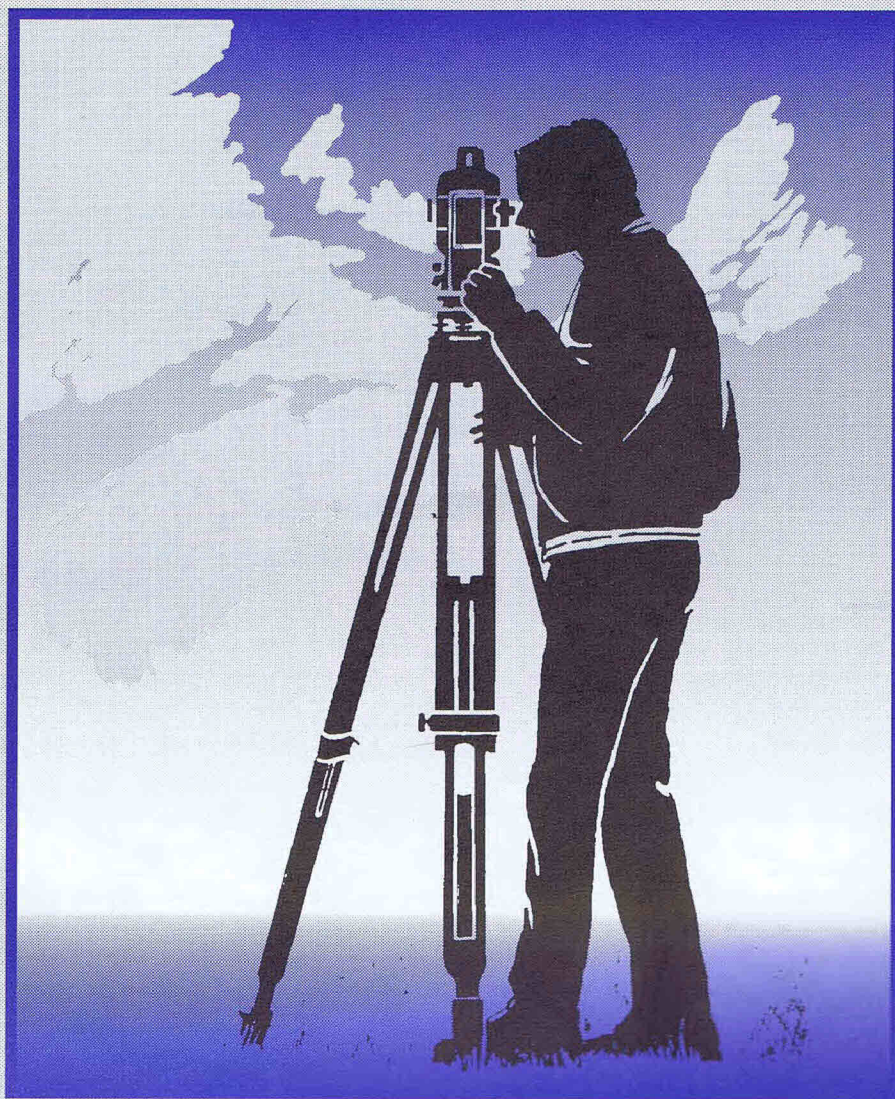


THE NOVA SCOTIAN SURVEYOR

Vol. 51

SPRING 1991

No. 139




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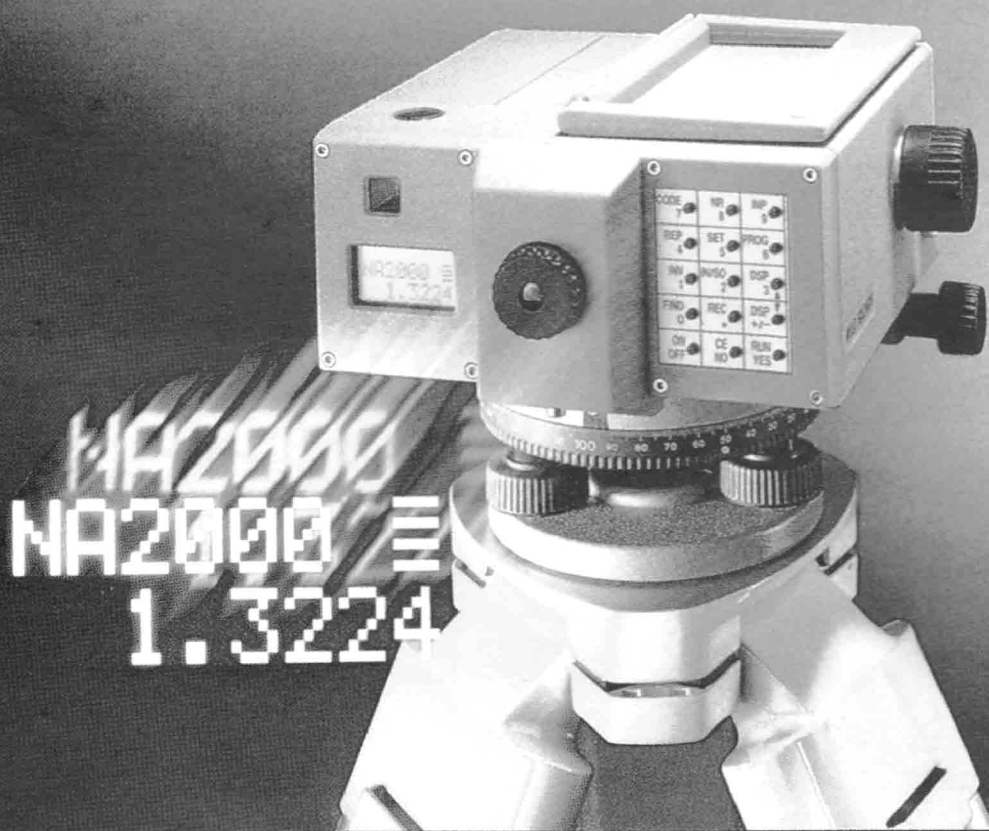
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THE NOVA SCOTIAN SURVEYOR

