

**Canadian Board of Examiners for Professional Surveyors**  
**Core Syllabus Item**  
**C 9: SURVEY LAW**

**Syllabus Topics:**

The Canadian Legal System:

Case law and precedent; Common Law; Civil Law in Quebec; Principles of evidence; Expert and lay witnesses; Estoppel; Constitution Act; Limitation of actions;

Real Property Law:

Easements and rights of ways; Statutory rights of way (or rights of way without a dominant tenement); Exceptions and reservations; Covenants, Caveats and other title restrictions; Prescription; Adverse possession; Dedication of roads; Expropriation; Escheat, All types of descriptions of parcels.

Boundary Law:

Creation of boundaries; Retracement and reestablishment of lost or obliterated boundaries; Resolution of boundary uncertainty; Bornage; Unauthorized removal or disturbance of monuments or other boundary markers; Hierarchy of evidence; Jurisdictional boundaries (international, provincial/territorial, municipal); Offshore boundaries and maritime zones; Leases at sea.

Natural Boundaries:

Water boundaries; Riparian and littoral rights; High and low water mark; *Ad medium filum aquae*; Erosion, accretion and avulsion; Excavation and fill adjacent to natural boundaries; Navigable waters and determination of navigability; Boundaries defined by artificial lines;

Principles of:

Subdivisions; Condominiums (including boundaries, common property, administrative framework, structure, fees and governance); Strata plans; Air Space plans; Mineral interests, Mining and placer claims; Petroleum and natural gas interests, Well site leases; Special surveys.

Professional Practice:

Function of associations; Purpose of codes of ethics and standards; Negligence; Disciplinary process; Common causes for disciplinary actions.

Integration of Property Surveys:

Typical requirements; Role of coordinates in retracement and as evidence; Surveys of parcels under a land registry system and under a land titles system.

**Recommended Prior Knowledge and Skills:**

Item C8: Cadastral Studies

**Learning Outcomes:**

In order to satisfy the requirements of this syllabus item, candidates should be able to:

1. Explain and illustrate the basis of the Canadian legal system and how our legal system is affected by case law and precedent.

2. Demonstrate a clear understanding of Federal and Provincial statutes, the Common Law and the Civil Law in Quebec as they affect property rights and cadastral surveys.
3. Explain and illustrate the limitations of actions and estoppel.
4. Explain and illustrate the principles and admissibility of evidence including the role of an expert witness and how an expert witness differs from any other witness.
5. Explain road dedication, easements, rights of way, statutory rights of way and the various means through which they are created.
6. Explain adverse possession, prescription and be able to clearly articulate their differences and similarities.
7. Explain and illustrate grants, reservations, transfers through deeds and other land related documents.
8. Explain and illustrate water boundaries and their definition, the common law doctrines of accretion and erosion and the principles of apportionment, how property rights are affected by the ambulatory nature of water bodies and related case law.
9. Explain riparian and littoral rights and how they have been affected by modern statutes.
10. Explain the classification of waters, offshore boundaries and zones, tenures over bodies of water and at sea, jurisdiction over the offshore, navigability
11. Explain the various types of boundaries, their creation and demarcation, descriptions, retracement and repositing, and the hierarchy of evidence.
12. Explain the various ways of resolving boundary uncertainties, including mediation, litigation, statutory confirmation, bornage, and the land surveyor's role in each.
13. Explain the role of a surveyor as a member of a self-governing profession and its benefits and obligations.
14. Demonstrate a good knowledge of historical and modern case law relating to all of the above.

In many learning outcomes, an explanation would be enhanced by an accompanying example or illustration or both.

### **Essential Reference Material:**

Allred, G.K. (2014). Water boundaries: The Prairie Provinces. A chapter of the new Survey Law for Land Surveyors in Canada book available from the CBEPS Web site.

Barry, Dr Michael (2012). Land Registration. A chapter of the new Survey Law for Land Surveyors in Canada book available from the CBEPS Web site.

Beaulieu, Berthier and Ferland, Yaïve (2015), Delimitation of water property in Quebec. A chapter of the new Survey Law for Land Surveyors in Canada book available from the CBEPS Web site.

Blackie, W.V. et al. (edit) [1989]. *Survey Law in Canada: A Collection of Essays on the Laws Governing the Surveying of Land in Canada*. CISM/CCLS. The Carswell Co. Ltd. ISBN 0-459-33191-4 [whole of text but especially ch. 4 to 11]

De Rijcke, Izaak (2012). Water Boundary Issues – Eastern Canada. A chapter of the new Survey Law for Land Surveyors in Canada book available from the CBEPS Web site.

