



Boundaries Act

Client Guide

December 2003

Ministry of Consumer and Business Services

Registration Division

Title and Survey Services Office

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1. INTRODUCTION

The purpose of the *Boundaries Act* is to determine and confirm the true position, on the ground, of one or more boundaries of a property, including those of a public highway.

The operation of the *Boundaries Act* can be distinguished from that of the *Land Titles Act* or the *Certification of Titles Act*. Under the latter two acts a title holder may be certified as the registered owner of land. The *Boundaries Act* deals with the location of boundaries (i.e., "what" property is described in a deed), and the *Land Titles Act* and the *Certification of Titles Act* deal with ownership (i.e., "who" owns it).

Applications under the *Boundaries Act*, with the accompanying material and application fees, should be forwarded to:

Ministry of Consumer and Business Services
Title and Survey Services Office
Suite 301, 393 University Ave
Toronto ON M5G 1E6

2. APPLICATION AND ACCOMPANYING MATERIAL

The *Boundaries Act* allows the following parties to make applications:

- (a) the owner(s) of an interest in a property;
- (b) the council of the municipality in which a property is located;
- (c) a Minister of the Crown;
- (d) the Surveyor General of Ontario;
- (e) the Surveyor General of Canada;
- (f) a surveyor who has the consent of the owner of an interest in a property;
- (g) the Minister of Transportation; or
- (h) the council of a municipality or an authority having jurisdiction over a public highway.

A submission must be accompanied by:

- (a) **A completed application form (Form 1 of Regulation 60 under the *Boundaries Act*) and the application fee.** A copy of this form is attached as Appendix "A".

The fee is \$410.00, plus one dollar for each property adjoining the boundaries to be confirmed. Cheques should be made payable to the Minister of Finance.

It should be noted that the application form refers to a "*Schedule attached.*" This schedule should refer to the specific boundaries of the lot and/or instrument that are to be confirmed, as shown on the draft plan, and refer to the date of that plan and the surveyor who prepared it. A copy of the draft plan, as well as the schedule, should be attached to the application form. It is important to ensure that the schedule and the Draft Plan are consistent with respect to what boundaries are intended to be the subject of the application.

If a surveyor wishes to apply on behalf of the owner, either a statement signed by the surveyor that he/she has the consent of the owner to apply or a letter of authorization from the owner will be required (subsection 3(3) of the *Boundaries Act*).

If the application is made by a municipality, then a by-law is required to authorize the application (section 2 of Regulation 60 under the *Boundaries Act*).

- (b) **Four prints of an up-to-date plan of survey (referred to as the Draft Plan) that has been prepared specifically for the *Boundaries Act* and signed by an Ontario Land Surveyor. A copy of the related field notes are also required.**

The Draft Plan must be prepared in accordance with Regulation 60 under the *Boundaries Act* and O.Reg. 43/96 under the *Registry Act*. Monumentation must conform to Regulation 525/91 under the *Surveyors Act*. The plan must illustrate the boundaries that are to be confirmed by heavy, solid lines. It should be evident from an examination of the draft plan how the surveyor re-established the boundaries. Improvements along or near the boundaries must be shown on the Draft Plan to assist the affected parties in understanding the location of the boundaries to be confirmed.

Sample Registration (Form 4 – O.Reg 43/96) and Confirmation Certificates to appear on the plan are attached as Appendix "D".

- (c) **Copies of all existing plans and field notes that relate to the location of boundaries being confirmed.**

In cases where the issues relate to an original Crown survey, a copy of the original township plan, field notes and patent will also be required. Copies of the instructions given to the Crown Surveyor, as well as the surveyor's report should be included if available.

- (d) **A detailed title search of the subject lands, and the lands adjoining the boundaries to be confirmed, which includes copies of the relevant abstract indexes, instruments and/or parcels.**

Adjoining lands would include properties that touch the boundaries to be confirmed even at only one point.

Copies of all relevant documents, including any deposits that relate to the subject boundary, should be provided. All relevant severances of property should be carefully documented.

In most cases a title tree should be prepared that shows the progression of ownership and severances (if any) of the various related properties.