Vol. 51

Spring 1991

No. 139

THE ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS

159 Portland Street, Suite 301
Dartmouth, Nova Scotia B2Y 1H9
Telephone: 902-469-7962; Fax: 902-466-2052

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Zone 6

Jim Banks

Ed Jeffrey

Nicholas Dearman

Sandy Cameron

Ministerial Appointee

Keith AuCoin

Manager, Survey Review

Department

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Letters to the Editor

Dear Editor:

One of the advantages (?!) of having a trivia quiz (Fall 1990 Issue) is that one can receive trivial correspondence in rebuttal. Hence this trivial note on specific questions.

Question 4/14

Convergence is, in fact, the difference between Grid north and true (Geodetic, ellipsoidal) north, an option which is not given to the puzzle participant. This confusion between grid and astronomic is carried through to question 14, where an agonic line is stated as being no different from magnetic, grid or astronomic north. I would also suggest that this carries over into regulation #23 of the association, where members commonly apply convergence to an astronomic observation, when it should apply to a geodetic observation.

It really is all quite simple—there are 4 “north’s” under discussion magnetic, grid, astronomic and geodetic (true) - each of which is different and unique. The saving grace to most surveyors in this area is that the difference between astronomic and geodetic is not usually observable at the accuracies required for boundary surveys.

Question 5

The comment that (c), “most of the error is assumed to be in the distances and not in the angles” best describes the Crandall or least squares adjustment continues the trend to denigrate least squares adjustment. Firstly, Crandall and least squares are differing processes. Secondly, least squares does not assume the error to be greater in distances than in angles—the standard deviations of the observations are commonly used to evaluate the weights of the observations. One can weight either heavier or both the same, according to one’s desires/experience.

Question 9

Your correct answer, (b), is specifically elevation scale factor as defined by LRIS. Reference to Brinker and Mennick, *The Surveying Handbook* (p.578) and Kavanaugh and Bird, *Surveying: Principles & Practice* (p.415), to name but two references would seem to indicate that the correct answers should be (c).

Question 19

If you are going to be so pedantic that you worry about the comma in 10,000, why not say that a) is also false because the spelling of metre is in error?

Trivially yours,

Dr. D.F. Woolnough
Head, Survey Department
College of Geographic Sciences

SURVEY REVIEW DEPARTMENT

The first meeting of the Survey Review Department Advisory Committee was held in conjunction with the annual Association workshop in Truro on January 26, 1991. All committee members were present. The committee is comprised of Ted Webber as Chairman, Grant McBurney, Dennis Prendergast, James Gunn as secretary. In structuring this important committee every effort was made to satisfy the following conditions: The committee should be small and manageable. It should have direct ties to Council and a strong private practice component. It should have a carry over member from Survey Standards and the committee should have equal geographic representation.

A number of topics were discussed at our first meeting not the least of which was how the Advisory Committee would interact with the Survey Review Department. It was agreed that all major decisions and opinions of the SRD should first be aired to the committee in an effort to best reflect the attitude of the Association. This approach seemed to work fairly well last year with the former Survey Standards Committee.

In January the Association hired Shelley Lane as a permanent part-time technician to work two days each week in the Survey Review Department. Shelley lives in Dartmouth and has worked for both Thompson Conn and Associates and Servant Dunbrack, MacKenzie and MacDonald Ltd.. She received her Survey training at the British Columbia Institute of Technology in Vancouver, B.C. She also holds a Bachelor of Public Relations Degree as well as a diploma in Secretarial Arts, from Mount Saint Vincent University. Shelley is a welcomed addition to the department.

This year the SRD plans to conduct systematic plan checks on approximately five per cent of all plans. Many of these will include field checks. Since the beginning of our new year in October 90, we have processed approximately 1350 plans. Of these, 88 have been checked and three have been field checked. Of those checked, 48% were completely satisfactory, 45% contained minor problems and 7% contained major problems.

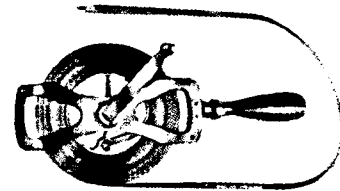
Some of the most frequent comments include: not sending in copies of survey plans to the SRD within the prescribed time; not showing the angular relationship between control monuments; not naming the grid reference system and the date of adjustment; incorrect use and recording of symbols; not

monumenting all corners and PCs with current markers.

