



Bob Aaron bob@aaron.ca

March 27, 2004

It's true: Some fences make very bad neighbours

Property lines must be accurate

Licensed surveyor is best protection

A recent decision of the Ontario Court of Appeal emphasizes the importance of using a licensed Ontario land surveyor when putting up fences in new subdivisions or, for that matter, old subdivisions and the risks of using unlicensed surveyors.

Virtually all new homes are sold today without backyard fencing.

Subdivisions are designed so that water runoff from rain and melting snow flows away from the homes, and not into somebody's basement. If fences are erected too soon, they will restrict developers from being able to correct grading problems easily.

In February, 2000, Curtis Reid and Michelle MacLellan purchased a house in a new subdivision in Windsor.

In the spring of the following year, they decided to fence in their backyard.

They retained William Van Loon of Van Loon Construction Surveys & Layout Inc. to locate the corner posts and property line. Upon discovering that Van Loon was not a licensed surveyor, Curtis and Michelle retained a second firm to confirm the boundaries and later built the fence in the correct location.

The Association of Ontario Land Surveyors (AOLS) took Van Loon and his company to court to obtain an order prohibiting them from engaging in boundary surveying without a licence.

Without referring to the testimony of any of the seven witnesses, the trial judge denied the association's prohibition application.

The case made its way to the Ontario Court of Appeal, which reversed the trial decision last January.

Writing for a three-judge panel, Justice Robert Armstrong ruled that Van Loon had engaged in the practice of boundary surveying without being licensed.

The court found that Van Loon did more than simply locate the existing iron bars.

The Van Loon staff had marked the lot corners and placed wooden stakes along the property line. They measured the lot angles and compared them to the plan of subdivision.

"This they were not entitled to do," according to the Appeal Court. It issued an order prohibiting the firm from engaging in boundary surveying.

Last week, I spoke to Bill Buck, registrar of the Association of Ontario Land Surveyors.

He told me that the problem of unlicensed surveyors is of increasing concern to the association. In the past three years, he has dealt with 21 formal inquiries about unlicensed surveyors.

In one case, which the AOLS successfully took to court in 2001, a forestry services company incorrectly located a boundary, resulting in a logging company cutting several acres of trees on the wrong property. Unfortunately, the neighbour was a licensed surveyor.

If homeowners cannot locate the original survey markers for their property corners, only a licensed Ontario Land Surveyor can accurately determine the correct location.

It is certainly very easy for a homeowner to put up a fence on the wrong property lines if they have been improperly located by an unlicensed technician, or by guesswork.

The issue is really one of public protection. In boundary dispute cases which occur with surprising frequency the AOLS can assist in several ways, including informal inquiries of the surveyor involved, a formal complaints process, a fee mediation process, a compensation fund and mandatory professional liability insurance.

To become a licensed surveyor in Ontario takes four years for a degree in geomatics (the current term for surveying), plus 18 months of articles and a series of written and oral professional examinations.

With unlicensed surveyors, there are none of these protections or guarantees, and no recourse aside from litigation.

In extreme cases, where iron bars have been incorrectly placed, the survey fabric in the neighbourhood may be compromised, as the incorrect markers can also affect the measurements of neighbouring properties.

In one case, the AOLS became aware of many houses located incorrectly, being either on the wrong lot or too close to the lot line.

The AOLS is concerned only with legal boundary surveys. Architects, engineers and others are free to carry out other types of surveys, such as topographic surveys, site plans, and engineering surveys. But only AOLS members can express an opinion on a legal boundary.

For contractors and others involved in constructing new or replacement fences, the rule is: If a surveyor's boundary markers are present and visible, it's probably okay to proceed. If you can't find the markers or are uncertain about the lot corners, don't guess. Call a licensed surveyor. They are the only ones entitled to use the designation Ontario Land Surveyor after their names.

FOLLOWUP: Three weeks ago, I wrote about the settlement of a class action involving investors who lost money in the failed World Centre mall in Richmond Hill.

I am grateful to well-known Toronto condominium lawyer Mark Freedman who called to point out that under the new Condominium Act, deposits in commercial projects have the same protection as in residential developments.