

# The NOVA SCOTIAN SURVEYOR



APRIL – 1973

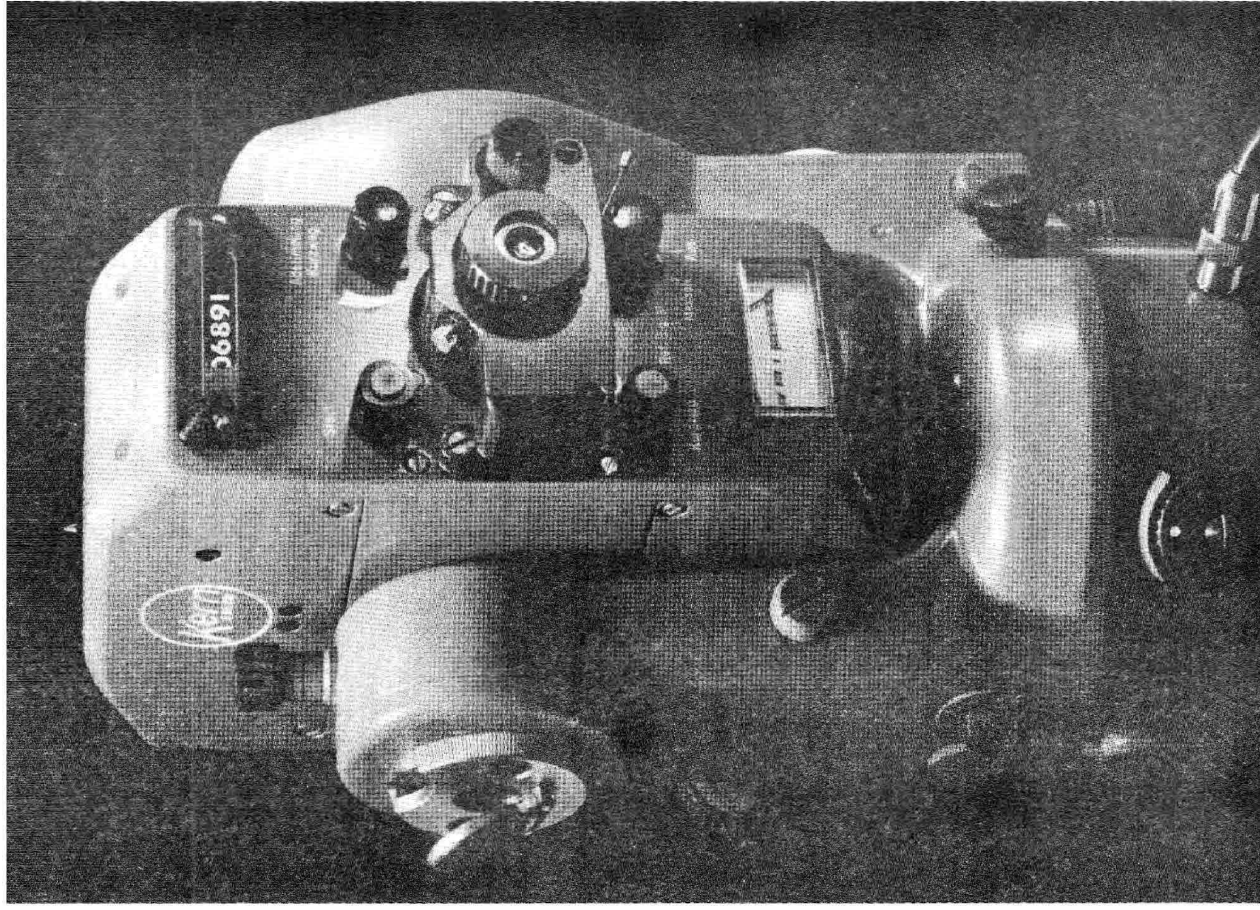
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# The NOVA SCOTIAN SURVEYOR

*Published four times a year by*

**THE ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS INCORPORATED**

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**\*\* GARNET F. CLARKE \*\***

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- C O N T E N T S -

*Views, expressed in articles appearing in this publication, are those of the authors and not necessarily those of the Association.*

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## \*\* LEGAL ASPECTS OF LAND SURVEYING IN NOVA SCOTIA \*\*

*by Malachi Jones*

*Legal Staff, Department of the Attorney-General of Nova Scotia  
(from The Canadian Surveyor - December, 1955)*

I wish to deal, gentlemen, with the question of boundaries, more particularly as to the law applicable to boundaries insofar as it effects your profession or occupation. I will endeavour to outline very briefly a few of the legal principles which may be of some assistance to you in dealing with your everyday problems in this regard.

A boundary has been defined as an imaginary line which marks the confines or line of division of two contiguous estates or, in common language, properties. The term is also used to denote the physical objects by reference to which the line of division is described as well as the line of division itself. In this sense boundaries have been divided into natural and artificial, according as such physical objects have or have not been erected by the agency of man. As illustrations of natural or physical objects forming or locating boundaries, the following may be mentioned; waters, the seashore, fences and party walls.

In cases where the ownership of the surface and minerals is severed, boundaries are not necessarily confined to the surface. In general, of course, a division of land into separate parts is either horizontal or vertical; but there appears to be no reason why the division may not be made in any other way; but where no such severance of the minerals has taken place, the surface boundary probably carries with it the right to the column of air over the land to the sky, although there is considerable doubt about this matter, and certainly the soil to the centre of the earth.

