

# A Boundaries Act Hearing

BY G. R. WILSON

(R.S.O. 1970, Chapter 48)

In the matter of the Boundaries Act And in the matter of an Application for confirmation of the true location on the ground of the north-easterly boundary of Cardigan Street between Norwich Street and the south-easterly boundary of Lot 1030, Registered Plan No. 8, City of Guelph in the County of Wellington.

This is an Application by Surveyor "A" on behalf of the Canadian Pacific Railway Company and Canadian National Railways, to confirm the aforementioned boundary in accordance with a plan of survey signed by Surveyor "A" and dated January 25th, 1971.

Prior to the Hearing, Objections to the Application were received from the City of Guelph through Mr. Runions, Solicitor, and an Objection from Surveyor "B".

This Application came before me in the Council Chambers of the City Hall of Guelph, Ontario at 11:00 o'clock in the morning of the 28th day of October, 1971.

At this time there appeared before me:

Surveyor "A" - Ontario Land Surveyor who signed the draft plan of survey  
Mr. Runions - Objector on behalf of the City of Guelph  
Surveyor "B" - Objector

During the course of the Hearing, fifty pages of field notes, plans and other documents were filed and were received as Exhibits 1 to 7. Surveyor "A" was placed under oath and described his method of survey of the north-east limit of Cardigan Street, being the line under Application. Surveyor "A" made two submissions with respect to the said limit: Firstly, that its distance from the south-westerly limit of Cardigan Street had originally been 99 feet according to Registered Plan No. 8, but by resubdivision, unregistered closing or some other means had been reduced to its present width of 66 feet, and secondly, that he was able to reposition the said limit from the Instruments registered against Lots 1031 to 1036 inclusive, Registered Plan No. 8, and, in relating the existing lines of the railway tracks to old evidence and the Instruments he was able to set the limit of Cardigan Street. He noted that both methods resulted in the same position for the north-easterly limit of Cardigan Street. Surveyor "A" suggested that his theory that Cardigan Street had been

cut down by resubdivision or some other means was supported by the fact that the block bounded by Norwich, Woolwich, and Cardigan Streets showed surpluses which supported his proposition. He referred to a surplus of 29.61 feet from the north-east angle of Registered Plan 35 to Cardigan Street and a surplus of 113.36 feet from Norwich to Cardigan Street measured along the north-easterly limit of Woolwich Street. He noted also that Plans 35, 175 and 144 showed Cardigan Street by scaling to be less than 99 feet wide.

Surveyor "B" gave evidence to elaborate his objection to the line under Application as set out in his formal Objection of September 23rd, 1971. Surveyor "B" 's major submission to the Hearing was that Plan No. 8 showed Cardigan Street to have a width of 1½ chains with respect to that portion of the plan adjoining the line under Application in the Boundaries Act Hearing. He stated that he was not aware of any by-law or plan which had altered the original width of 99 feet to 66 feet. He stated that if this had occurred, then the City, as the owner of the street, would have to sign the plan subdividing the street as owner and the plan title of the subdivision plan would have to include a portion of the street in its recitation of the lands being subdivided and he pointed out that no evidence had been heard by the Hearing to indicate that such had occurred. He stated that the street must, therefore, be assumed to be 99 feet wide and that, if Surveyor "A" 's plan was accepted, then 33 feet of the street were unaccounted for. He suggested that either 33 feet of Cardigan Street lay inside Lots 1030 and 1032 to 1036 inclusive, as illustrated on Surveyor "A" 's plan, or else 33 feet of Cardigan Street lay within the Lots on the south-west side of Cardigan Street. Surveyor "B" referred also to an agreement on the north-east side of Cardigan Street to allow a building encroachment which he said supported his view that the street was 99 feet wide.

Surveyor "B" dealt at length with Surveyor "A" 's suggestion that the surpluses found in the triangular block bordering the south-west side of Cardigan Street supported the theory of resubdivision of the street. Surveyor "B" stated that surveyors who were familiar with the Canada Company's survey of lands in that area, registered as Plan No. 8, were not surprised to find surpluses. He detailed surpluses ranging from 20 feet to 46 feet which could be found in various areas of the plan and gave de-

tailed examples of the lack of reliability of the original survey measurements on Plan No. 8. Surveyor "B" pointed out that if Surveyor "A" 's line for the north-east limit of Cardigan Street was accepted and if the street was assumed to be 99 feet wide, then many serious building encroachments would occur on the south-west side of Cardigan Street and in one instance mentioned a house that would be bisected by such street line. Surveyor "B" concluded by filing many exhibits of plans, documents and by-laws which he stated supported his belief that Surveyor "A" 's positioning of the north-east limit of Cardigan Street was incorrect.

