

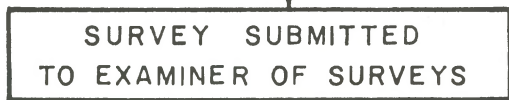
THE "FIRST APPLICATION"

PHASE

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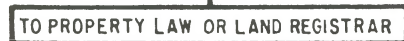
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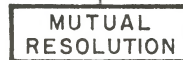
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LAW AND SURVEYING

Legal Surveys Branch
Ministry of Consumer & Commercial Relations



THE "FIRST APPLICATION"

by Michael John Thornton, O.L.S.
(Examiner, Survey Standards Audit
Section, Legal and Survey Standards
Branch)

The following article is presented with the intention that the practising surveyor may more easily understand the procedures and continuities involved in the processing of an application for First Registration under The Land Titles Act and an application for a Certificate of Title as defined in The Certification of Titles Act. It is not intended as a short cut, but is presented with the hope that delays may be minimized, thus resulting in savings to the surveyor and, consequently, his client.

The two procedures, as far as we need be concerned, are nearly identical, thus, for the sake of brevity, this article will be confined to "First Applications".

In order to facilitate explanation of the process, I have prepared a flow chart outlining the major phases involved and, appurtenant to the chart, a written summary of each phase. If certain summaries seem brief, it is purposely so, as these aspects have been dealt with elsewhere or are the province of the solicitor. I shall expand only on those phases as they apply to the surveyor, and the Legal and Survey Standards Branch.

When reference is made to the Examiner of Surveys, it is intended to include also an Assistant Examiner of Surveys or "local examiner". In your particular area please contact the local examiner to determine if plans should be dealt with by him or by the Central Office. Note, however, that all "C.T.A.'s" should be forwarded to the Examiner of Surveys in Toronto.

As with the survey submissions, not all of the formal title applications are processed by the local Land Registrar. Accordingly, references to "Property Law" or "Land Registrar", means the Property Law Program in Toronto, or the local Land Registrar. Again queries should be directed to your local officials. In all instances, "C.T.A." applications should be forwarded to the Property Law Program, here in Toronto.

Phase I - Application Initiated

Before an Application for First Registration is filed, the applicant is required to have his land surveyed and a reference

plan prepared by an Ontario Land Surveyor.

There are many reasons for wishing to register land under The Land Titles Act, the predominant one being the "guarantee of title". Some mortgages may be conditional upon a converted title and some statutory requirements, as in the case of plans of subdivision or condominiums.

Regardless of reason, I think the primary concern to the surveyor should be the fact that his plan of survey becomes the graphic description of the lands under application and should, therefore, be accurate, complete and indicative of all the lands and interests in question. There is no need to digress into the "Functions of a Surveyor", but I would like, at this point, to discuss some of the more common pitfalls encountered and why it is preferable they be handled early in the procedure rather than later, when costs to rectify them can become exorbitant.

A. - There appears to be a common misconception that a "First Application" confirms the boundaries of the lands under application. Such is not the case and I refer you to Section 159 (2) of The Land Titles Act, being Chapter 234 of R.S.O. 1970:

"The description of registered land is not conclusive as to the boundaries or extent of the land."

Your client may have his boundaries confirmed, but would be required to make a separate application under The Boundaries Act in order to do so.

B. - The applicant is not required to register all of his lands or interests under the Act. This may prove beneficial to a client where, for example, the cost of retracing a dominant right-of-way far outweighs the value of the land involved. It may prove expeditious, therefore, to delete such an interest from the application and leave it "registered" under The Registry Act.

C. - There is no restriction as to the number of applicants "per plan", so long as each submits a formal application and again, so long as the plan reflects each interest clearly and completely.

It may be a good idea at this point to discuss what is meant by "clearly and

completely". Referring to Section 159 (a) of The Land Titles Act, we find:

"Registered land shall be defined in such manner as the proper Master of Titles (Land Registrar) considers is best calculated to secure accuracy."

Normally this means a Part or Parts on the reference plan. However, we confine this concept to just those rights, interests or fee that are being brought forward into the parcel register and where such rights, interests or fee are definable by survey. Limited interests not created by specific legal documentation, need only be shown graphically, in the event of claims by prescription.

D. - It is permissible, at this stage, to create internal Parts for the purposes of later severance or partial discharge of mortgage, etc.

E - There is often a request by the applicant to include lands which he has been adversely occupying. These lands are usually best designated as a Part, for in the event of his claim failing, it is more convenient to delete said Part from the application and the plan, than it is to return to the field.

