A public that increasingly expects the delivery of boundary line, property corner establishment and retracement, in a virtual environment with no “hard features” referenced to the ground, may seem like the exact opposite of what is seen as “certain,” such as a cadastral monument. Yet, increasing capacity to model boundary location using digital mapping is challenging our traditional views of how evidence, based on co-ordinates, is to be treated. This paper explores these developments with a view to understanding the further changes that are needed in the legal framework for determining boundary location based on co-ordinates.

Overview

The definition of cadastral boundary, based not on a reference to a “hard feature,” but on a mathematical model, means that the model is an attempt to replicate the hard feature. At common law, this had been accomplished by the adherence, in respect of legal boundaries, to one simple goal, and was captured by the simple adage: place most reliance on things which are least likely to be mistaken. The principles of boundary retracement are then replete with variations of this adage in order to achieve the implementation of that goal. This may well be fine if the hard feature is capable of being found or replaced as a most probable position of a line or a corner sought to be reliably re-established. However, what if the model is itself the end result? What if the model is the only means of re-establishing a line or corner which was never related to a hard feature in the first place? This is no longer an academic or legal...