Mr. Runions, Solicitor, appeared on behalf of the City of Guelph and spoke in support of the City's objection to Surveyor "A" 's plan. Mr. Runions relied, in general, upon Surveyor "B" 's technical evidence to support his objection and submitted as an exhibit a copy of the Registrar's Abstract of Title of the relevant area. Mr. Runions noted that if Cardigan Street had been cut down from 99 feet to 66 feet as suggested by Surveyor "A" then the geographical name of the lands would not change and the Abstract would show that portion of the street had been subdivided. He noted that the Abstract did not support Surveyor "A" 's contention.

The matter before the Hearing is the determination and the confirmation of the true location on the ground of the original position of the north-east limit of Cardigan Street. In this regard then, the contest is one of evidence and the concern of the Hearing is to locate the best available evidence of the survey stakes and lines that created the said north-easterly limit of Cardigan Street. The width of Cardigan Street, whether 66 feet or 99 feet; the evidence of the south-west limit of Cardigan Street; and whether certain lands have been subdivided opposite the line in question, are all questions secondary to the issue before the Hearing. The first question of concern in the determination of the true location of the north-east limit of Cardigan Street is when was this limit surveyed and created and what monuments were planted to preserve its location? The next question of concern is what local physical evidence exists today in the vicinity of the lost line which could be considered to be the best available evidence of its original positioning? It is along these lines that the evidence of the Applicants' surveyor and the Objectors is to be evaluated and weighed. Surveyor "A" 's plan has re-established the line under Application and found it to be in harmony with the measurements in the instruments registered against Lots 1030 and 1036 inclusive of Plan No. 8. Surveyor "A" stated also that the line





so set is 66 feet from the south-west limit of Cardigan Street as re-established by Surveyor "B" and as peacefully occupied by owners fronting on that line. Surveyor "B", in his submission, agreed that the south-west limit of Cardigan Street, as retraced by Surveyor "A", was in the correct position; therefore, in effect, both surveyors agree on the same line for this boundary of Cardigan Street. I find that I cannot accept Surveyor "B"'s submission that Cardigan Street is and must be 99 feet wide because Plan No. 8 calls for this width. It was noted in the Hearing that streets, the same as lots, are as wide as the monuments that create them. The fact that Plan No. 8 calls for a width of 99 feet for Cardigan Street is not, in my view, unchallengeable evidence that it did, in fact, have that width at the time it was surveyed. Surveyor "B" repeatedly stated that the Hearing must presume that Cardigan Street is 99 feet wide; but this statement is not acceptable to me. In reviewing Plan No. 8 both in the Hearing and subsequent to the Hearing, I am impressed with the fact that the plan is a copy of a copy; that there is some indication in the certificate by W. B. Robinson, Commissioner, that there were surveys predating Plan No. 8; that Surveyor "B" noted in his evidence that no original monuments had been found.

At some length, in his evidence, Surveyor "A" sought to convince the Hearing that the 99-foot street on Plan 8 had been subdivided by removing a 33-foot strip from the south-west limit and that by this method the 99-foot street had been reduced to 66 feet. I find that I cannot accept this reasoning. In my view, no acceptable evidence was presented in the Hearing which would support this contention. I accept the arguments of both Mr. Runions and Surveyor "B" that the plans that followed Plan No. 8, which were alleged by Surveyor "A" to be resubdividing part of the street, would have shown in some manner the street lands included within the newly subdivided lands, and I accept the argument of Mr. Runions that the Abstract of Title would also have so indicated. I can find no fault with Surveyor "B"'s positioning of the south-west limit of Cardigan Street and I am satisfied that this positioning by Surveyor "B" and as subsequently accepted by Surveyor "A", is the best available evidence of the original position of the South-west limit of Cardigan Street opposite the line under Application. I feel that the argument by Surveyor "B" that the Canada Company's plan contains many errors in measurement is sufficient to neutralize the evidence of measurement that Surveyor "A" presented to support his theory of resubdivision. How-

