

The Raging Surveyor

Land surveyors are members of an elite group in society; self-regulating professions. The primary purpose of our professional association is to ensure the proficiency and competency of land surveyors to the public. Land surveyors are entrusted with the determination and establishment of boundaries delineating ownership rights and other interest in land. These boundaries are key to land tenure and must be determined and maintained with diligence, professionalism and impartiality.

But who does the public need protection from? There may be isolated cases of surveys that are poorly done and some cases of members of the public trying to manipulate boundaries away from their true locations for personal gain. But, the majority of attempts to move boundaries from their true positions are put forward under the policies of the provincial government.

The biggest issue, and the one that I will discuss here, is the location of water boundaries. It is not my intention to discuss the principle of erosion and accretion. That is a separate issue. When the original township surveys were completed, it was recognized that the area of lands covered by waters should be excluded from the land suitable for farming that would be granted to settlers. Surveyors were instructed to accurately survey all navigable rivers and lakes of twenty acres and upwards. There was no mention of how to survey the location of the water bodies, nor what feature was to be surveyed. Later editions of the Manual of Instructions for the Survey of Dominion Lands, for example the 1905 Edition, give much more indepth instructions. The boundaries to be surveyed were the banks, using a definition similar to the present-day definition. The method to be used was that of a stadia traverse, with no shot exceeding one-half mile. It was clearly stated that the purpose of the traverse survey was to determine the area of land to be excluded from the grant.

It is clear, from the methods used, and from reviews of the field notes, that the surveyors did not exercise the same care in these traverses as they did with the surveys of the section lines. It was surely their opinion that the bank was the boundary and that it was there for all to see and their traversing of it was inconsequential to the location of the boundary. David Lambden, in *Survey Law in Canada*, states that “an erroneous notion arose that the natural boundaries of land/water by the original survey were also ‘true and unalterable’ in position like the land lines of the system”. He goes on to say that “natural boundaries are not established by survey; they are objects of representation”. Courts have consistently ruled that natural boundaries are paramount as monuments and that the water boundary is ambulatory in nature and not fixed by the surveys.

Why then does our Land Titles system hold that the original township plans govern the location of the boundary. A typical title reads The Fractional North East Quarter ... which lies to the North of the Qu’Appelle River as shown on Township Plan dated April 1, 1882. The line of the river was mapped some twenty-five years ago from the township plan as part of the cadastral base map program. The mapping was used in the LAND project to create a parcel picture that title could be based upon. And somehow, that line has become the “set in stone” boundary. The meaning of the words got mixed up. The emphasis was placed on “Township Plan dated April 1, 1882” rather than “North of the Qu’Appelle River”. The entire government bureaucracy is perpetuating the problem; Ministry of Justice, both Titles and Survey sides, Ministry of Agriculture and the Water Security Agency.

The issue carries forward to secondary surveys. Again, plans show a bank location and then confirm that the bank is the boundary, as per the statute definition of the bank. But the system has created a parcel

picture based on the plan that is unalterable. While banks on secondary surveys are more accurately plotted for the most part, there are many instances where the bank determined on the ground is in error. Personally, I have come across at least two types of errors in bank determination. There was an instance where the bank was determined to be at the back of a sand beach, quite a distance back from the water both vertically and horizontally. But the land adjacent to the beach had vegetation growing nearly to the water's edge. Investigation determined that the sand beach was artificially kept free of vegetation by regular cultivation. The surveyed bank was clearly in error. A second, and more common instance, was related to a practice from several decades ago where surveyors would determine the bank to be at the top of the rise away from the water, where the land levelled out. This was not the bank, and the courts have ruled that it was not in *Resort Village of Island View v. Romashenko*, 2010 SKCA 4. A key statement in the decision was; "when one looks at the definition of "bank" it is clear it is not the escarpment or where the traverse line is described. The boundary is determined by the bank and the bank is the vegetation line as defined in the *Act* and *Regulations*. The traverse line is not a correct depiction of where the "bank" is."

So, what do we, as surveyors, do? The Planning Branch will not complete their review when the land involved is larger than the parcel picture. They request that the "title holder", being the Crown, for the land outside the parcel picture be part of the application. The Controller of Surveys will do nothing at this point, whether the difference between the boundary and the parcel picture is within the arbitrarily set "tolerances" for changing the parcel picture. Hence, the Ministry of Agriculture becomes involved. They are very reluctant to accept any change that reduces their perceived land holdings. Much of the position of all of these agencies is based on Section 21 of the Land Surveys Act; where a natural monument that is a bank ... of a body of water has been used as a monument and its location has changed over time, the boundaries of the parcel may only be determined ... by agreement of all the registered owners for any parcel that uses the natural monument to mark ... boundary. And the Water Security Agency Act forbids the granting of any land forming the bed of a body of water.

We have a situation where the bureaucracy has convinced themselves that their role is to do everything they can to deprive landowners of ownership of land that is rightfully theirs. Again, I am not referring to accretion, which is another topic for discussion. This is simply a case of taking a mapping line as an unalterable line, even though it may have been based on erroneous surveys or surveys done by surveyors who never dreamed that the plotted line would determine title.

We must fulfil our role as self-regulated professionals and fight for the rights of landowners. First, we must lobby to have the arbitrary tolerances for correcting the base map discarded. This is of utmost importance. Second, we must lobby to have the policies of the Planning Branch of the Ministry of Government Relations, the Ministry of Justice, the Ministry of Agriculture and the Water Security Agency changed to recognize the rights of affected landowners. The time of backing down in order to avoid delay of projects must end. We must stand up for what we know to be right. We must do better for land owners.

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