A growing concern to the SRD is the practice of showing placed markers on Location Certificates. Members should be reminded that unlike the Location Certificate, the placement of survey markers is strictly controlled by legislation. Markers should only be placed in conjunction with a survey conducted in accordance with our regulations. If a plan showing the placed markers is required, then it also should be prepared in accordance with our regulations. Please keep your comments coming and remember to send your plans in every month.

Jim Gunn
 Manager
 Survey Review Department

AS



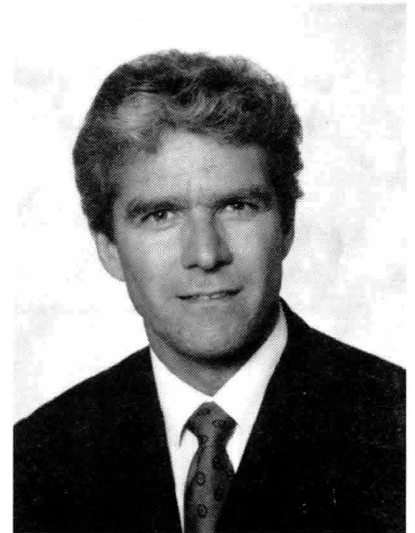
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PRESIDENT'S REPORT



Benjamin Franklin once said "When you assemble a number of men, to have the advantage of their joint wisdom, you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interests and their selfish views. From such an assembly, can a perfect production be expected?"

I often think of that quotation when I consider our Association and its business, when participating in an annual general meeting, a council meeting or a committee meeting. The answer to the question, of course, is always the same. Perfection cannot be expected, but its absence is an acceptable price to pay for the strength that comes from the support of people with very diverse views.

This sound philosophy must be continually considered when dealing with the many and varied issues our Association is involved in. The issues will vary in complexity and seriousness, and the number will change from year to year. There is one fact, however, that will not change. There will always be serious issues to deal with. The reason for this is because the Association is continually changing, it is constantly moving, it is never standing still. Our challenge is to ensure that it is moving in a positive direction, in a direction which will strengthen its position in society, in a direction which will see renewed respect by the public and by other professional associations, and in a direction which ensures that everyday we remember our objectives as an Association.

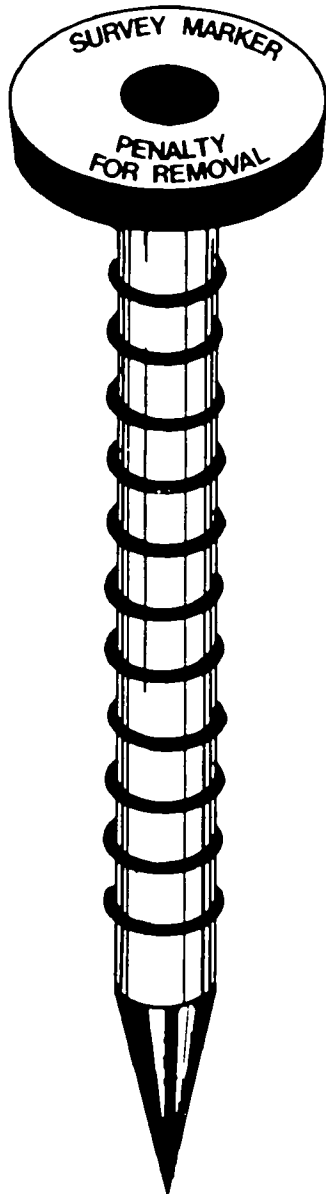
Since the Annual Meeting, we have had two Council meetings. In the very near future, a round of zone meetings will begin. I urge you to attend the zone meetings so that you can obtain information first hand from your councillors. I will do my best to attend all zone meetings, which will give me an opportunity to meet many of you and hear your views directly.

Since becoming President, I have attended annual general meetings of sister provinces in Winnipeg, Manitoba, Moncton, New Brunswick, and Toronto, Ontario. In addition, your Vice-President, Grant McBurney, has attended meetings in Victoria, British Columbia, and Framington, Massachusetts. I have also represented you at a Nova Scotia Barristers' Society Testimonial Dinner in December. Reports are prepared of all trips and these are presented to Council.

I ask all of you to support your Association in whatever way possible as we move forward in the months and years to come.

David A. Steeves
President

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THE ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS

MINUTES OF THE 40TH ANNUAL MEETING

**HELD AT THE HOLIDAY INN,
DARTMOUTH, NOVA SCOTIA**

NOVEMBER 16-17, 1990

Friday, November 16, 1990

1. President Ken Whalen welcomed all present to the 40th Annual Meeting noting that this is a milestone year, a time to reflect on our past accomplishments with pride and look forward to the challenges of the future.
2. President Whalen introduced Alderman John Woods who brought greetings and welcomed everyone to the City of Dartmouth. President Whalen thanked Mr. Woods and presented him with a gift.
3. The following persons brought greetings and wished the assembly a productive meeting.

John Horwood on behalf of the Association of Newfoundland Surveyors.

Norman Stewart on behalf of the Association of Prince Edward Island Land Surveyors.

David Green, on behalf of the Association of New Brunswick Land Surveyors.

Tolson Rody, on behalf of the Association of Ontario Land Surveyors.

Alex Gauer on behalf of the Association of Manitoba Land Surveyors.