- (e) **Any other documentary evidence that relates to the position of the boundaries that are to be confirmed.**

All sources that may yield any information respecting the relevant issues should be investigated (i.e., discussions with past and present owners, local histories, archives, air photos, etc.).

- (f) **A Surveyor's Report that presents a detailed history of the dispute, and discusses how the locations of the boundaries shown on the draft plan were determined.**

The report should outline and review all relevant surveys, title documentation, occupational evidence, discussions with individuals having knowledge relating to the boundaries under application and all other available relevant evidence. The report should provide an analysis of the reasons for accepting or disregarding any of this evidence.

3. REVIEW OF THE SUBMISSION

A MCBS Regional Surveyor will review the submission. This review will consist of a cursory evaluation of the plan with respect to certain requirements of O.Reg. 43/96 under the *Registry Act*, and monumentation required by Regulation 525/91 under the *Surveyors Act*. It is not anticipated that field examinations will be performed by Ministry staff.

It should be noted that it is the responsibility of the applicant's surveyor to ensure that the survey method is sound, that all the necessary research has been performed, and that the necessary supporting information has been included in the submission. It should not be assumed that Ministry Surveyors will provide comments, prior to any hearing, on the amount or quality of the research, or the manner in which the surveyor who prepared the draft plan has treated the evidence.

Following this review, the surveyor who prepared the draft plan will be requested to submit a list of the names and addresses and mailing labels for all the parties who have interests in the land adjoining the boundaries to be confirmed, and supply sufficient copies of the draft plan for distribution to them and any other parties identified by the Director of Titles.

4. NOTICE OF APPLICATION

A Notice of Application will be sent to all parties who have interests in the land adjoining the boundaries to be confirmed, and any other persons the Director of Titles deems may be affected by the application. This may include other surveyors, municipalities and Provincial and Federal agencies. The Notice of Application will set out the purpose of the application and the time fixed for delivering objections. Generally, 30 days is allowed in the Notice for the receipt of objections.

The Notice will state that any material or document submitted with the application may be inspected, by appointment during working hours, at a specified location.

If the applicant provides a duly executed Consent and Waiver of Notice from any interested party, that party need not receive a copy of the Notice of Application, provided that the party has signed and dated the print of the plan of survey of the boundary attached to the Consent and Waiver of Notice, and there are no subsequent amendments to the plan of survey which affect the location of the boundary. The Consent and Waiver of Notice should be in the form attached as Appendix "B".

5. OBJECTIONS

Anyone who wishes to object to the location of the boundaries to be confirmed, as shown on the draft plan, must deliver, by registered mail or by personal service, a written statement setting forth the nature and grounds of the objection. An objection must be made within the time period stated in the Notice of Application, and must be supported by copies of all plans, field notes and documents on which the objector relies.

In cases where no objection is received, the material submitted with the application may be deemed to have satisfied the onus of proof regarding the boundaries under application, and these boundaries may be confirmed without a hearing. If, however, the Director of Titles is not satisfied with the application and the material filed in support thereof a hearing may be convened.

6. HEARING

When a written statement of objection is received, a hearing will be held to determine the validity of the objection. In the event that no objection is received, and the Director is not satisfied with the application and the material filed in support thereof, a hearing may be convened. The Director may require any person he or she considers necessary to appear at a hearing to give evidence.

The applicant, any person who submits a statement of objection, and any other person as the Director may specify, are parties to the proceedings and may themselves, or through counsel, introduce evidence and cross-examine witnesses.

A Notice of Hearing will be sent to the parties to the proceedings, and to any other persons as the Director may specify, setting forth the time, place and purpose of the hearing.

It is expected that the applicant and the objector(s) will exchange, prior to the hearing, the evidence on which they expect to rely. This cooperation between parties will assist in expediting the hearing process.

Generally the hearing is chaired by a MCBS Regional Surveyor who has been appointed as a Deputy Director of Titles for the purposes of the *Boundaries Act*.

The onus of proof is on the applicant to provide sufficient evidence at the Hearing to prove the true location of the boundary or boundaries to be confirmed.