Whether a boundary is, or is not, included in the property which is described as founding depends upon the particular circumstances in each case. Thus, in the case of adjoining properties bounded by a hedge and a ditch there is no inaccuracy in describing either property as so bounded, though the boundary may be wholly included in one and excluded from the other.

Boundaries are fixed either (1) by proved acts of the respective owners, or (2) by Statutes or Orders of the authorities having jurisdiction, or (3) in the absence of such acts, statutes or orders, by legal presumption.

### BOUNDARIES FIXED BY ACTS OF THE PARTIES

#### *By Agreement*

Boundaries may be fixed by an agreement made between two or more adjacent owners where their boundaries become lost or confused. Such an agreement need not be in writing and, therefore, need not be by deed, for, if it be fairly made, the boundaries so settled will be presumed to be the true and ancient limits.

#### *By Assurance*

Boundaries may, and of course should, be fixed by the deed or deeds conveying one or both of the properties concerned. It is always a question of fact whether a parcel of land is contained in the description of the land conveyed by deed or not. In a conveyance of land it should be described with the utmost accuracy, and it is the duty of the grantor to see that this is done, the rule being that the grant shall be construed most strongly against the grantor, except where the grantor is the Crown.

The property may be described in any way sufficient to identify it but the best method is by area, location and County and, if it can be stated, by well marked boundaries such as highways and rivers or, if not, by stating the names of adjacent owners coupled with reference to a plan for the purposes of better identification. It is, however, unsafe to rely exclusively upon a plan the lines on

which are to be taken as a true description of the boundaries of the property conveyed, just as if they were contained in the body of the deed; for the person who prepares the plan may easily make a mistake, which might be irreparable and would at all events necessitate either another deed or judicial rectification.

#### *By Undisturbed Possession*

The right to boundaries fixed by agreement or assurance may be lost and a new boundary may be acquired under the Statute of Limitations by twenty years undisturbed possession of the land falling between the old and the new boundaries. Thus, where the owner of a hedge and a ditch beyond it has covered in the ditch, and the adjoining owner has erected buildings and planted trees on the site of the ditch more than twenty years before an action is brought, the boundary will be the hedge, as the former owner of the ditch has discontinued the possession of its site by allowing these acts of adverse ownership; and climbing over the hedge once or twice a year to clip it will not be evidence of the continued possession of the site of the ditch but only of a right in the nature of an easement. Similarly, filling up a ditch and sowing and cultivating the site of it together with the rest of the field will be sufficient dispossession to bring the Statute of Limitations into operation. In order that the Statute may operate, however, it is not sufficient to prove mere acts of ownership, that is to say, acts which an owner may do. Actual possession on the part of the person claiming under the Statute and dispossession on the part of the former owner must be proved, for this reason, that if discontinuance of possession on the part of the former owner has not been proved his right to bring an action has never arisen, and the Statute has never commenced to run against him. Mere non-user on the part of the owner is not sufficient evidence of discontinuance of possession without some other acts of definite adverse possession on the part of the person claiming the land by long possession.

#### BOUNDARIES FIXED BY STATUTE OR OTHER AUTHORITY

I do not wish to dwell on this particular heading other than to point out that boundaries may be established under statutory or other authority. In the case of expropriations under the Expropriation Act boundaries are established for the area expropriated by means of the plan and description filed in the appropriate registry office. This is very common of course in cases where land is expropriated for highway purposes. Boundaries may also be established by means of a Court order. For example, the Supreme Court has power to make an order for the partition of lands as between, for example, tenants in common. Such orders are, of course, not very common in practice.

#### BOUNDARIES FIXED BY LEGAL PRESUMPTION

In certain instances boundaries may be fixed by legal presumption. In other words the law presumes that certain facts exist until the contrary is shown. All the presumptions recognized and obtained in the case of boundaries may be rebutted by satisfactory evidence, but until such evidence is produced the presumptions necessarily hold. For example the boundary between the seashore and the adjoining land is as a general rule the line of the medium high tide between the ordinary spring and neap tides; but the boundary of land described in a conveyance as bounded by the sea may in certain circumstances, include the foreshore below this line.

Where land abutting upon tidal waters is granted and is described in the conveyance as extending back from the high water mark a stated number of feet, the line from which such distance is to be measured must be taken to be the ordinary or usual and customary high water mark, but where the word "beach" is used to describe land granted at or near the sea or arms of the sea, it is taken to mean the land lying between the lines of high water and low water over which the tide ebbs and flows. However, where the place is so situated that there is only a slight rise and fall of the tide, and there is a distinct fresher mark, in that case the beach may be taken to include the foreshore between the ordinary high water mark and the

fresher mark. As stated previously these presumptions are rebuttal presumptions that is to say, evidence can be produced to show that the situation is otherwise. The right to the seashore depends wholly upon the construction of the grant. Where the line in the deed is a fixed and permanent one, when first conveyed, so as to indicate a definite parcel of land, the water mark at the date of the deed remains, and does not follow the changes which may result from the subsequent action of the water.