Ed Grenkie on behalf of the Saskatchewan Land Surveyors Association.

Syd Loeppky on behalf of the Alberta Land Surveyors Association.

Patrick Ringwood on behalf of the Corporation of British Columbia Land Surveyors.

Michael O'Sullivan, Assistant Surveyor General, on behalf of the Surveyor General for Canada.

David Woolnough on behalf of the Canadian Institute of Surveying and Mapping.

Orest Recunyk on behalf of the Canadian Council of Land Surveyors.

Ivan Macdonald on behalf of the Association of Canada Land Surveyors.

4. Others present and attending the CCLS Directors Meeting being held in conjunction with our Annual Meeting were introduced: Douglas MacDonald, Immediate Past-President of CCLS, Bill Chapman and Russell Short of British Columbia, Victor Wolchansky of Alberta, Gordon Webster of Saskatchewan, Cliff Hawco of Newfoundland, Jack Young of Ontario and Bob Semper, Secretary of CCLS.
5. The following exhibitors were introduced:

Atlantic Drafting Supplies represented by Ian Tarrant.

Canadian Technology & Instrument Co. Ltd. represented by Stephen Dawe.

Cansel Surveying Equipment represented by Mike Strutt.

Cornerstone Surveying represented by Bob Martin.

Eastward Drafting Supplies and Pentax Canada represented by Perry Desrosiers.

J.P. Morasse represented by Richard Morasse.

Leica Canada Inc. Represented by Paul Lyon.

Liberty Enterprises represented by John Kelligrew.

Norman Wade represented by Tom Marshall.

Sansom Equipment represented by Carl Ahern.

Sokkisha Canada represented by Michael Leblanc.

University of New Brunswick represented by Chris Rayworth.

Webber Enterprises represented by Paul McKenna.

Westward Industries represented by Dave Strudwick

6. President Whalen officially called the meeting to order and reviewed the procedures to be followed. A moments silence was observed in memory of the following persons who passed away during the year:

George Bates, Honorary Member, #108
 James L. Ryan, Life Member, #49
 Roy Schofield, Life Member, #10
 Harold B. Smith, #308

A moments silence was also observed in memory of the following Honorary Member from Massachusetts who passed away in the previous year, but whose death was unknown to us at the last Annual Meeting:

Charles Moncrief, Honorary Member

7. The Secretary, Rosalind Penfound, reported that 246 people have registered for the convention, 158 of which are members of the Association, noting that well in excess of the required quorum was present.

The Secretary further reported that as of the end of the fiscal year, September 30, 1990, membership in the Association was as follows:

Members	300
Honorary Members	3
Life Members	13
Associate Members	8
Non-Practicing Members	5
Retired Members	15
Student Members	21

8. Hearing no errors or omissions it was moved by John MacInnis, seconded by David Steeves and passed unanimously that the minutes of the 39th Annual Meeting be approved.
9. Rosalind Penfound reported on the activities of Council during the past year and presented and reviewed the Treasurers Report in the form of audited financial statements.

10. As Secretary to the Board of Examiners, Rosalind Penfound reported that four persons were admitted to membership during the past year. They are:

Walter Johnson	#604
Allan Chisholm	#605
Steven Keddy	#606
Paul Slaunwhite	#607

11. The President noted that the Scrutineers report had been received and that the results of the Executive and Council elections were as follows:

President	David Steeves
Vice-President	Grant McBurney

Councillors

Zone 1	tie-Alex McDonald, David Crooker
Zone 2	no election
Zone 3	no election
Zone 4	Clive MacKeen
Zone 5	Dennis Prendergast
Zone 6	Ed Jeffrey Jim Banks

The President reviewed the provisions of By-law 1.4 regarding the procedure to be followed in the event of a tie vote. In accordance with those procedures the members present from zone one voted by secret ballot. This ballot resulted in a tie vote, the President broke the tie, and declared Alex McDonald elected.

Thanks were extended to Gerry Bourbonniere, Lawrence Miller, Paul Zinck and Brian MacIntyre who acted as scrutineers for all voting.

The 1990-91 Executive and Council will be as follows:

President	David Steeves
Vice-President	Grant McBurney
Past-President	Ken Whalen

Councillors

Zone 1	Alex McDonald
Zone 2	David Wedlock
Zone 3	Gordon Isaacs
Zone 4	Clive MacKeen
Zone 5	Geoff Verner Dennis Prendergast
Zone 6	Sandy Cameron Nick Dearman Ed Jeffrey Jim Banks

President Whalen, expressed sincere thanks to the following members leaving Council:

Past President	Murray Banks
Zone 1	Allan Comfort
Zone 4	Duncan MacDonald
Zone 5	Michael Astephen
Zone 6	Bob Daniels
	Joe Alcorn

12. It was moved by Gerry Bourbonniere, seconded by Allan Comfort and agreed unanimously that all election ballots be destroyed.

13. The President reported that at its October 12, 1990 meeting Council unanimously approved the nomination of three members for Life Membership. In accordance with the provisions of By-Law 12 this nomination must be ratified by the membership. The three nominated members are:

Robert Feetham	#222
Ivan Macdonald	#211
Edward Rice	#246

At the request of the President the nominees left the room.

It was moved by A.E. Wallace, seconded by Harold Lively, and passed unanimously that Robert Feetham be granted Life Membership.