The *Statutory Powers Procedure Act* (S.P.P.A.) governs hearings conducted under the *Boundaries Act*. This Act allows considerable latitude in the type of evidence that can be presented. It provides that the Tribunal may admit as evidence at a hearing, whether or not it is given or proven under oath or affirmation or admissible as evidence in a Court, any oral testimony and any document or other thing, relevant to the determination of the location of the subject boundaries. It is the duty of the Chair to consider such evidence and give it an appropriate weight. In addition, the Tribunal may exclude anything that is unduly repetitious.

All licensed Ontario Land Surveyors are considered to be expert witnesses for the purposes of a *Boundaries Act* hearing. Generally it is not necessary to have more than one O.L.S. give opinion testimony for each party.

7. DECISION

At the conclusion of a hearing, the decision of the Director is usually reserved. It will be handed down subsequently by an Order, supported by Reasons. The Director will deal with any objections and may, by order, confirm the location of the boundaries as shown on the draft plan. Alternatively, the Director, if he or she considers it proper to do so, may order that the draft plan be amended, and may confirm the location of the boundaries as shown on the amended plan.

Where the Director is of the view that insufficient evidence has been presented in the hearing to prove the true location of the boundary or boundaries to be confirmed, the Director's Order may dismiss the application.

A copy of the Order and Reasons will be sent to the parties to the proceedings, as well as to any other party the Director considers to be affected by any amendment to the plan as set out in the Order.

8. COSTS

Costs are not automatically awarded to the successful party and, consequently, each party should expect to pay their own costs with respect to the application and any subsequent hearing. When a hearing is called to determine the true location of the boundaries under application, the Director may, however, order costs to be paid by or to anyone who is a party to the proceedings. Costs may be awarded against any party who, for example, unduly delays the proceedings or puts forth frivolous objections to the application.

If a party desires to make a submission for costs, this must be made known before the hearing is adjourned.

Costs submissions must provide reasons why costs should be awarded and include invoices or statements as to fees charged by the relevant professional(s).

9. APPEALS

Any party aggrieved by an Order of the Director may appeal to the Superior Court of Justice. The Notice of Appeal must be filed by the appellant with the court, and a copy must be served on the Director and other parties to the proceedings within 30 days of the date of mailing of the Order.

10. APPROVAL, CERTIFICATION AND REGISTRATION

When the time specified in the Notice of Application has expired and no objection has been received, **or** after the 30-day period for appeal has expired and no appeal has been filed, **or** after any appeal has been disposed of, the surveyor will be instructed to prepare the final plan of the confirmed boundaries and submit it to the Regional Surveyor for approval. The final plan is the Draft plan of survey, into which has been incorporated any amendments required by the Order of the Director or by the Court.

When the surveyor has delivered the final plan and the original field notes of the survey to the Director, the plan will be approved by the Examiner of Surveys. The Director will then certify the location of the boundaries, either as confirmed by him or her, or by the Court.

The Director will cause the plan to be registered in the proper Land Registry Office.

The Land Registrar will make an entry in the proper parcel register or abstract index for the property and for each property that adjoins any of the boundaries confirmed by the plan.

Future documents and plans that deal with a property that adjoins a boundary that has been confirmed under the *Boundaries Act* shall not be accepted for registration unless the description contained therein conforms and refers to the *Boundaries Act* plan.

The following entry is made on the parcel, PIN or abstract for each property that adjoins any of the confirmed boundaries:

“Plan BA- registered (date) as Plan confirms(those boundaries of the parcel confirmed). A future instrument shall not be registered unless the description contained therein conforms and refers to Plan BA- “

When, subsequent to the registration of the plan, any part of the lands affected by the confirmation are transferred to the Land Titles System, or re-entered as a new Land Titles parcel, or re-abstracted (i.e., new subdivision plan), the original *Boundaries Act* plan entry will be carried forward and shown on each new Land Titles parcel or new abstract index for the lands abutting the confirmed boundaries.

11. EFFECT

The boundaries confirmed and certified by the Director, and defined by the monuments shown on the plan, are deemed to be the true boundaries of the property. A plan registered under the *Boundaries Act* supersedes all corresponding portions of all former registered plans and descriptions.