#### SHIFTING OF BOUNDARY LINE

The boundary of land abutting upon the seashore may vary from time to time, and in the case of a conveyance of land described as bounded by the seashore, then as the medium high and low water marks shift so does the boundary of land shift also; for there may be a movable freehold. Thus, as the sea gradually and by imperceptible degrees recedes and leaves a quantity of land uncovered, then, as the general law of accretion applies, and the land so gained belongs to the owner of the adjoining land, the boundary will be correspondingly advanced. It is one condition of the operation of the rule that the accretion shall be natural and shall be slow and gradual - so slow and gradual as to be in a practical sense imperceptible in its course and progress as it occurs. Conversely, the boundary will recede if the sea or an arm of the sea by gradual and imperceptible progress encroaches upon the land of a subject; for the land thereby covered with water belongs to the Crown or to the owner of the foreshore as the case may be.

These principles do not apply where the change occurs owing to a sudden advance or recession of the sea, or where the boundaries are well known and have not disappeared by reason of the influx of the sea, but, provided the change is gradual, they apply notwithstanding the former boundary was well known and readily ascertainable. They are, however, limited to the seashore and land abutting on rivers of running water, and do not extend to stagnant waters, such as a lake.

#### BOUNDARIES BY SURVEY

Evidence of boundaries differs in kind and in degree. As a general rule, where a deed refers to known physical and natural objects by means of which the boundaries of land conveyed are described, and also contains a statement of area, the former will control the latter in case of discrepancy; and if reference is made to some physical object not in existence at the time, and the parties subsequently erect some object intending it to conform to the deed, the boundary indicated by such object will be binding upon them, even although it may not actually conform to the line of boundary or to the acreage contained in the deed. In running the boundary line of any property, the marks of the original survey should be sought and adhered to as far as possible. The general rule to find the intent where there is any ambiguity in the grant, is to give most effect to those things about which men are least liable to mistake. On this principle, the things usually called for in a grant, that is, the things by which the land granted is described, have been thus marshalled: first, the highest regard had to natural boundaries; secondly, to lines actually run and corners actually marked at the time of the grant; thirdly, if the lines and courses of an adjoining tract are called for, the lines will be extended to them, if they are sufficiently established; fourthly, to courses and distances, giving preference to the one or the other according to circumstances. If in a deed conveying land the description of the land intended to be conveyed is couched in such ambiguous terms that it is very doubtful what were intended to be the boundaries of the land, and the language of the description equally admits of two different constructions, the one of which would make the quantity of the land conveyed agree with the quantity mentioned in the deed and the other would make the quantity altogether different, the former construction would prevail.

#### DESCRIPTION BY REFERENCE TO BOUNDARY MARKS

When plans, and monuments as well, are mentioned in a grant, or the latter are marked on a plan attached to such grant, it is the duty of the Court in construing the same, to give full effect, if possible, to all that is so written or

delineated. Having regard both to the description set out in a grant as well as to an attached plan in all its particulars, precedence is to be given to monuments laid down on the ground, if the plans and monuments mentioned are shown as aforesaid and do not coincide in meaning. However, where no monuments are referred to, the limits of the land conveyed must be determined by the courses and distances stated in the grant. When, in a deed, the boundaries of land conveyed are uncertain, the number of acres which the land is stated to contain may become an important, and very often the decisive, element in determining what are the true bounds of such land. But, when the boundaries of the lot conveyed are defined in the deed, no erroneous statement as to acreage comprised in the land can change such special boundaries. In construing a deed, extrinsic evidence of monuments and actual boundary marks is inadmissible to control the deed, but if reference is made by the deed to such monuments and boundaries, they control, though they may call for courses, distances or computed contents, which do not agree with those in the deed. Where it is sought to ascertain the land conveyed by deed, it is necessary to resort to extrinsic evidence to ascertain what the parties intended to indicate by any expression or words in the deed purporting to describe any monument, such as an old line, marked stake or other object used to designate and define the bounds of the lot conveyed. Artificial monuments are regarded by the law as evidence of the intention of the parties, second only in controlling force to that of natural monuments. In case of a discrepancy in the description of the premises between the distances and the boundaries, the former are controlled by the latter, on the ground that the latter must yield to the greater certainty and where land is conveyed by a particular description and with an enumeration of the quantity of acres, the latter is held to be a matter of description merely and cannot be deemed an implied covenant for quantity. But the rule that monuments control courses and distances does not hold good when the grantee's evident intention was that courses and distances should govern. When the lines or corners of an adjoining tract are called for in a deed or patent, the lines must be extended to them without regard to distance, provided that those lines and corners be sufficiently established and that no other departure be permitted from the words of the patent or deed than necessity enforces or a true construction renders necessary, and this holds true whether the line be marked or unmarked. As a general rule, a call for the line of an adjoining survey means the true line not a supposed line nor a line agreed on between the adjoining owners. Before the boundaries of a junior grant can be determined the lines of an older survey called for must be located. When a deed refers to lines as laid down in a map or plot they must be taken as giving the true description of the boundary as much as if they had been set forth in the deed.