Gray, David H. (2011). Water Boundary Issues, Part 1 – Maritime Boundary. A chapter of the new Survey Law for Land Surveyors in Canada book available from the CBEPS Web site.

Ringwood, Patrick (2015) Water Boundary Issues, British Columbia. A chapter of the new Survey Law for Land Surveyors in Canada book available from the CBEPS Web site.

Ringwood, Patrick (2013). Land Surveyors as Expert Witness. A chapter of the new Survey Law for Land Surveyors in Canada book available from the CBEPS Web site.

Robidoux, Marie C. (2013). The Canadian Legal System. A chapter of the new Survey Law for Land Surveyors in Canada book available from the CBEPS Web site.

Roy, Francis and Ferland, Yaives (2014). Bornage: Determining boundaries of real properties in Quebec. A chapter of the new Survey Law for Land Surveyors in Canada book available from the CBEPS Web site.

*Criminal Code*, R.S. 1985 ch. C-46 via <laws.justice.gc.ca/en/C-46/>

Court decisions related to the syllabus topics including the following, as well as those listed in Core Syllabus item C 8 Cadastral Studies. Comments are given for those cases to which reference has not been given in *Survey Law for Land Surveyors in Canada*.

*Case reports that are not available via the Canadian Legal Information Institute, <[www.canlii.org](http://www.canlii.org)>, are available for download from CBEPS, unless another source is specifically mentioned.*

Attorney General for British Columbia v. Miller, [1975] 1 S.C.R. 556, [1974] 4 W.W.R. 545, 45 D.L.R. (3d) 376, reversing [1973] 2 W.W.R. 201 (B.C. C.A.)

Attorney General of British Columbia v. Neilson, [1956] S.C.R. 819, 5 D.L.R. (2d) 449, reversing 16 W.W.R. 625, [1955] 5 D.L.R. 56, which affirmed 13 W.W.R. 241

Attorney General for Ontario v. Walker, [1975] 1 S.C.R. 78, 42 D.L.R. (3d) 629, 1 N.R. 283, affirming [1972] 2 O.R. 558, 26 D.L.R. (3d) 162 (C.A.), which affirmed [1971] 1 O.R. 151, 14 D.L.R. (3d) 643 (H.C.)

Attorney General for Québec v. Healy, [1983] Que. C.A. 573, affirmed [1987] 1 S.C.R. 158

Chuckry v. R., [1973] S.C.R. 694, [1973] 5 W.W.R. 339, 35 D.L.R. (3d) 607, 4 L.C.R. 61, reversing [1972] 3 W.W.R. 561, 27 D.L.R. (3d) 164, 2 L.C.R. 249 (Man. C.A.)

Clark v. Edmonton (City of), [1930] S.C.R. 137, [1929] 4 D.L.R. 1010, reversing [1928] 1 W.W.R. 553, [1928] 2 D.L.R. 154, 23 Alta. L.R. 233

Edgeworth Construction Ltd. v. N.D. Lea & Associates Ltd. [1993] 3 S.C.R. 206 via CanLII

*Confer discussion of Hedley, Byrne v. Heller, [1964] in Survey Law for Land Surveyors in Canada.*

Esson v. Mayberry (1841), 1 N.S.R. 186 (C.A.)

Flello v. Baird 1999 BCCA 244 via CanLII

*Re: proprietary estoppel; conventional boundary under land titles; interpreting judicial pronouncements*

Grasett v. Carter (1884), 10 S.C.R. 105

Harries Hall & Kruse v. South Sarnia Properties Ltd., 63 O.L.R. 597, [1929] 2 D.L.R. 821 (S.C.)

Hedley, Byrne v. Heller, [1964], A.C. 465 (H.L.)

Home Bank v. Might Directories Ltd. (1914), 31 O.L.R. 340, 20 D.L.R. 977 (C.A.)

Howard v. Ingersoll (1851), 13 Howard 381, 54 U.S. 381 (U.S. Sup. Ct.)

Huebner v. Wiebe, [1984] 1 W.W.R. 272, 25 Man.R. (2d) 70 (Q.B.)

Irving Refining Ltd. v. Eastern Trust Co. (1967), 57 A.P.R. 155 (N.B. S.C.)