12. CORRECTIONS

The *Boundaries Act* allows the Director to order the correction of any inconsistency, error or omission in a plan that has been certified and registered under the *Boundaries Act*, or a predecessor thereof, provided the correction does not affect the position of the confirmed boundary.

The procedure for correcting a registered *Boundaries Act* plan is as follows:

- (a) A surveyor, or a person having an interest in land shown on a registered *Boundaries Act* plan, will submit an "Application to Correct a Plan" to the Director (see form in Appendix "C") accompanied by a print of the plan indicating in black, and circled thereon, the correction to be made, and supported by evidence satisfactory to the Director of the inconsistency, error or omission;
- (b) The Director, upon either giving such notice as he or she considers appropriate, or without notice, and if he or she is satisfied that the plan should be corrected, will order the correction;
- (c) The Examiner of Surveys will forward a copy of the Director's Order to the appropriate Land Registry Office, and the Land Registrar will register and enter

the Order in each abstract index, parcel register, PIN or plan index, as may be required by the Examiner;

- (d) The Land Registrar will ensure that the corrections are carried out in compliance with the Order.

13. **FREQUENTLY ASKED QUESTIONS**

- (a) Who can make an objection to a *Boundaries Act* application?

Any person with an interest in the boundary under application can put forth an objection and is thereby a party to the hearing. The Director under the *Boundaries Act* can also appoint any person as a party to the hearing, if a hearing is held.

It should be noted that if a hearing is held costs could be awarded against any party.

- (b) Can an existing survey be used for a *Boundaries Act* application?

No, a current survey of the boundaries under application specifically prepared for the purposes of the *Boundaries Act*, by a licensed Ontario Land Surveyor, is required.

- (c) Can a *Boundaries Act* application be combined with a CTA/LTA/LTCQ-LT+ application?

No. If a hearing is required to resolve an objection, an Ontario Land Surveyor chairs the hearing under the *Boundaries Act* while a lawyer is required to chair a hearing held under the *Land Titles Act* or *Certification of Titles Act*. The *Boundaries Act* application deals solely with the position of boundaries while the CTA/LTA application deals with title to the land. Separate applications are necessary.

- (d) How much does a *Boundaries Act* application cost?

Currently the fee is \$410 plus \$1 for every parcel of land that touches the boundaries under application.

- (e) Do applicants or objectors need to engage a lawyer?

If a hearing is held, it is not mandatory that parties be represented by a solicitor however, as it is expected that parties will present evidence, cross examine witnesses and provide submissions on the applicable law, it is strongly recommended that all parties to a hearing have legal representation.

- (f) Do applicants or objectors need to engage a surveyor?

It is required that the applicant provide a current survey, prepared for the purposes of the *Boundaries Act*, by a licensed Ontario Land Surveyor (OLS) of the boundaries under application. Objectors are not required to have a survey or to engage an OLS however it is strongly recommended that all objectors consult with an OLS prior to a hearing. Generally surveyors will provide evidence as expert witnesses for all parties at a hearing.

- (g) When will the decision of the Chair be available?

The Order and Decision are usually reserved and will be finalized within five months of the hearing unless there are unusual circumstances, such as a lengthy hearing.

- (h) How does a *Boundaries Act* hearing differ from court proceedings?

The general procedure is similar however a *Boundaries Act* hearing will permit some types of evidence that usually would not be allowed in court. Each party, commencing with the applicant, puts forth their case through evidence of witnesses (i.e. surveyors, current and former property owners in the area) and the submission of relevant documentation. Each party has an opportunity to cross-examine witnesses put forth by other parties. The provisions of the *Boundaries Act* and the *Statutory Powers Procedure Act* govern hearings.

- (i) Can a water boundary on a lake or a river be confirmed under the *Boundaries Act*?

Any boundary, where doubt exists regarding its position on the ground can be confirmed. Some water boundaries are unique in that they are ambulatory, or they move, as the water body naturally fluctuates. Nonetheless the nature of the water boundary (i.e. the water's edge of the lake) can be confirmed even though the actual position will vary from time to time.

