

Applying the Hierarchy of Evidence

The hierarchy of evidence is an important tool in the surveyor's toolbox and it should be applied whenever a boundary is being defined. We've recently encountered instances where surveyors have applied the hierarchy in a rigid manner without giving due weight to evidence which may be more reliable.

To recap, the hierarchy of evidence is:

1. Natural Boundaries
2. Original, Undisputed Monuments
3. Occupation (old and undisputed)
4. Abuttals (the description of a land parcel by reference to what it abuts or adjoins)
5. Measurements (mathematical evidence of position)

While the hierarchy is not enshrined in legislation, the legitimacy of its use has been confirmed by case law. Just as importantly, case law has confirmed that the hierarchy should not be rigidly applied.

In *Chief Executive Land Information New Zealand v Te Whanau o Rangiwhakaahu Hapu Charitable Trust* [2013] NZCA 33 the Court affirmed the appropriateness of surveyors' reference to the hierarchy of evidence and observed:

'The hierarchy of evidence is a guide rather than a straight-jacket. The hierarchy places the greatest weight on the points on which the parties were least likely to be mistaken at the time. If the circumstances make it clear that a piece of evidence further down the hierarchy is a more reliable indication of the parties' intention, then it may take precedence'.

It is therefore important that surveyors assess the evidence of a boundary position not only in terms of its position in the hierarchy, but also in terms of its reliability. A common example is where a surveyor encounters conflict between old occupation and a mathematical determination of the boundary position by adoption. In trying to reinstate the boundary in the same position as originally marked on the ground, the surveyor must gather, weigh up, decide and use all evidence available to achieve that aim.

All sources of evidence have their weaknesses. A mathematical position is dependent on existing data which may be subject to measurement errors, calculation errors, rounding and so on. The inaccuracy of a mathematical definition increases when the position is obtained through long or complex adoptions. When considering the use of old occupation for definition purposes, the reliability of that evidence needs to be carefully assessed. In the case of an old fence line, for example, was the fence placed on the boundary? Perhaps it was constructed next to a hedge which was on the boundary but is long since gone? Perhaps the fence was renewed and placed beside an older fence? Was it a fence of convenience that never occupied the boundary in the first place?

These are the types of questions a surveyor needs to resolve when weighing up which evidence will take precedence. It may result in evidence that sits lower in the hierarchy prevailing over something higher.

The final weighting applied to evidence, therefore, is a combination of its importance within the hierarchy and an assessment of its reliability to the boundary position under consideration.

For further information on the hierarchy of evidence, see the Land Title Surveys in NZ resource on the S+SNZ website and relevant Knowledge Base articles on the LINZ website.

Simon Ironside

Cadastral Surveyor

LINZ Property Rights

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