Finally, in lieu of the standard reference plan, we do entertain two other survey vehicles for descriptive purposes, namely, Parts on a reference plan deposited under Part II of The Registry Act and whole lots or blocks according to registered plans of subdivision. These plans, however, must be assessed for acceptability by the Examiner of Surveys in Toronto, prior to any formal application being made and an explanation of this assessment is more fully outlined in PHASE 2.

Because we are limited by space, we cannot possibly outline every problem that will be encountered and invite you, therefore, to direct any questions or problems you may have regarding procedural matters to this Branch. An ounce of prevention is worth a pound of cure!

Phase 2 - Survey Submitted

Prior to the legal application being made, you must submit your survey to the Examiner of Surveys, where a file number will be allocated and a file notice mailed to you. This file number is required by the solicitor for his application purposes and you must, therefore, forward it to him as soon as possible.

I would at this time like to point out several common oversights that result in submissions being returned and examinations delayed.

A. The submission should include two paper prints of the survey plan and copies of all adjacent and underlying

plans employed in the preparation of the survey. (This includes any plans or sketches obtained from other surveyors.)

- B. It is not necessary to forward a computer output or a certified title search. The former is necessary only for plans of subdivision and the latter is provided by the applicant's solicitor.
- C. A survey report, although not essential, can be very helpful in explaining a particular method or reasoning that might otherwise be questioned by letter.
- D. Similarly, if the solicitor's name and address are provided with the initial submission, problems pertaining to title matters could be solved with a quick telephone call.

As previously mentioned, we do accept deposited reference plans and registered plans of subdivision in certain instances, but there are certain criteria involved, namely:

- E. In the case of plans of subdivision:
 - a. The land being described is the whole of a lot or block according to the plan;
 - b. The plan was registered under The Registry Act within 10 years prior to the date of the application;
 - c. The title of the applicant is neither subject to, nor together with, an easement or right-of-way;
 - d. The lot or block described is mathematically correct; and
- F. In the case of reference plans:
 - a. The land being described is wholly laid out as a Part or Parts on the reference plan;
 - b. The plan was deposited as a Reference Plan under Part II of The Registry Act, after January 1, 1969;
 - c. Any easements or rights-of-way are defined as Parts;
 - d. The plan is mathematically correct.

In both instances, the method of survey and evidence held, should be clearly indicated (including fencing hedging, etc. and their relationship to the title limits under application). Also, in both instances, the plan is to be forwarded to the Examiner of Surveys in Toronto for assessment.

As you are aware, the process to amend either of the aforementioned plans is a somewhat arduous and lengthy task and may be at best impractical. This should be kept in mind when advising your client and weighing the advantages of utilizing existing plans for first application purposes.

Phase 3 - Formal Title Application Submitted

Having received the file number

from the surveyor, the solicitor then submits his formal title application to Property Law or the appropriate Land Registrar. This submission is similarly given a number, which is termed the "application number". The requirements for this submission are outlined in the "Application for First Registration Procedural Guide" and need not be repeated here, but of interest to the surveyor is the necessity to provide the solicitor with four paper prints of the plan, which must accompany the said title application. The application is examined and requisitioned, if necessary, and upon being accepted, is forwarded to the appropriate office of the Examiner of Surveys, with any comments that may necessitate amendments to the plan.

Phase 4 - Examiner of Surveys

Upon the receipt of comments by Property Law Branch or the Land Registrar, the plan is examined with respect to the appropriate statutes, regulations and legal survey and boundary principles that might be applicable. There are several basic principles and sections of the regulations that are frequently misunderstood and dwelling upon them at this time may expedite approval of the plan and avoid many of the picayune objections that are received from adjoining owners.

- a. Fencing and Hedging
All fences and hedges and their relationship to the legal limits under application should be shown. Where "on-line", so state, and where not, show the ties to these. If these entities are deemed to represent adverse occupation, their approximate age must also be indicated, e.g., greater or less than 10 years. It is most important to remember that the surveyor's function is to indicate all evidence, conflicting or otherwise and not to draw conclusions as to **title**.
- b. Trespass Elements
Pole lines, underground cables, lanes or footpaths, overhangs, wells, etc., should also be considered and illustrated in the event of claims by prescription. (Please note however that local services, i.e., water, gas, hydro, are not included in this classification).
- c. Presentation of Evidence and Method
In all instances where there is a lack of evidence, the alternative survey method employed should be clearly indicated, i.e. deed and set, plan and set, proportion, occupation, etc. etc. This point is commonly overlooked and can be easily rectified by spending a few more minutes in the draughting office.
- d. "Deed" and "Measured"
This is probably the most neglected

item and leads to the majority of enquiries and objections from adjacent owners. Any differences between your measured values and those indicated in a deed or plan registered under The Registry Act or those shown on a Land Titles register or registered plan, should be shown. With respect to bearings, only when the "contained angle" differs, need comparisons be indicated.

e. Proper Research

Whether performed by the solicitor or by yourself, the importance of a proper title search cannot be too highly stressed. Quite often adjacent surveys and servient (or dominant) rights-of-way come to light at this time and knowledge of them, prior to the field work, can have, needless to say, a marked outcome on your survey and subsequent notices.