It was moved by Douglas MacDonald, seconded by John MacInnis and passed unanimously that Ivan Macdonald be granted Life Membership.

It was moved by Forbes Thompson, seconded by John Pope, and passed unanimously that Edward Rice be granted Life Membership.

In making these nominations A.E. Wallace, Douglas MacDonald and Forbes Thompson reviewed the contributions of the nominees to their community and profession. (These remarks are reproduced at the end of these minutes as Attachment #1)

The President noted that the new Life Members, who returned to the meeting would be more formally recognized at the Annual Luncheon on Saturday.

14. The President drew the attention of the members present to the Committee reports found in the fall edition of the Nova Scotian Surveyor. The following additional reports were delivered:

Surveyor & Barrister Liaison - Allan Owen
Land Court Committee - K.W. Robb
Errors and Omissions Committee - K.W. Robb
APENS Liaison Committee - Ken Whalen
Regulations Committee - Carl Hartlen
Architects Liaison Committee - Bob Daniels
By-laws Committee - Gerry Bourbonniere

15. It was moved by Bob Daniels, seconded by Nick Dearman, and passed unanimously that membership dues will increase to \$550 per year effective October 1, 1991. (This represents a \$50 increase. A Notice of Motion was circulated to the membership regarding this motion prior to the Annual Meeting).

16. Approval of the proposed by-law amendments, circulated with a Notice of Motion prior to the Annual Meeting, was moved by Gerry Bourbonniere and seconded by Robert Feetham. After brief discussion the motion was carried with one dissenting vote. (The amendments as approved are reproduced at the end of these minutes as Attachment #2).

17. At the request of the President, James Gunn, Manager of the Survey Review Department, assumed the chair for the purpose of dealing with the seven proposed amendments to the regulations circulated with a Notice of Motion prior to the Annual Meeting. The proposed amendments were dealt with as follows:

Motion #1: Be it resolved that effective January 1, 1991, the record of a plan to be submitted to the Survey Review Department in accordance with these regulations shall consist of a full copy of the plan. It was moved by Gerry Bourbonniere, seconded by John MacInnis and carried.

Motion #2: Be it resolved that regulation 44 (1)(c) be amended to include the following: "or where it is determined that the location of a monument will place it in immediate danger of destruction as in the case of lots fronting on an undeveloped street". This amendment would cause the regulation to read as follows:

s.44(1)(a) Where it is impossible or inadvisable to monument a true angle or point of intersection, or where it is determined that the location of a monument will place it in immediate danger of destruction as in the case of lots fronting on an undeveloped street, one witness monument stamped "WIT" shall be placed at a suitable point as near as possible to its correct

location and on one of the boundaries under survey.

The above amendment to the regulations, moved by Carl Hartlen and seconded by Nick Dearman, was defeated.

Motion #3: Be it resolved that regulation 24(1) be amended by removing the words "when required". This amendment would cause the regulation to read as follows;

s.24(1) All boundary lines through wooded areas shall be well brushed out and suitable trees standing within one meter of the line shall be blazed fore and aft and on the side towards the line or the trees shall be blazed fore and aft at forty five degree angles to the line.

The above amendment to the regulation, moved by Robert Feetham and seconded by Errol Hebb, was defeated.

Motion #4: Be it resolved that regulation 60(a) which presently states "that the diagram of the plan shall show the accurately plotted boundaries under survey, with the distances and bearings as determined by the survey" be amended to add the following: "Where the boundary under survey follows along a curve, then the length along the curve and the radius of the curve shall be shown."

The above amendment, moved by Dennis Jones, seconded by John MacInnis, was carried.

Motion #5: Be it resolved that regulation 51 be amended by removing the words "Unless a specific request is made for a plan scale to be in an imperial format (inch-foot ratio), then all plans" and replacing them with the words "Plans drawn in metric".

The above amendment, moved by Marcellin Chiasson, seconded by A.E. Wallace, was carried.

Motion #6: Be it resolved that regulation 37(a) which reads "Where a survey is made, all angles and points of curvature of the boundary or boundaries under survey, being either retraced or created, shall be defined by one of the monument classifications prescribed in the regulations." be amended by adding the words "When a retracement survey includes curved boundaries along an existing road, it is sufficient to

monument the intersections of the highway boundary and the property boundaries and to show calculated points of curvature along the highway boundary".

The above amendment to the regulations was moved by Allan Comfort and seconded by David Roberts. After considerable discussion and the defeat of several minor amendments to the motion, the question was called and the motion carried. The vote as counted by the Secretary was 37 in favour and 34 against.

Saturday, November 17, 1990

Walter Rayworth indicated that he had voted in favour of Motion #6 on Friday but now moved that it be reconsidered. A.E. Wallace seconded the motion to reconsider and it was carried. The vote as counted by the Secretary was 55 in favour, 27 opposed.

It was moved by Walter Rayworth, seconded by Arthur Backman that proposed amendment #6 be tabled until the next Annual Meeting. The motion was carried.

Motion #7: Be it resolved that regulation 36 be amended to include the following additional monument classification:

"(d) Any marker or object that would appear to have been placed by a Land Surveyor to mark a boundary, prior to the coming into force of these regulations"

The above amendment was moved by John MacInnis and seconded by Marcellin Chiasson. After considerable discussion and proposed amendments to the amendment it was moved by A.E. Wallace and seconded by James Banks that this motion (#7) be tabled. The motion to table was carried.