#### DESCRIPTION BY REFERENCE TO PLAN

Where reference is made in the description in a deed to a plan attached, the interpretation to be given to the description must be one that accurately fits and describes what is to be found in the plan. Where maps, plans and field notes are referred to in descriptions of land, they are to be regarded as incorporated into the descriptions, and in case of a conflict of calls the usual rules of construction are to be applied, and those calls which are most certain and definite, or most in accord with the true intent of the parties, are to be adopted. A description in a conveyance of lands by reference to a plan is equivalent to description by notes and bounds. When lands are described by reference to a plan, the plan is considered as incorporated with the deed, and the boundaries of the lands conveyed as defined by the plan are to be taken as part of the description. Where land is granted by reference to a plan upon which is shown a certain land mark, the position of this land mark on the ground will not be allowed to control the description in the grant, if it is not mentioned therein; and an inaccuracy in the plan will not control the dimensions in the deed. Where a lot is described in a grant as bounded by the adjoining lot and by reference to a certain plan, if the plan is subsequently lost, the boundaries may be ascertained by locating the boundaries of the adjoining lot, if its boundaries can be located by reference to monuments on the ground. A second plan of subdivision of land cannot be invoked as evidence of the limits of land conveyed by description according to a first plan, unless there be evidence of error in the first one.





When a highway or street is referred to in a grant or other conveyance, the way, as opened and actually used, rather than as plotted, is construed to be the boundary intended by the parties, but when the grant or conveyance refers to a map, the line of the way as actually surveyed is held to determine the boundary of the line.

#### SURVEYORS' MONUMENTS

When the plan and monuments made by an original survey do not coincide, the monuments govern, and this is also the case when the monuments are made by one survey and the plan afterwards by another, and the plan only is referred to in the deed. Where there is some doubt whether or not a surveyor's post is correctly located, the original plan and field notes are conclusive of the question. Where the owners of adjoining properties cannot agree as to the boundary line between them, or upon the employment of a surveyor to settle same, and one of them employs a surveyor who runs the line in accordance with the nearest old monuments recognized as marking the true boundaries of other lots in the neighbourhood, there being no plan of the lots, no objection can be made to the owner who employed the surveyor erecting a fence upon the line so established.

#### LOCATION OF LOST BOUNDARY MARKS

No rule in real estate law is more inflexible than that monuments control course and distance. But its application in other cases is quite as proper, and quite as necessary to the protection of substantial rights. If the actual location of the original landmarks can be discovered they must govern. If they are no longer discoverable, the question is where they were located; and upon that question the best possible evidence is usually to be found in the practical location of the lines, made at a time when the original monuments were presumably in existence and probably well known. As between old boundary fences, and any survey made after the monuments have disappeared, the fences are by far the better evidence of what the lines of a lot actually are.

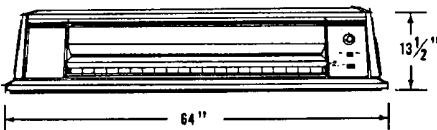


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Editorial Board -  
 "The Nova Scotian Surveyor"

Since my acceptance of employment with the firm of Doucet, Davidson and Kelly, I find that lawyers have the following comments to be made about surveyors in general. These comments are meant to be constructive criticism and do not necessarily apply to surveyors in our area:

1. When surveyors subdivide land and prepare a new deed description, they should always insert recitals such as "being a part of the lands conveyed to Joseph Smith by his father, John Smith, as recorded in the office of the Registrar of Deeds in Port Hood, Inverness County in Book 56 Page 73". Therefore, if Joseph Smith has several lots, one can identify the root of title of the lot under search.

2. Surveyors should not attempt to give legal advice in the same way that lawyers should not attempt to practice land surveying.

3. Surveyors should maintain close liaison with lawyers, as lawyers can suggest to prospective clients that their lands should be surveyed, especially if they know that the surveyors in the area will be prompt and fair in getting the work done.

4. Surveyors should be available at regular hours so that clients know when the surveyor can be reached, especially if the surveyor does most of his own field work. The public realize that a surveyor cannot be surveying in the field and in his office at the same time; however, he should have regular office hours so that the public may know when to contact him. This, of course, applies to any person in business.

5. Surveyors should answer mail and telephone calls promptly. This again applies to any person in business including lawyers.

6. Surveyors should make more use of the Registry Offices. Because of a plan filed or a description of an adjoining owner, a surveyor might more readily find information on the ground if he had first checked the Registry Office.

- Signed Marcellin S. Chiasson, N.S.L.S.  
 Property Division Manager.  
 September 12, 1973.

EDITORIAL NOTES -

1. The Private Ways Act may be obtained from the Nova Scotia Communication and Information Centre on Barrington Street, Halifax, N.S. Surveyors should become more acquainted with this Act.

2. The Editorial Board would be pleased to receive comments on Marcel's points which could be common with other lawyers.

- The Editor.

## STRETCHING THE TAPE- - -

Employer: "You were twenty minutes late, again this morning. Don't you know what time we start work in this office?"

Tardy employee: "No, sir. They're always working when I get here."

\* \* \*

An eminent specialist who devoted much of his time to charity work in clinics was surprised to have a bewhiskered old gentleman ushered into his Park Avenue consultant room one day.

"Remember me, Doctor?" asked the man. "You treated me over at the clinic. Well, I've been left a little money and I guess I can afford my own doctor now."

"But what made you come to me?" the physician wanted to know. "I wasn't the only doctor who treated you at the clinic."

"I know," the old man said quietly - "but you were the only one who helped me with my coat."

\* \* \*

Mr. Smith: "What, buy a new car? Do you think cars grow on trees?"

Mrs. Smith: "Of course not - everybody knows they come from plants."

