

EXTENT OF TITLE – THE GREY AREA

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The land surveyor is charged with the responsibility of establishing the boundary limits of real property. This is often referred to as the “extent of title” which begs the question as to, what is the extent based on?

The surveyor must exercise that responsibility without any bias, which at times is not an easy task. The client often has a perceived notion as to where they believe the boundary should be and want the surveyor to verify that location. This is obstacle number one in explaining the duty the surveyor has in serving a client. Obstacle number will likely be dealing with neighbours.

Sections from the **Canadian Generally Accepted Land Surveying Principles** as published on www.anls.ca.

5. Land surveyors use the best available evidence to re-establish a boundary. The hierarchy of evidence doctrine, which gives most weight to “those things about which people are least likely to be mistaken”, is used to resolve ambiguity (for example, between a measurement and a monument) .

6. Land surveyors are cautious in upsetting settled possession. Rationale: Land surveyors are cautious not to disturb settled possession if there is a discrepancy between her/his opinion and the physical occupation on the ground.

This is the grey area!

The land surveyors’ role is to define “extent”, not the “quality of that extent”. Quality is the domain of the legal profession and the Courts. The challenge that faces land surveyors, is that they are expected to satisfy both extent and quality of the subject title to the property owner and satisfaction of the community at large. The publics’ perception is that Extent and Quality are synonymous.

The Judicial Functions of Surveyors

By **Thomas M. Cooley Chief Justice, Supreme Court of Michigan, 1864-1885** as published on www.anls.ca.

The last paragraph of his treatise on the topic is noted as follows, however, a complete read has merit.

QUASI-JUDICIAL CAPACITY OF SURVEYORS

I have thus indicated a few of the questions with which surveyors may now and then have occasion to deal, and to which they should bring good sense and sound judgment. Surveyors are not and cannot be judicial officers, but in a great many cases they act in a quasi-judicial capacity with the acquiescence of parties concerned; and it is important for them to know by what rules they are to be guided in the discharge of their judicial functions. What I have said cannot contribute much to their enlightenment, but I trust will not be wholly without value.

The surveyor must research all available documentation, locate any boundary evidence on site (including relevant cultural features), interview landowners if available, “stir well” and render an opinion. This is a lifelong career exercise as I have personally experienced as well as being exposed to the survey projects submitted by Candidate Members. There is often confusion about adverse possession, prescriptive rights, acquiescence, miss-description, not to mention the accuracy of the measurements referred to on a plan or in a property description.

It is not the surveyor’s duty to imply that a client has ownership by adverse possession or a prescriptive right. A plan or report, however, should illustrate occupation or refer to interviews when conducting research and field surveys. The plan must be clear and devoid of ambiguities. Most property descriptions presently filed with Property Online simply refer to the registered survey plan. Most likely 9/10 individuals who view the plan are then forming an opinion on the merits of the illustrated extent. Be very clear on why you may have deviated from any existing documents with side notes, or a narrative noted on the plan. Remember, the surveyor is tasked with establishing boundaries with the best evidence, not just following in what may have been perceived as the previous surveyor’s footsteps.

Land Registration Act

CHAPTER 6 OF THE ACTS OF 2001 amended 2002, c. 19; 2003, c. 7, s. 4; 2004, c. 38; 2006, c. 15, ss. 9, 10; 2008, c. 19; 2009, c. 10, s. 30; 2011, c. 20; 2014, c. 35, s. 24

Purpose of Act

2 The purpose of this Act is to

- (a) provide certainty in ownership of interests in land;
- (b) simplify proof of ownership of interests in land;

Location and boundaries

21 (1) The legal description of a parcel in a register is not conclusive as to the location, boundaries or extent of the parcel.

(2) Provincial mapping is not conclusive as to the location, boundaries or extent of a parcel.

(3) A registration may not be rejected only because the location, boundaries or extent of the parcel appear to overlap the location, boundaries or extent of another parcel.

<https://nslegislature.ca/sites/default/files/legc/statutes/land%20registration/>

I do not intend to discuss adverse or prescriptive rights, but I do recommend that surveyors acquaint themselves with court cases as well as articles published by the Lawyers' Insurance Association of Nova Scotia.

<https://lians.ca/resources/real-estate/articles/adverse-possession/>

What I would like land surveyors to consider, is acquiescence or the **grey area** of extent. Maintain the "status quo" or don't "upset the apple cart" if you will. Long time occupation that is accepted by the community as being correct should not be questioned without a great deal of consideration. Does a 125-year-old cemetery fence take priority over a description of the same age? This is what one candidate member had to decide.

Another candidate member had a project of a municipal property that was fenced and was a remnant parcel. Several adjacent parcels occupied up to the fence and outside of their deed descriptions. The project was to survey the plot of land and not to address any claim of adverse possession of the adjacent lots but only showing the occupation. The municipal agency was not laying claim to anything outside of the fence. The candidate held the fence, but this is not to say that the municipality could not take exception to that opinion.

We are now working in a coordinated world. Please keep in mind that networks are evolving, and adjustments have been made to monument values since we, as an association, actively started to utilize the system. This can present a mathematical concern for retracement. Maybe not a large one, but noticeable on the ground.

Remember, your opinion must withstand the scrutiny of the Courts if challenged and nothing less than the best evidence and interpretation is expected.

Thank you for your attention.

Questions or Comments????