18. President Whalen acknowledged A.E. Wallace who spoke about the need to revise the definition of professional land surveying in the Land Surveyors Act. It was moved by A.E. Wallace and seconded by Robert Feetham that the membership approve the proposed amendment to the Land Surveyors Act regarding the definition of professional land surveying, as circulated with a Notice of Motion prior to the Annual Meeting.

After considerable discussion and comments by members and visitors representing other Associations across the country, the motion, with minor amendments, was carried unanimously. (The amendment as approved is reproduced at the end of these minutes as Attachment #3)

19. Carl Hartlen moved, seconded by Robert Feetham, that the proposed regulation regarding Surveyors Real Property Reports be approved by the membership. Carl Hartlen spoke of the need for standards in this area and the desirability of following the policy and initiative of the Canadian Council of Land Surveyors in this regard. After very lengthy discussion and amendments the resolution was carried. The vote as counted by the Secretary was 38 in favour, 32 opposed.

Glenn Crews, noting that he had voted in favour of the motion, seconded by Erwin Turner, made a motion for reconsideration. The motion for reconsideration was carried. The vote as counted by the Secretary was 43 in favour, 33 against.

George Sellers moved, seconded by Valerie George that the proposed regulation regarding Surveyors Real Property Reports be tabled for consideration at some future date. The motion was carried. The vote was as counted by the Secretary was 43 in favour, 33 against.

(The proposed Surveyors Real Property Report regulation as amended on the floor is reproduced at the end of these minutes as Attachment #4).

20. The new President, David Steeves, assumed the Chair.
21. The Treasurer, Rosalind Penfound, presented the 1990-91 Budget and answered questions from the floor. In response to an inquiry about staff salaries Rosalind Penfound and James Gunn left the room and the President answered general inquiries.

It was moved by Robert Feetham, seconded by Ed Rice, and carried, that appreciation be extended to the Association staff for their efforts on behalf of the membership.

Rosalind Penfound and James Gunn returned to the meeting. It was moved by Ken Whalen, seconded by Ken Robb, that the budget be accepted as presented. Motion carried.

22. New Business

Glenn Crews and Harold Lively addressed the need to change section 4(3) of the Land Surveyors Act to remove the requirement that a member be

ordinarily resident in a zone before he may be elected as a Councillor for that zone. There are some members who reside in one zone but whose principle place of business is in another zone. The Secretary indicated that the Statutes Committee is working on amendments to the Act, and this suggested change is to be included in their proposed changes.

K.W. Robb expressed concern about low pricing and fees undercutting.

Arthur Backman commented on what he sees as the inconsistency between how breaches of the regulations are handled by the Complaints and Discipline process as compared to the Survey Review Department. He noted that although section 25 of the Act provides the penalties that the Discipline Committee may impose there is no provision for the Committee to allow a member to recover costs should he be found not guilty of professional misconduct. The Secretary indicated that these concerns would be brought to the attention of the Statutes Committee as they review the Act and consider possible amendments.

It was moved by Douglas MacDonald, seconded by A.E. Wallace, that the Association convene a workshop for the purpose of discussing Surveyors Real Property Reports and further considering monumentation issues, including the monumentation of PC's. Motion carried.

K.W. Robb expressed his concern about the number of prosecutions APENS in mounting against him and suggested that the Association should intervene.

It was moved by Robert Ashley, seconded by Glenn Crews that Council be directed to establish a committee for the purpose of examining the feasibility of the Association introducing a Manual of Good Practice. Motion carried.

23. President Steeves thanked all members who participated on Committees and Council for their contributions to the Association.
24. At the Presidents invitation, guests in attendance addressed the membership and thanked the Association for the hospitality extended to them.
25. The meeting was adjourned at 4:50 p.m.

Rosalind Penfound
Secretary

CONVENTION '90 - SURVEY PLAN CONTEST



David Wedlock and Grant McBurney present student exercise prizes to Dana Starratt and Michael Marshall at COGS.

CATEGORY	WINNER	PRIZE
Best Retracement Plan	Stephen Howard	Gift Certificate donated by Eastward Drafting Supplies Ltd.
Best Government Plan	David Crooker	Umbrella donated by Cornerstone Surveying Systems
Best Subdivision Plan	Fred Hutchinson	Pen Set donated by Norman Wade Company
First Place – Student Exercise	Michael Marshall	Pen Set donated by Westward Industries Limited
Second Place – Student Exercise	Dana Starratt	Pen Set donated by Leica Canada Ltd.

Many thanks to our generous sponsors for their donations

ATTACHMENT #1 TO THE MINUTES OF THE 40TH ANNUAL MEETING

LIFE MEMBERSHIP NOMINATIONS

1. L. ROBERT FEETHAM, NO. 222

Born in Halifax in 1925, Bob attended public schools in Halifax and Bedford, and for a short period attended St. Mary's University. During World War II he attended Eastern Radio School, established to train wireless operators for the Canadian Merchant Navy. Following graduation he served in the Merchant Navy, and the Department of Transport. After the end of the war Bob spent a summer and fall working under the late Roy M. Schofield on Crown Land surveys. In late 1946 he joined the old Avon River Power Company, a subsidiary of Nova Scotia Light and Power, later the Nova Scotia Power Corporation. He did the layout and supervised much of the construction on three hydro developments on the Black River System in Kings County between 1946 and 1951. From 1951 until 1959 he was Construction Superintendent for five of the six Water Street Thermal Units.