\* \* \*

Brown: "The average man lives 30 years longer than he did in 1800."

Jones: "He has to in order to get his taxes paid."

\* \* \*

Sal: "What happened when you asked the boss for a raise?"

Al: "Oh, he was like a lamb."

Sal: "What did he say?"

Al: "BAH!"

When a man just returned from his vacation complained of the rainy weather he'd had, a friend interrupted, "It couldn't have been so bad - you're sunburned!"

"Sunburn, nothing," he replied. "That's rust!"

\* \* \*

An antique collector passing through a small village stopped to watch an old man chopping wood with an ancient ax. "That's a mighty old ax you have there," he remarked.

"Yup," said the villager, "it once belonged to Sir Walter Raleigh."

"Not really!" gasped the collector. "It has certainly stood up well."

"Of course," admitted the old man, "it's had three new handles and two new heads."

\* \* \*

"Just what good have you done for humanity?" asked the judge before passing sentence on the pick-pocket.

"Well," replied the confirmed criminal, "I've kept three or four detectives working regularly."

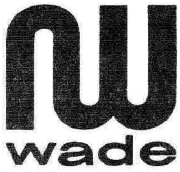
\* \* \*

Five-year-old Bobby and his "Sand Box Gang" were busily making mud pies.

Suddenly activity ceased, then: "We've run out of dirt, men," Bobby piped up. "Everyone take off their shoes and empty them."

\* \* \*





# INFORMATION

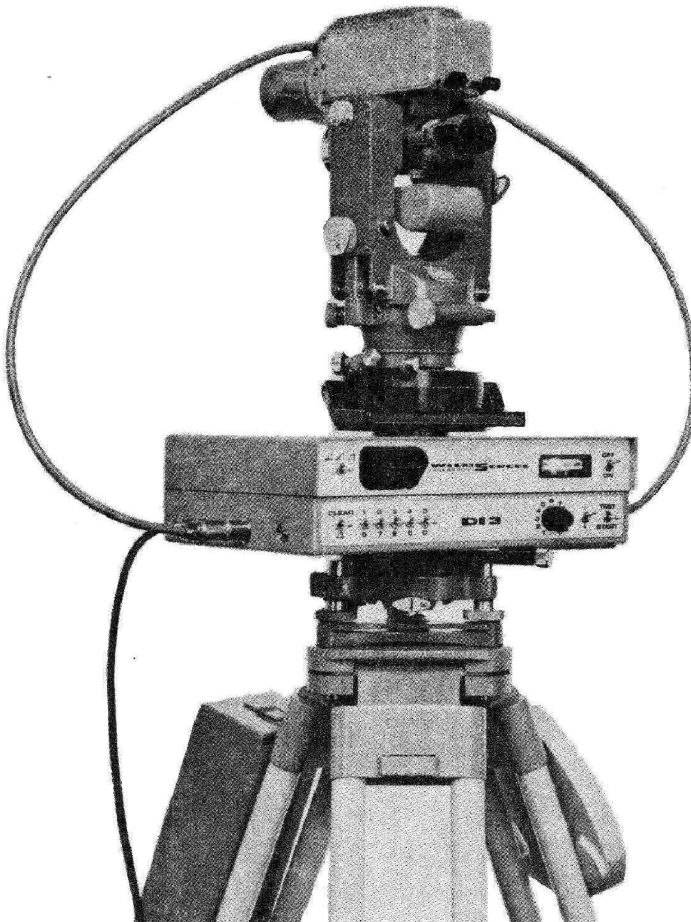
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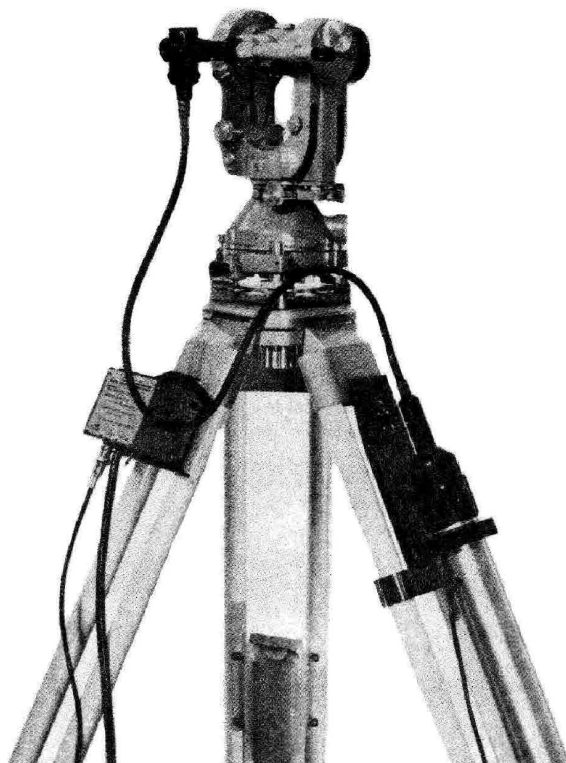


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\*\* ADDRESSES GRADUATION AT NOVA SCOTIA LAND SURVEY INSTITUTE \*\*

*by Don Gillis*

"I can assure you that those of us who can no longer claim to be young, fully recognize that the greatest natural resource of this country - indeed of any country - is its youth.

