

First Annual Boundary Case Law Conference Parcel Title and Parcel Boundaries Where Lawyers and Surveyors Meet

By Patrick Floyd

On November 22, 2013, Four Point Learning held its *First Annual Boundary Conference* at the Delta Hotel and Conference Centre in Guelph. It was well attended by lawyers and surveyors alike. The room was full with over 104 registrants to listen and learn from the interesting and experienced nine speakers. The event was the result of the spectacular effort by Izaak de Rijcke and the staff of Four Point Learning.

I am writing this article from the perspective of being a lawyer with a previous career as in-house counsel for a national institution, which leased and licensed over 2500 properties in all jurisdictions of Canada, including all variations of boundary issues arising from lakeside, riverside, oceanside and First Nation properties. I found the conference and the various subjects very interesting and very helpful from the legal and practical perspectives.

The first speaker, Bill Snell, provided an informative and interesting overview of the different types of land title categories from “LT Absolute”, and “LTCQ” to “LT Plus”. The analysis and description in his paper was very insightful and provided clarification of what title means in the *Land Titles* system in Ontario.

Jeffery Lem gave a practical and light-hearted overview of the practical issues of the “neighbour that you will soon hate” and the battle for the “most expensive property in Ontario”. Mr. Lem gave a great presentation on the problems in *MacIsaac v. Salo*, and how the Courts looked at rectification and actual notice under the Land Titles system. The perspective of how inter-neighbour dynamics elevate a few square feet of property to the extreme value caused by the expenditure of tens of thousands of dollars in legal costs was helpful. In addition to his presentation, the written material provided great references with regards to how to treat easements, prescriptive rights and other aspects relating to dominant tenements, etc. The analysis provided in the paper would be extremely helpful in any neighbour dispute or easement issue.

Jeff Buisman gave an interesting practical review of the issues of navigability of water courses. While dealing principally with the severance of a property due to the intersection of that property with a navigable water course, this aspect affects other areas in my practice relating to the navigability of water courses; principally, dealing with the Federal scope of authority relating to navigable waterways and Canadian maritime law.

The practicality of navigating the waterway by a canoe

and how the Court looks at that practical evidence was very helpful in understanding the applicability and proving of the “navigability” of waterways.

Roger Townshend and Michael McClurg provided a review of the *Mining Act* and the Duty to Consult and Accommodate Aboriginal Peoples. I found this part of the seminar interesting since I have had to negotiate licence and lease agreements with First Nations across Canada. The updating of the duty to consult and how rights are defined under Treaty or under traditional territory analysis, and how those rights trigger the duty to consult and accommodate was very helpful.

Russell Raikes presented an entertaining overview in dealing with natural boundaries in the Post-*Ellard* and *Battaglia* regime. In addition, Mr. Raikes provided an interesting practitioner’s perspective in how to deal with the issues of latent ambiguity versus patent ambiguity in Court. Having been tangentially involved in such matters, I found his perspective very enlightening in looking at the (historical) intention of the developer. The paper he provided will be very helpful in any upcoming historical analysis of the Developer (Sub-divider’s) intent with regards to beach access - especially in the Township of Tiny.

Virginia Tinti was entertaining and enlightening in the “Role of a Survey” in due diligence in the post-title insurance era. In addition, she provided an interesting perspective of how a proper survey plays into due diligence, and how the lack of a survey could be seen as not fulfilling proper due diligence. Her paper was very good in linking to the issues in standard form purchase agreement templates and was quite insightful.

Robert Fenn addressed issues of “Processes and Remedies for Resolving Uncertainty”. The paper provided a very good overview of common law and equity in dealing with proper legal process. Furthermore, the analysis of how the *Surveys Act* could be used to fix boundaries was insightful and very helpful.

The analysis by Mr. Fenn of the two different procedural routes in administrative law (appeal vs. judicial review) would be very helpful to any practitioner in understanding what each route provides and what is necessary to prepare for each forum. Finally, the practical and strategic suggestions in dealing with boundary litigation and the associated costs were informative – if not frightening.

The paper provided by J. Anne Cole on “Ethical Issues and Resolving Neighbour Disputes” was helpful, especially in light of Jeffrey Lem’s description of the “most expensive

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property on the earth” when dealing with neighbour disputes. Although Ms. Cole was not available to present the paper and to provide practical insight, she was well served by her replacement, Bob Halliday.

As an attendee, I found it one of the best conferences as it was forward thinking and provided valuable and practical practitioner’s advice regarding many of the issues surrounding boundaries, whether it be inter-neighbour boundaries, water courses or First Nations. I, for one, will attend the Boundary Law Conference next year as it is progressive, insightful, and helpful and it will be well

received, and worth the time, effort and cost.



Patrick Floyd of Rohmer & Fenn has an interest and practise in the problems caused by boundary disputes, due to his previous position at NAV CANADA which focused on the real property and environmental problems relating to airport and other aviation properties (including radar and communication sites). Since joining Rohmer & Fenn, Mr. Floyd has continued his aviation and real property focus. Mr. Floyd is a member of the Bars of New York, Ontario and Nunavut. He can be reached by email at floyd@rohmerfenn.com