In 1954 he took a short leave of absence from N.S.L. & P. and attended the Land Survey School at Lawrencetown. He received his Commission as a Land Surveyor in June of 1956.

In 1960, while attending the Association Annual Meeting, he met Edward P. Rice, who convinced him he should become active in the Association. Bob became a Councillor in 1969, Vice-President in 1969-1970, and President in 1970-1971. He was appointed Manager of Lands and Rights for Nova Scotia Light and Power in 1960, and held that position until the company's integration with the Nova Scotia Power Corporation in 1971. He made three major moves in the next four years with N.S.P.C. Following the Wreck Cove Hydro Plant construction 1975-1978 where he was Construction Manager, he was named Manager of Hydro Production. In this capacity he was responsible for 375 M.W. (500,000 horsepower) of hydro generation. Bob retired in this capacity in 1986 after 40 1/2 years of service.

While President of the Association of Nova Scotia Land Surveyors 1970-1971 Bob became active in C.I.S.M., and joined forces with Fred Pearce, O.L.S.,

and Rejean Blanchet of Quebec in an attempt to create the Canadian Council of Land Surveyors. After five years of meetings and countless trips across Canada that group was granted Letters Patent in 1976, and they became its three charter members.

Bob has served on numerous committees, some of which were Highway Liaison on two different occasions, a committee to engage our first full-time Secretary-Treasurer in 1974, and recently as Coordinator of the Professions Committee. He is presently on the ANSLS-APENS Liaison Committee with Jim Doig and President Ken Whalen. Since 1973 Bob has had the honour of swearing in sixteen of our Presidents.

In 1954 Bob joined a fledgling organization called the Canadian Association for Retarded Children, which later became the Canadian Association for the Mentally Retarded, today known as the Canadian Association for Community Living. He served on several of its committees during the late 1950's, and became President of the Halifax Branch for two successive years. This was followed by two years as President of the Nova Scotia Division.

He has served on the Board of Directors for the National Institute on Mental Retardation. During his term as provincial President of C.A.M.R. he was greatly influenced by the work of Dr. Jean Vanier who proved that handicapped people are special and should not be confined to institutions, but can live in small group homes within the community. Bob helped pioneer the Group Home concept in Nova Scotia, which led to the establishment of the present-day Regional Residential Service Organization, which operates homes in the metropolitan areas of Nova Scotia.

There were, however, still many severely handicapped people who the Government believed could not function in group homes within the community. Bob persevered, and in 1986 a breakthrough with the Provincial Government occurred when money and other resources were committed to help fifteen severely handicapped people back into the community. This led to the establishment of Gateway Homes Ltd., a non-profit organization funded by Government and operated by a Board of Directors. Bob serves as Vice-President and Board Member on Gateway. They now own three homes providing care for seven residents, with a fourth house to be purchased this fall. Bob and Rhoda have a son in one of these homes, and after thirty-six years of work it is like a dream come true. This could lead to the closing of many of our present-day institutions in Nova Scotia, which, by the way, is the trend across Canada. Bob is presently Vice-President of the Enfield, Elmsdale Joint Board of Directors for the Canadian Association for Community Living.

Bob is active in church affairs, having been President of two Parish Councils, and served for two years as an Area Representative on the Archbishop's Pastoral Council. He also worked on Building Committees for St. Rose of Lima Church in Windsor Junction, and St. Pius X in Fairview.

Bob is married to Rhoda Theresa Baggett. They have five children, three girls and two boys. They now reside in their new retirement home in Horne Settlement at Enfield.

2. IVAN P. MACDONALD NO. 211

Born January 19, 1930 at Sherbrook Nova Scotia he received his early education in that community. Ivan attended the Nova Scotia Land Surveyors Institute in 1954. Following graduation he joined the Air Sector, Topographic Surveys Division, Federal Department of Mines and Technical Surveys in 1955. He later transferred to the field staff of the Legal Surveys Division and in 1966 he qualified as a Dominion Land Surveyor. In 1969 Ivan returned to Nova Scotia as Manager of Control Surveys under the Director of Surveys for Nova Scotia.

In 1973 he went into partnership with A. E. Wallace to form Wallace Macdonald Surveys Ltd. This firm has prospered and was later expanded to the present day Wallace, Macdonald and Lively Surveying and Engineering Limited.

Ivan is a long time member of CISM and served as Chairman of the Nova Scotia Branch. He also was a member of the organizing committee for the CIS Halifax Convention held in the late 1960's.

Ivan served as a Councillor for a three year term prior to becoming Vice-President in 1974. In 1975 he was elected President of A.N.S.L.S. He served as the Nova Scotia Representative on the Canadian Council of Land Surveyors for eight years. He was a member of the editorial staff of the Nova Scotian Surveyor from 1970-1974 and its editor from 1978-1985. He did an excellent job for our Association in these two areas of endeavour. Ivan has served on several committees over the years for our Association.