Lee v. Arthurs (1918), 46 N.B.R. 185 (S.C.), affirmed (1919), 46 N.B.R. 482, 48 D.L.R. 78 (C.A.)

McKellar v. Canlan Investment Corp. [1988] BCJ No. 2150 & BCJ No. 3078 [McKellar & Kelly v. Canlan Investment Corp., MacGregor Pacific Realty, Fotsch, & Purden]

*Re: declaration of title to an alleged "gore", in dispute; sequence of surveys since 1891; bearing error; official surveys; reference to Cooley's original lines must govern (SLiC §11.63)*

Monashee Enterprises Ltd. v. Minister of Recreation and Conservation, British Columbia (1981), 28 B.C.L.R. 260, 21 R.P.R. 184, 23 L.C.R. 19, 124 D.L.R. (3d) 372, reversing (1978), 7 B.C.L.R. 388, 7 R.P.R. 197, 16 L.C.R. 212, 90 D.L.R. (3d) 521 (C.A.)

Okanagan Radio Ltd. v. British Columbia, 1994 CanLII 1914 (BC S.C.) [1994 01]; Okanagan Radio Ltd. v. British Columbia, 1995 CanLII 3035 (BC C.A.) [1995 02]; Dunlop v. Okanagan Radio Ltd., 1995 CanLII 2890 (BC S.C.) [1995 11]; Okanagan Radio Ltd. v. British Columbia, 1996 CanLII 2954 (BC S.C.) [1996 09] via CanLII

*Re: dispute over 11 Ac "gore"; conflicting surveys/plans under land titles; errors almost 60 years ago; hierarchy of evidence*

Palmer v. Thornbeck (1877), 27 U.C.C.P. 291 (Ont. C.A.)

Paul v. Bates (1934), 48 B.C.R. 473 (Co. Ct.)

Piercy et al. v. Briggs & Little Woolen Mills Ltd. 2003 NBQB 210 via CanLII

*Re: appeal of a decision under the Boundaries Confirmation Act, upheld; failure of claim of adverse possession*

R. v. Robertson (1882), 6 S.C.R. 52, affirming 1 Ex. C.R. 374

Rotter v. Canadian Exploration Ltd., [1961] S.C.R. 15, 33 W.W.R. 337, 26 D.L.R. (2d) 133, reversing (1959), 30 W.W.R. 446, 23 D.L.R. (2d) 136 (B.C. C.A.)

Shaw v. R., [1980] 2 F.C. 608 (T.D.)

South Australia State v. Victoria State, [1914] A.C. 283, 83 L.J.P.C. 137, 110 L.T. 720, 39 T.L.R. 262, 18 C.L.R. 115, 20 A.L.R. 74 (P.C.), affirming (1911), 12 C.L.R. 667, 17 A.L.R. 206 (H.C.)

Swazey et al. v. King et al. (1997) 186 N.B.R. (2d) 169 (N.B. C.A.) affirming (1996) 175 N.B.R. (2d) 11 (N.B. T.D.) both available via CanLII

*Re: riparian boundaries and rights; non-tidal and non-navigable river; severed part of island, ad medium filum aquae applied; differing expert evidence and opinion.*

Candidates are encouraged to compile discussions/reviews of case reports concerning real property law, land surveying, and professional conduct. Several sources are recommended: "Geomatics and the Law" in *Geomatica*; "The Legal Corner" in *The Canadian Surveyor*; "Legal Notes" in *ALS News* [[www.alsa.ca](http://www.alsa.ca)]; and similar efforts and articles in these and other association publications and their web sites.

### **Supplementary Reference Material:**

These are in addition to those listed in Core Syllabus item C 8 Cadastral Studies.

LaForest, G.V. and Associates [1973]. Water Law in Canada: The Atlantic Provinces. Information Canada, Ottawa.

*Although a bit dated, it is a thorough treatment.*

Lambden, D.W. and I. de Rijcke [1996]. Legal Aspects of Surveying Water Boundaries. Carswell, Scarborough. ISBN 0-459-55410-7

*Although Ontario focussed, it is a useful dealing with water boundaries.*

Wilson, D.A. [2008]. Forensic Procedures for Boundary and Title Investigation John Wiley & Sons, Inc., ISBN 978-0-470-11369-1 hardcover.

*Although this has an American focus, it is a comprehensive treatment of evidence gathering, in keeping with the judicial function of a surveyor.*