"You and those of your age group are on the verge of inheriting this country - and all the responsibilities which that implies - from those of my generation who are now much closer to the end of their career than to the beginning of it. I hope you are ready for the challenge. I am certainly confident that the time you have spent in this excellent institution of learning will have done much toward preparing you for that challenge."

So spoke Mr. Willis F. Roberts, Executive-Director, Atlantic Provinces Surveying and Mapping Program, at the annual Graduation Exercises of the Nova Scotia Land Survey Institute, which was held again this year at the Lawrencetown Consolidated School on Friday, May 18, 1973.

Mr. Roberts, the guest speaker, went on to say:

"Indeed you may begin to wonder what you can do with all the knowledge and information which you have been given. Some of you, perhaps, may have heard of the phrase 'information pollution', and may wonder whether you, as graduating students, are not just another example of pollution in this world of ours.

"However, things are slowly being done about this problem, as the developed countries of the world slowly change from being societies based upon goods to being based upon knowledge; in Peter Drucker's phrase, 'knowledge economy'.

"The systematic and purposeful acquisition of information and its systematic application, rather than science or technology, are emerging as the new foundation for work, productivity and effort. Of all our modern industries, ranging from those based on computer science to those based on atomic energy, perhaps the most important one in the future will be the information industry.

"This perhaps explains why I, who have the honour of being the Executive Director of a branch of the information industry, the Land Registration and Information Service, have been asked to give this address to you."

Mr. Roberts then went on to explain how the LRIS had been established through the cooperation of the three Maritime Provinces and what the various functions and responsibilities of the service were. In closing, he reminded the graduates of the staggering fact that the amount of technical information in the world doubles every ten years and that in order to cope they must keep abreast of the new developments.

Before Mr. Roberts' address there was a presentation of prizes to students in the different classes. The J.E.R. March Prize to the First-Year Student in Surveying with the best Field Book was presented by Mr. March to Harold Keith Hamer of Dartmouth, N. S.

The J.A.H. Church Prize to the First-Year Student in Surveying making the most progress was presented by W. S. Crooker, President of the Association of Nova Scotia Land Surveyors, to Gavin Paul Thomas Seaman of Saint John, N. B.

The Norman Wade Company Limited Prize to the best student in First-Year Photogrammetry was presented by H.B. Robertson of the NSLSI Advisory Committee to Arthur Angus Pringle of Cross Creek, N. B.

The Atlantic Air Survey (1963) Limited Prize to the best student in Second-Year Photogrammetry was presented by S. E. Daykin of the NSLSI Advisory Committee, to Wendell Charles Feener of Bridgewater, N. S.

The Norman Wade Company Limited Prize for the best student in Cartography was presented by W.E. Servant, Chairman of the NSLSI Advisory Committee, to Louise Patricia Bent of Lawrencetown, N. S.

The Norman Wade Company Limited Prize to the best student in Second-Year Surveying was presented by J. D. McLaughlin of the NSLSI Advisory Committee, to Erwin Robert Turner of New Ross, N. S.

Following the remarks of the guest speaker, who was introduced by W. E. Servant, the Certificates and Diplomas were presented to the Graduates by Everett A. Green, Supervisor of Institutes of Applied Arts and Technology, assisted by the instructors.

Throughout the program, the assembly was favoured with several musical selections by students of the Lawrencetown Consolidated School. Following the ceremonies, there was an afternoon tea served by the Ladies Auxiliary of the Lawrencetown Branch No. 112, Royal Canadian Legion.

At 3:30 p.m., the Nova Scotia Land Survey Institute was open to visitors. There were several displays of the instruments used in the survey field, both past and present, and various examples of the work done by the students throughout the year. Students and Instructors were on hand to answer any questions that the visitors had and to demonstrate the operation of various pieces of equipment used at the Institute.

Following is a list of the graduates in the various courses:

- FIRST-YEAR PHOTOGRAMMETRY -

Kenneth Conrad Cormier	- New Waterford, N. S.
Ellen Margaret Donaldson	- Glenwood, N. S.
Victor Reid Kaulback	- Middleton, N. S.
Arthur Angus Pringle	- Cross Creek, N. B.

- FIRST-YEAR SURVEY -

Maurice James Bower	- Berwick, N. S.
Dale Christie Brown	- Windsor Junction, N. S.
Norman Earl Cook	- Milltown, N. B.
Gerald Dwight Eisnor	- Lunenburg, N. S.
Harold Keith Hamer	- Dartmouth, N. S.
Roderick Kevin MacInnis	- Dartmouth, N. S.
Patrick Douglas Muise	- Halifax, N. S.
Robert Stuart Redden	- Windsor, N. S.
Gavin Paul Thomas Seaman	- Saint John, N. B.
Richard James Surette	- Windsor, N. S.
Bruce Eugene Turner	- New Ross, N. S.

- CARTOGRAPHY -

Louise Patricia Bent	- Lawrencetown, N. S.
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Andre Peter Harpman	- Truro, N. S.
Rodney Edward Humphreys	- Bridgetown, N. S.
Marjorie Elizabeth Kelly	- Waterville, N. S.
Alan Lesley MacKay	- Shelburne, N. S.
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William Forrest Pye	- Kentville, N. S.
Steven Peter Westerlund Rasmussen	- Stellarton, N. S.

