

# LAW AND SURVEYING

Legal Surveys Branch  
Ministry of Consumer & Commercial Relations



## EDITORIAL

### TRUE AND UNALTERABLE

The heading for this editorial is intended to describe not only the opinions of the author, but a philosophy of surveying that is probably due for examination or re-examination, as the case may be.

The unalterable status of lines and boundaries established in the course of original survey has been upheld and reinforced by common law and statute law since time immemorial. The question of what does in fact constitute an original boundary is, of course, a matter of evidence, the assessment of which, as we are all aware, is the function of the courts. The professional land surveyor however, is not an automaton, programmed to plug in monuments at deed or plan dimensions. He must, by the very nature of his calling pre-judge and assess evidence in the course of his survey in order to protect the interests of his client and should the need arise, defend his opinions in a court of law.

The problem of distinguishing between evidence that created the boundary, and evidence that may have been placed in attempting to re-establish it, is compounded by the problem of determining if the original evidence created a true and unalterable boundary in the first instance.

My first encounter with the dilemma occurred quite early in my career when attempting to reconcile a six-foot misclosure on a farm lot survey. The farmer, who was an ex-sea captain and quite knowledgeable in the realm of bearings and distances, explained that in clearing the farm for cultivation he had attempted to remove one troublesome stump with the aid of his prize Percherons and a block and tackle. He recounted how in the ensuing struggle, the stump stayed put but he inadvertently pulled the township 6 feet off square.

This, of course, resolved the misclosure but left my conceptions of unalterability badly shaken. It also points up the difficulties football players of that era must have experienced in making ends meet.

In general terms it may be safe to say that a boundary established or monument planted in the process of creating a severance, is true and unalterable so long as the original is extant; a survey for the purpose of re-establishing that severance after the original monuments have disappeared is only as reliable as the decision-making faculties of the individual surveyor.

This latter survey may be rendered true and unalterable through the process of confirmation under the appropriate statute or by the acceptance of the adjoining owners for such length of time as would estop them from disputing its location.

A simple illustration of some concepts may be drawn from the example of a survey performed to expropriate land for the purpose of a highway or street widening. Upon registration of the plan, any monuments planted to define the "exterior" limits of the expropriation are true and unalterable and define the extent of the lands acquired even though, through an error in the positioning of the monuments, the authority may have acquired a lesser or greater quantity of land than was intended. However, if during the survey, the authority undertook to monument the limit of the widening at its intersection with the boundary of an adjoining parcel, the monument could not be construed as marking the true limit of that parcel. The net effect of the monument would as mentioned, define extent of the expropriation, but the position of the intersecting parcel limit, in the absence of original evidence, must always be subject to statutory confirmation.

An examination of the rational governing the unalterable status of a monument would disclose that a layman may only be expected to be capable of assessing the extent of his rights and interests on the basis of something physical or tangible — something in this case that has been hammered into his front yard by some burly chainman. He may be shown a plan of survey replete with figure symbols and signatures, and be advised that 522.675 square feet have been expropriated for the public good. He will naturally assume that the symbol on this plan represents the one inch square threat to his lawn mower, and like a good percentage of the population, will adopt the further assumption that surveyors are infallible. Throughout the processes of negotiation, compensations and appeal (should it come to that) his actions and reactions will be motivated by the mental image of that iron "thing" in the ground.

But — alas and alackaday — the impossible has happened — a blunder has been made and the monument is three feet distant from the theoretical position as suggested by the dimensions. There is, of course, a powerful temptation to correct the error by moving the monument, and at first glance this would appear to be the sensible approach. After all, the plan reflected intent, the square footage was as intended and above all else the compensation was paid and accepted on the basis of the theoretical position of the monuments.

### Professional Ethics

I suggest that to bow to the temptation would betray a serious lapse in professional ethics for the very simple reason that the surveyor has failed to appreciate or acknowledge the concepts of theory and tangibility and their different affect on the reactions of the layman and the professional. In short, he would have moved a monument that common law, in its wisdom and appreciation of the difference, has declared to be unalterable. I have not even mentioned statute law because we are, of course, fully aware of what it may say about moving monuments. Resolution of the problem is not within the context of our theme but for the sake of clearing up loose ends I will suggest that relief would be the subject of a civil action.

To avoid the risk of uncertainty in expanding into a broader application of the philosophy, I will confine my dialogue to monuments and roads. This approach will also provide me with the opportunity to set down my thoughts and observations on the already badly overworked subject of street or road widths, and the possibility of examining the applicability of the concept of unalterability within the limits of my capabilities.

### Of Unknown Origin

The origin of the dictum (being a formal or authoritative pronouncement) that the plan widths for streets are inviolate, is unknown to me and will remain so lest it change my opinion. This notwithstanding, the rationalization arrived at through a concerted examination of common law and statute law is all the more puzzling when one views the zealous application of opposite values by some surveyors to the positioning of street limits and interior lot limits. I have personally seen a plan of survey wherein a street (being a unit of land, the fee of which is vested in the municipality) set at plan width, ignoring evidence that would suggest something less than net. On the same plan there was illustrated a survey of a park (being a unit of land, the fee of which is vested in the municipality), the dimensions of which were governed by found evidence.

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## Sacred 66

A further example of this strange phenomenon was observed, again during my formative years, surveying in northern Ontario, where posts planted during the original survey (Circa 1900) may still be found in place, the scribed lettering still legible. Imagine if you will, the surveyor having found an original post marking a lot corner, carefully cross referencing the centre of the post before replacing it to the nearest hundredth of a foot with a standard iron bar. He would then proceed to the intersection of two road allowances where, on finding two original posts on opposite sides of the intersection, he would measure between them only to discover that they were 63 feet apart rather than the sacred 66. Without any apparent pangs of conscience, he replaced one of the posts with great precision summarily yanked out the other and planted an S. I. B. 66 feet from the first.

The moral (if such is the term) to be drawn from these anecdotes has two elements. The first is that roads are not necessarily the same width as might be indicated by the plan of survey that creates them. The second suggests that the unalterable status of original monuments is not fully understood.

### Re-establish Limit

To pursue the matter a bit further,

the question arises as to the manner of re-establishing street limits after the original evidence has disappeared. The responses must sound redundant and will come as no surprise — the limit must be re-established from the best available evidence of its original location.

If any conclusions may emerge from this dissertation, surely the most prominent would be the acknowledgment that I have barely scratched the surface of the philosophy I set out to examine. The status and affect of conventional lines, surveys by unqualified surveyors, fences, and lines by parol agreement, etc. come to mind and with the kind forbearance of publisher and reader, we may examine some of these in future Quarterlies.

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## Guest Editorial

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