APPENDIX "A"

Form 1

Boundaries Act

APPLICATION FOR BOUNDARY CONFIRMATION

To the Director of Titles:

1. I / We,
(full name(s) of applicant(s))

..... hereby apply to have the boundary (or boundaries) of the land described in the Schedule attached hereto confirmed under the *Boundaries Act*.

2. The address of the applicant(s) for the service of any notices or other documents is:

.....
.....

3. This application is made under subsection 3(1) or (2) of the Act.

4. The applicant(s) is (or are):

- (insert the appropriate clause)
- (a) the owner(s) of an interest in the parcel;
 - (b) the council of the municipality in which the parcel is situate;
 - (c) a Minister of the Crown;
 - (d) the Surveyor General of Ontario;
 - (e) the Surveyor General of Canada;
 - (f) a surveyor who has the consent of the owner of an interest in the parcel to make this application;
 - (g) the Minister of Transportation; or

(h) the council of a municipality or an authority having jurisdiction over the public highway(s) described in the Schedule.

5. I am (We are) fully aware that I am (We are) liable, in the absence of evidence to the contrary, to pay all costs, charges and expenses of and incidental to this application.

6. Where the application is made under Subsection 3(1), state briefly the doubt that exists in respect of the location of the boundary (or boundaries)
.....
.....

Dated at this day of 20.....

signed
(signature of applicant(s))

Regulation 60, Form 1

APPENDIX "B"

BOUNDARIES ACT

CONSENT AND WAIVER OF NOTICE

(Re: Application No. B-)

I,, being the registered owner of land adjoining the boundary (boundaries) to be confirmed as shown on the attached print of draft plan of survey hereby consent to the application made by(*name of applicant*) to confirm the true location of the boundary (boundaries) on the ground under the *Boundaries Act*, as shown on the said draft plan of survey.

And I hereby waive my right to a Notice of that Application.

Dated at, this day of, 20..

.....
(Witness) (signature of registered owner)

Note: *The party executing this Consent and Waiver of Notice must sign the attached print of the draft plan of survey and indicate on the print the date on which he or she signed the Consent and Waiver of Notice. This consent and Waiver of Notice will cease to be valid if the draft plan of survey is later amended so as to change the boundary between the land under application and the land of the party executing this Consent and Waiver of Notice.*

APPENDIX "C"

BOUNDARIES ACT

APPLICATION TO CORRECT A PLAN

IN THE MATTER of plan BA - registered in the
Land Registry Office for the Registry (Land Titles)
Division of as Plan

I, of the of
..... hereby apply to have the following
correction(s) made to the above mentioned Plan B.A. -
.....

.....
.....

(here state the nature of the error(s), defect(s) or
omission(s) in the plan and give particulars of the
correction(s) required)

A copy of the said Plan B.A. - (or a relevant
portion thereof) is attached hereto with the proposed
correction(s) circled thereon in black ink.

The following is submitted in support of this application:

.....

Date:

.....
(Signature of Applicant)

APPENDIX "D"
BOUNDARIES ACT PLAN CERTIFICATES

<p>PLAN _____</p> <p>RECORDED AT THE OFFICE OF THE DIRECTOR OF TITLES UNDER BA _____</p> <p>APPROVED _____</p> <p style="text-align: center;">_____ ASST. EXAMINER OF SURVEYS</p> <p>MCBS FILE _____</p>	<p>PLAN _____</p> <p>I HEREBY CERTIFY THAT THIS PLAN IS REGISTERED IN THE LAND REGISTRY OFFICE FOR THE REGISTRY (<i>and/or LAND TITLES</i>) DIVISION OF _____ (NO. __) AT O'CLOCK ON THE _____ DAY OF _____ , 20__</p> <p style="text-align: center;">_____ LAND REGISTRAR</p>
--	---

CERTIFICATE OF CONFIRMATION

I hereby certify that on the ____ day of _____, 20__ , the true location on the ground of the

as shown in heavy outline on this plan, were confirmed pursuant to subsection 9(1) of the *Boundaries Act*.

_____ Date

Deputy Director of Titles

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