## SOME ENCOURAGEMENT FOR PROFESSIONALS

by I. H. Asper

(from January 3, 1973 Chronicle-Herald)

Doctors, lawyers, dentists and many other groups of professionals should take heart from a decision of the federal court handed down a few weeks ago. The ruling, in effect, settles in favor of the professional practitioner the question of whether or not the tax law allows him to carry out the non-professional aspects of his work through a corporation.

For several years now, tax advisers have recommended to their clients that they incorporate management companies to handle the administrative side of their work. Done correctly, the profit arising from this operation will often be taxed at considerably lower rates than if the profits were earned by the individual practitioner.

The tax problems for professionals aren't created by the Income Tax Act, as by the government bodies of some professional organizations. For example, the professional organizations don't allow their members to incorporate their practices. Therefore, all income is taxed at individual rather than corporate rates.

A business corporation netting \$50,000 will pay tax at the 25 per cent rate. The individual, depending in which province he lives, would pay nearly 50 per cent tax on the same income. The advantages of being incorporated are rather clear.

The reason given for the refusal to allow doctors and similar professionals to incorporate is that the essence of professional practice is the personal, as opposed to business, relationship between doctor and patient - that there is full personal liability, not the limited liability a corporation provides, in case of malpractice.

The argument by the professional societies is weak. They do a disservice to their members by adopting it. Perhaps the fault lies not so much with the governing bodies but rather with the provincial governments which regulate those bodies.

In some states of the United States, professional incorporation is allowed. The personal liability aspect is resolved by making the individual practitioner personally liable for malpractice.

The general rule across the provinces is to prohibit these incorporations. However, there is nothing in either the professional code or tax law to prevent the professional from setting up a corporation to carry out those aspects of his work which are purely business or administrative, but not professional. Then it becomes a technical matter to determine how much of the total profits should be allocated to the professional work, and how much to the corporation.

There will always be a natural bias on the taxpayer's part toward moving the highest possible portion of profits into the management corporation and this is a legitimate area of dispute between taxpayer and tax collector. However, during the tax department's reign of terror against almost all tax planning, which began about 1967 and is only now subsiding, revenue officials began to attack these taxpayers, not only on the amount of income split between individual and corporation, but attacked the concept in its entirety.

Here's how it worked. The Doctor would incorporate a management company. The company would be owned by himself, or his wife and children, or some sort of family combination.



The company would then enter into an agreement to provide the doctor with premises at a fixed rent, provide equipment for a fee, lab service or what have you, as well as provide a staff for receptionists, technicians, accounting and so on. For all these services a fee would be charged equal to what a doctor would pay to a stranger for these services.

The fee to the management company would reduce the doctor's income at his top bracket, which might be over 60 per cent, and be taxed at 25 per cent in the family company.

As well, the company could reduce its income by hiring his wife as manager at a reasonable salary. This would qualify her to contribute to the Canada Pension Plan for sufficient years to, in effect, double the family social security at nominal cost.

All in all, good tax planning. After Ticat coach Ralph Sazio won his case wherein he claimed that he could incorporate himself as a football coach, newspaper columnist, TV personality and what have you, it was assumed the revenue department would cool its relentless attack on doctors' management companies.

Not so. It continues, but perhaps the most recent case will finally move the minister of national revenue to call off what is really a petty war.

In this particular case, a doctor and his three partners set up a traditional type management company owned by them and their wives. The department attacked it on the ground that the whole thing was a sham, or an artificial transaction to artificially avoid tax. The tax appeal board upheld the department.

Now, on appeal, the federal court has said that it's perfectly legal - so what's all the fuss. This decision should motivate doctors, lawyers, architects, engineers, dentists and other professionals to examine their financial affairs to determine whether or not there's room for a personal management corporation in their future.

If they decide that there is, they must make sure the company qualifies as an active business company under the new tax reform rules, in order to qualify for the low 25 per cent tax rate.

