ontario Gazette*. Major changes were effected by legislation, such as the statutes, which created the 'new' cities of Toronto and Hamilton, for example.

Ontario's new *Municipal Act* of 2001 changes the way that municipal boundaries are defined and altered. Like many other aspects of local government, changes no longer take place through statutes but are accomplished by Ontario Regulations. In addition, as of January 1, 2003, the venerable *Territorial Division Act* has been revised and downsized so that the names and descriptions of geographic divisions will be now prescribed by Ontario Regulation rather than by the statute itself.

Assembling Data and Municipal Boundaries

A municipal boundary is like any other boundary in that it requires proper research. But where do you find the documents and how do you put them all together?

The municipal Clerk or Solicitor's office should be a good starting point, but the researcher's success here often depends on the knowledge and ability of municipal staff. It's also worth checking to see if some of the relevant documents have made their way into the local Land Registry Office. The Archives of Ontario is another beneficial source of information and the excellent staff there can be invaluable in locating obscure documents. Local libraries and museums, law libraries

and large out-of-town libraries such as Toronto's Central Reference Library are also helpful.

If you should happen to acquire a Municipal History Boundary map produced by the Ministry of Municipal Affairs and Housing (mentioned above), it will give you a list of all the historical documents and a 'snapshot' of how the municipal boundary looked in about 1980. Unfortunately, these maps were not updated and are not currently available from the Ministry. They can sometimes be found at municipal offices however.

Also very useful are Connecting Link Plans produced by the Ministry of Transportation of Ontario. They were made to illustrate the limits between municipal and provincial jurisdiction for highway maintenance purposes before the recent round of highway 'downloading'. They are particularly good because they show the relation of lots, concessions and registered plan fabric to the municipal boundaries.

On-line resources include www.e-laws.gov.on.ca for current Ontario Statutes and Regulations and www.ontariogazette.gov.on.ca for the *Ontario Gazette*.

Also, plans and documents held at the Survey Records Office of Ontario's Ministry of Natural Resources and plans held by private surveyors can be invaluable.

Finally, there is also a new digital product produced and maintained by Land Information Ontario in partnership with the Ministry of Municipal Affairs and Housing, the Ministry of Natural Resources and Statistics Canada. This is a compiled product, having an accuracy of plus or minus 50 m. in the south part of the province and plus or minus 75 m. in the north.

Once assembled, all the maps and legal descriptions have to be interpreted to make a coherent boundary. Each case will have its own difficulties but here are a few common problems:

Many early legal descriptions did not refer to road allowances, just to the

lot and concession fabric adjacent to the roads. These documents seem to be based on the premise that all roads completely within an annexed area and the half roads adjacent to the outer boundary of an annexed area would be included in the annexation.

But, perhaps because this premise was never "spelled out" anywhere, it led to uncertainty. Eventually, annexation documents involving roads carefully specified which parts of which road allowances were to be included within the municipality.

However, today you often find a situation where an older, unclear, annexation is followed by another annexation document, which does not attempt to resolve (or even acknowledge) a problem with roads that may or may not be already included within the municipality. The result can be gaps and overlaps.

Another common situation is where a current municipal boundary has been arrived at by means of a detachment. Although it seems easier to simply plot

the final boundary from the detachment document, the best approach is to plot out the previous annexation first, then the detachment. This way you can be certain about what lands are and are not included in the municipality.

Water bodies have often been used to define municipal boundaries and this adds a whole new category of problem to retracement. The governing feature is usually the edge of water or center thread of the stream at the time the boundary came into effect, but good evidence of where this is (or was) must be also be obtained.

One useful bit of supplementary evidence to help reconstruct difficult municipal limits is the description of ward boundaries. The same documents that set the boundaries for the municipality also often set the boundaries for electoral wards within the municipality. The ward boundaries are not, of course, binding on the outer municipal boundaries, but they speak to the original intention of the parties involved.

In the case of municipal townships, which follow the boundaries of geographic townships, there are many problems with uncertainty in the survey fabric. Old notes by Crown surveyors can be incomplete, unreadable or even contradictory. For example, in the case of some road allowances, you might need a court decision to be certain if they even exist. There are also problems with missing original field notes, especially in the case of privately surveyed tracts, and other problems such as misnumbered Lots and Concessions and so on.

Earlier documents, which spell out the limits of First Nations lands can be unclear. Whether it was due to the haste in which they were drafted or the low value of the land at that time, mistakes were widespread here. Issues about the existence of road allowances alongside First Nations lands are a common problem.

Finally there are the problems inherent in all legal descriptions, such as errors or omissions in metes and bounds descriptions (e.g. necessary conjunctive terms such as "production/

continuation/prolongation of" may be missing), ambiguous or non-specific wording (e.g. "thence across the river"), references to former land owners (e.g. "thence to the westerly boundary of the property used as a pig farm by Orville Thurtle"), or to reference objects that are no longer there (e.g. "thence due north from the old oak tree on top of Sayer's Hill") or to plans that never entered the Land Registration system.

The answers may be found through further research - in the notes of older surveyors, in the records held at the Land Registry Office or at the Ministry of Natural Resources in Peterborough - but, as always, a final decision can be found by referring the contentious matter to the courts.

Land Registry Office Boundaries

The limits for Land Registry Office divisions are set by Section 4 of the *Registry Act*, R.S.O. 1990, c. R20, and by Section 4 of the *Land Titles Act*, R.S.O. 1990, c. L5. As a general rule, LRO boundaries reflect current municipal boundaries. This is not to say that a change in a municipal boundary will require a change to an LRO boundary however. Only where a municipality annexes land, which lies in an adjacent LRO will the LRO boundary eventually be amended; nor will the change be automatic. Each Act specifies that "no alteration in the boundaries of any riding, electoral district or municipality alters or affects the boundaries" of any Land Titles or Registry division.

The Minister of Consumer and Business Services can make changes (including the amalgamation or splitting of divisions, the transfer of lands between divisions and transfer of records between offices) by means of regulations under the two Acts.

Although meant to operate together, in the real world changes to municipal boundaries and subsequent changes to Land Registry Office boundaries can operate at different speeds. It may be many weeks or months before a municipal annexation is finally recog-

nized by a change in LRO limits. At some point, all the land records regarding the annexed area must be sorted out at one LRO and transferred to another.

Generally, the legal descriptions contained in these regulations are clear, but all the same ambiguities and problems that municipal boundaries are subject to (as discussed above) can occur here as well, especially if the regulations make reference to the municipal annexation documents.

Conclusion

Uncertainty in boundaries can lead to uncertainty in the administration of government services and, in some cases, to uncertainty in the administration of justice.

For example, there is today a major street in a small Ontario city that has a speed limit enforced by the local police. They regularly hand out speeding tickets and other traffic citations there. However, if the issue were ever raised in court, the municipality would have a very difficult time proving its jurisdiction over that street. It is one of those situations where a road allowance was not specifically included in an annexation. Any case would most likely be thrown out of court. Although the municipality was informed about this problem about five years ago, nothing was ever done about it. One can only wonder what might happen if a more serious crime was committed on this particular street.

Researching municipal and Land Registry Office boundaries is not an easy task. There is always the risk that the results may not be conclusive. But it is necessary for government agencies to be absolutely sure of what they administer.



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