Quite often, you will find yourself working alongside a public utility or agency, (Ontario Hydro, C.N.R., C.P.R., T.C.P.L., etc.) that is governed by a specific statute. If you anticipate any problems with the common boundaries thereof, it is advisable to discuss them with these agencies or their respective survey departments, prior to submitting your survey for examination. This greatly expedites the processing of the application and usually negates objections.

I have tried to touch upon most problem areas. Hopefully, these will save you time and money in future applications.

Phase 5 - Prints Ordered

This step of the procedure is presented as a phase because it is one that is often misunderstood and causes many headaches. Once the plan of survey is given tentative approval for notice purposes, by the examiner of surveys, prints are ordered from the surveyor. This request can only come from Property Law or the Land Registrar, upon the receipt of an approved print, or from the examiner of surveys. Special note should be made of this, for invariably, someone sidesteps the procedure and we end up with a zillion prints of a plan that has not even been examined! There is no need to describe the unnecessary costs or embarrassments caused.

Phase 6 - Service of Notice

The "Service of Notice" is handled by Property Law or the Land Registrar. Prints of the plan, along with the notice of application, are sent to ALL ADJACENT INTERESTS. This is quite an all encompassing group, as "adjacent interest" includes owner, mortgagee, mortgagor, (if different from owners), trustee, administrator, etc. etc. Recently, the "Service of Notice" was expanded

to also include each tenant in common and each joint tenant. Prints for these notices can, therefore, evolve into a forest of paper and should carefully be considered when discussing costs with your client.

The required period of notice is 16 calendar days (statutory holidays excluded) and during this time any of the parties so notified has the right to object. Objections come in many forms and can quite often be mutually resolved between the applicant and objector. This may be done either through the solicitor, or the surveyor, depending on the situation, but, occasionally, no such resolution is forthcoming and a formal hearing before the Director of Titles becomes necessary.

The rules that govern any Tribunal are applicable at such a hearing and as the "Surveyor in Court" is well recorded elsewhere, I think all I need repeat here, is that the Surveyor should come well prepared and documented.

Consequent upon the hearing, a decision in the form of a written Order is brought down, either in favour of the objection or against it. Instructions to the surveyor, regarding amendments to

the plan, may be given at this time, and upon completion of such alterations, the surveyor will be requested to provide revised paper prints for re-notification of the objector. There is a provision for appeal from the decision to the Supreme Court in the case of a Certification of Titles Application and to the County or District Court in the case of a "First Application". Upon complete resolution of the objection we proceed to the final legal requisitions. These final requisitions come from Property Law or the Land Registrar and may require such items as discharges of mortgage, executions or releases etc.

Phase 7 - Request for Linen

Like Phase 5, the "request for linen" is quite often misunderstood and therefore deserves an honourable mention. After the final title (or survey) requisitions have been completed, the request for the final linen is sent out. Again, this request must come from the examiner of surveys. You will receive a form letter to this effect, in which any requests for minor draughting changes and the format of the Part-Parcel co-relationship will be included. This relationship, or schedule, is a requirement of the Land Registrar and is included solely to expedite his

book-keeping. It simply relates Parts on the plan to the appropriate parcel registers and where necessary, outlines certain limited interests.

(It should be noted that in this instance, we request only the final linen for endorsement and will therefore be obliged to return any duplicates that are submitted. Thank you).

Phase 8 - Registration

After the original linen is endorsed, it is retained within the system and is forwarded by registered mail to the appropriate Land Registry Office where it is stored. The parcel register is opened up immediately after the Certificate of Title is registered under the Registry Act, and recorded in the appropriate abstract index.

As can be seen, the foregoing procedure is a somewhat diverse, lengthy and complicated one and we would welcome any criticisms or suggestions you may have in order to improve it.

It is hoped however that some of the "mysteries" surrounding "first applications" and C.T.A.'s have been unveiled and that this article will prove of some benefit to you and your client.