\* \* \* \* \*

Continued from page 13

- SECOND-YEAR PHOTOGRAMMETRY -

Robert Charles Braham	- Hantsport, N. S.
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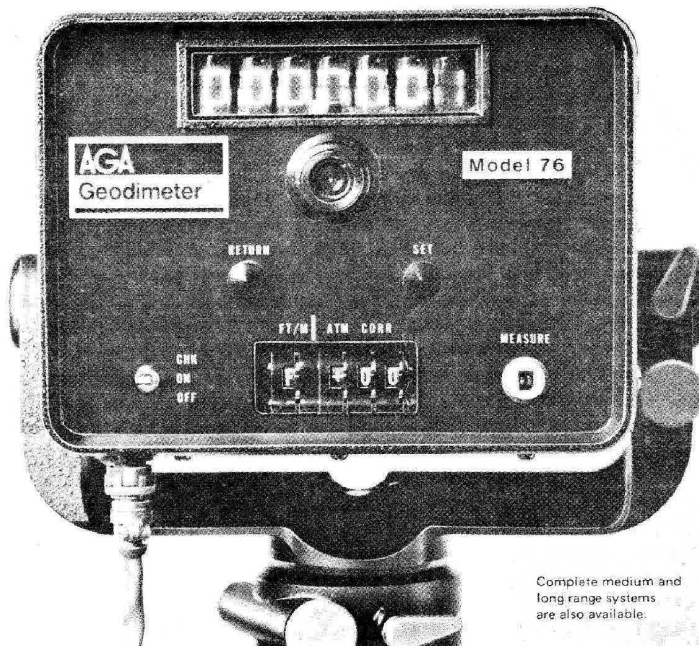
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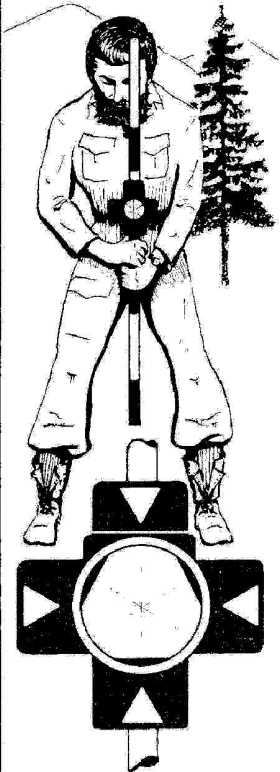
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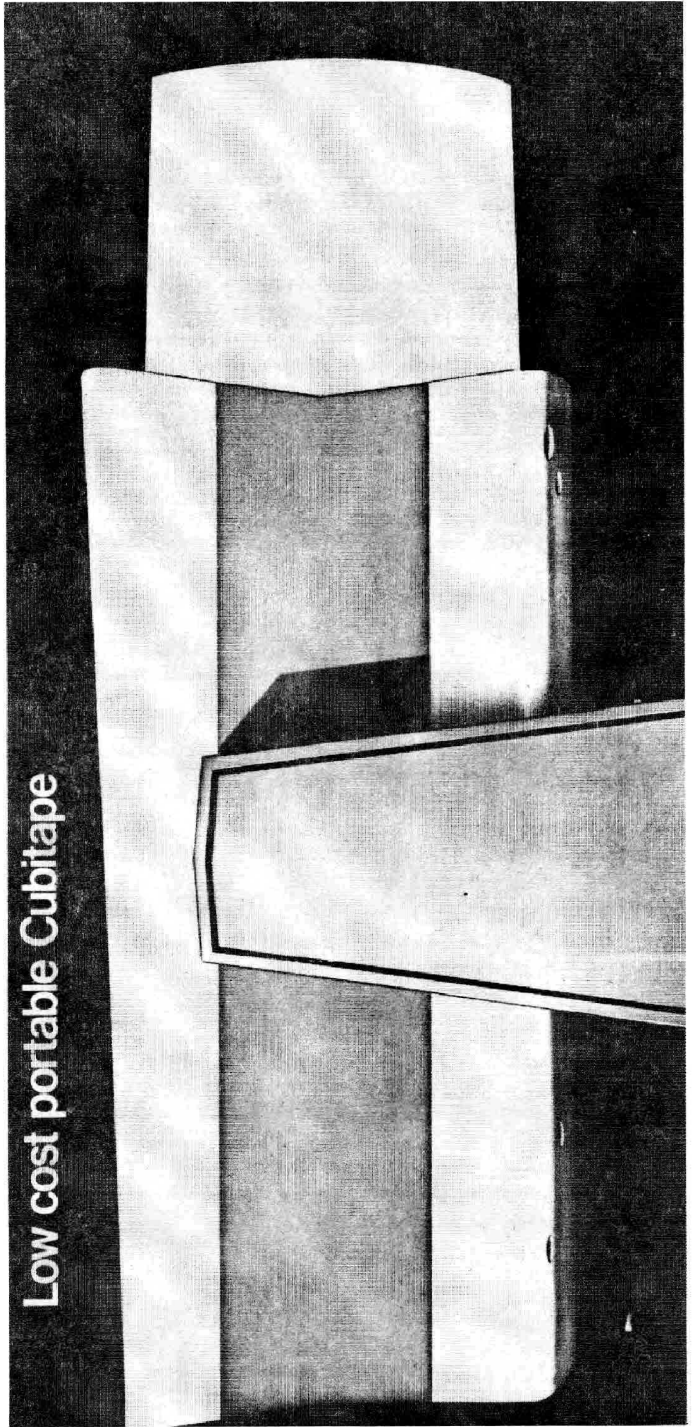


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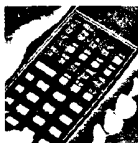
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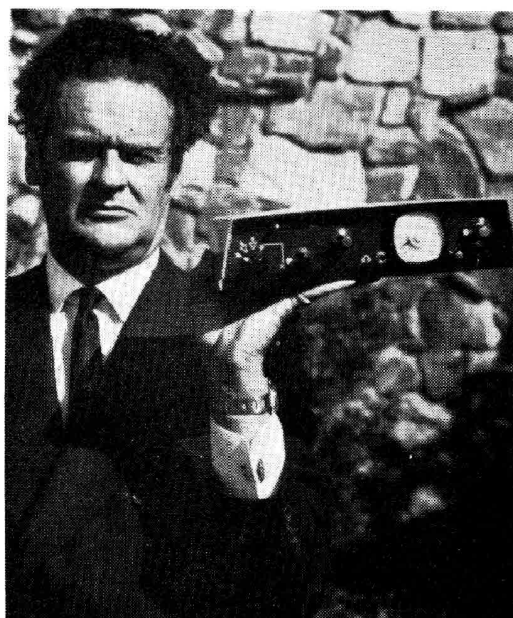
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