ever, I am also satisfied that the evidence by Surveyor "B" relating to the care that must be exercised before accepting measurements on the plan in a similar way defeats his own argument that we must presume that the measurement shown on the plan for the width of Cardigan Street is correct. The fact that the instruments on the north-east limit of Cardigan Street result in a 66-foot width is, in my view, an important indication that something may be wrong with the plan width of Cardigan Street as shown on Plan No. 8. A review of the plans filed prior to and during the Hearing supports this view and a comparison of Registered Plans No. 144 and No. 8 shows the following: On Plan No. 144, which is stated to be drawn to a scale of 2 chains to the inch, Cardigan Street, London Road, Norfolk Street and Norwich Street are illustrated. Norfolk Street is drawn with a scaled width of 1-½ chains, and on Plan No. 8 Norfolk Street has a scaled width of 1-½ chains and is shown by measurement to be 1-½ chains wide. On Plan No. 144, London Road has a scaled width of 1 chain and on Plan No. 8, London Road has a scaled width of 1 chain and is shown by measurement on the plan to be 1 chain wide. On Plan No. 144, Norwich Street has a scaled width of 1-½ chains and on Plan No. 8 the same street has a scaled width of 1-½ chains and is shown by measurement to be 1-½ chains wide. On Plan No. 144, Cardigan Street is drawn with a scaled width of 1 chain; on Plan No. 8, Cardigan Street is drawn with a scaled width of 1-½ chains and is shown by measurement to be 1-½ chains. The same type of scaled comparison is found on many of the plans submitted to the Hearing. Plan No. 175 shows Woolwich Street at 1-½ chains by scale in agreement with Plan No. 8; Cardigan Street has a scaled width of 1 chain in contradiction to Plan No. 8. Registered Plan No. 35 shows many streets in the vicinity of the line under application, and this plan shows some streets 1-½ chains by measurement of the scale and some streets 1 chain by measurement of the scale. Cardigan Street on Plan No. 35 is shown with a scaled width of 1 chain. The plan showing the lands of the Guelph Junction Railway drawn to the scale of 100 feet to the inch, dated April 1, 1891, shows Woolwich Street with a scaled width of 99 feet, Norwich with a scaled width of 99 feet and Cardigan Street with a scaled width of 66 feet. The plan of the Guelph and Goderich Railways, deposited in the year 1907, signed by the Chief Engineer, and submitted to the Hearing shows Woolwich Street with a scaled width of 99 feet and Cardigan Street with a scaled width of 66 feet. In every case mentioned, the only street which is challenged for its plan width as shown

on Plan No. 8 is Cardigan Street and in every instance, Cardigan Street is drawn with a scaled width when compared to the scale of the plan or when compared to the scaled width of surrounding streets as 66 feet and not 99 feet. I believe it is important to note also that the plan filed as Exhibit No. 6 which Surveyor "B" submitted to support the evidence of By-law No. 39 once again points to the suggestion that the original width of Cardigan Street has been recorded in error on Plan No. 8. The plan submitted in support of By-law 39, is signed by a surveyor of the name Smith, dated the 3rd of July, 1880. It is drawn to a scale of 200 feet to the inch and the width of Cardigan Street can, once again, be simply scaled from the plan and is found by scale to be 66 feet. Norwich Street on this plan scales 99 feet.

In my view, the only time that a measurement on a plan can be used to position a lost line is when all other methods have failed. The first priority in locating the lost point is to concern ourselves with physical evidence and the last and least significant method that can be used is measurement.

I am satisfied that in the vicinity of the lands under Application Cardigan Street is now and always has been since its original creation, 66 feet wide. I am satisfied that the problem concerning the Hearing is one of misdescription and that Plan No. 8 has recorded in error the width of Cardigan Street as 99 feet, rather than its original and correct width of 66 feet.

I find, therefore, that Surveyor "B"'s objection to Surveyor "A"'s plan cannot be successful in replacing Surveyor "A"'s survey method by laying out a 99-foot street north-easterly from the south-westerly limit of Cardigan Street. In a similar manner, I find that the Objection by the City of Guelph cannot be successful. I do not accept Surveyor "A"'s submission that the street originally was 99 feet wide and was subdivided or closed to a width of 66 feet; however, I do accept his retracement of the line under Application as being the best available evidence of the original position of Cardigan Street in this vicinity.

Having given full consideration to all of the evidence before this Hearing and for the reasons set out in this Order, in reliance of all the material filed in connection with the Application, from the evidence adduced, and the law applicable, I am of the opinion that the boundary under Application is correctly illustrated on the draft plan by Surveyor "A", signed by him and dated January 25th, 1971.