He is married to Betty Joy Black and they reside at 39 Doull Avenue in Halifax. Ivan and Betty have four children, two boys and two girls. They are proud grandparents to two young grandsons.

Ivan is very active in Bethany United Church, Armdale, Halifax, where he is a member of two choirs and an elder of Bethany Session. For many years he has been involved in the Annual Campaign of the Canadian Diabetes Association.

Ivan recently retired from the Wallace, Macdonald and Lively Survey firm he helped to found. Since retirement he has taken up golf and in good weather may be found on the golf course.

3. EDWARD PATRICK RICE NO. 246

Born in 1930 in Weymouth Nova Scotia Ed attended grade school in that community and since his Mother was bilingual he was shipped off to St. Ann's College at Church Point at the age of 14 years so he could be equally blessed. He later entered St. Francis Xavier University where he took two years of engineering.

Ed joined the army and served for three years (1955-1958) in the first division locating battery, Royal Canadian Artillery at Camp Shilo, Manitoba. During this period he became proficient in sound ranging techniques, radar operation, and surveying, establishing coordinates for gun positions. In 1957 he applied to enter the Land Survey School at Lawrencetown. In reviewing correspondence between he and Major Church the Major states, "Re SF98840 Gunner Rice, Edward Patrick, is infinitely better trained than 98% of students entering the school." That statement was later proven to be very true when Ed walked out with an 85 average. Ed graduated from the school in December 1958 and received his commission in 1959. He worked with Clark Surveys, Central Mortgage and Housing and the Maritime Telegraph and Telephone. When he retired from M.T. & T in June of this year, he held the position of Outside Plant Manager.

In 1961 he became Assistant Secretary to Bert Robertson who was our Association Secretary. Bert was crafty because once he had Ed trained he resigned and Ed held the position of Secretary Treasurer for nine years. He had planned to stay for ten years as he really enjoyed doing it. However his move to New Glasgow for M.T. & T forced him to resign after a mere nine years.

Ed did an outstanding job for the A.N.S.L.S. Well-organized and articulate he knew every member by their first name, and they all respected him for his professionalism.

He then became Councillor for Eastern Nova Scotia Zone 4 and was elected Vice-President in 1973. He assumed the office of President in 1974. He has served on Financial Committees, Regulation Committees, attended CCLS meetings and was a moving force when he hired our first full time business manager in 1975.

LIFE MEMBERS



Ivan MacDonald, Bob Feetham and Ed Rice
proudly display their Life Membership Certificates
presented to them at the Annual Meeting

He is an active member of CISM and a member of the Telephone Pioneers of America. He is married to Elizabeth (Betty) Tanner of Halifax and if ever this Association decides to honour the wife of one of its members then Betty would be the leading contender for her hard work in supporting Ed on the Associations behalf over the years. They have two children Dixon and Beth both living out of Province.

Since retiring Ed has returned to the old home in Weymouth where he and Betty reside, complete with new 1/2 ton 4wd truck, Cadillac and a 32' fiberglass hull fishing boat.

Space does not permit a complete biography of Ed Rice.



ATTACHMENT #2 TO THE MINUTES OF THE 40TH ANNUAL MEETING

NOTICE OF MOTION

PROPOSED BY-LAW AMENDMENTS

TAKE NOTICE that the following motion will be made at the Annual Meeting of the Association of Nova Scotia Land Surveyors to be held at the Holiday Inn, Wyse Road, Dartmouth, Nova Scotia beginning at 9:30 a.m. on Friday, November 16, 1990.

BE IT RESOLVED that the By-laws of the Association of Nova Scotia Land Surveyors be amended as follows, effective immediately:

1. By-law 18 entitled "Survey Standards Committee" be deleted in its entirety and replaced with the following:

18. Survey Review Advisory Committee

18.1 Council shall appoint a Survey Review Advisory Committee which shall be comprised of not less than three members. The members of the Committee may elect one from among them to serve as Chairman if necessary.

18.2 The function of the Committee shall be to offer advice and assistance to the Survey Review Department with respect to practice issues and surveying standards.

(Reason for change: The Survey Standards Committee does not function as outlined in the by-law but acts in an advisory capacity to the Survey Review Department. The proposed change reflects this.)

SCHEDULE "B"

- (1) **J.E.R. March Prize:** Awarded on behalf of Mr. J.E. Ruskin March, formerly Director of Surveys, Province of Nova Scotia. The prize is presented to the student completing first year Surveying at the College of Geographic Sciences with the best kept field notes;
- (2) **J.A.H. Church Prize:** Awarded in memory of Major James A.H. Church, D.S.O., M.C., P.L.S., who founded what was to become the College of Geographic Sciences and was its first Principal. The prize is presented to the student completing first year Surveying at the College of Geographic Sciences who has made the most progress;
- (3) **G.T. Bates Scholarship:** Awarded to recognize the contribution to public relations which Mr. George T. Bates made to the affairs of the Association. A monetary award is provided as a credit against tuition and books at the College of Geographic Sciences for the student who has completed first year Surveying with the highest standing.



FORM 14 **MANDATORY LIABILITY** **INSURANCE**

PART I **PROOF OF INSURANCE**

I, _____, N.S.L.S.,
Registration # _____, hereby certify that I am
insured to the extent and in the manner required by
PART V of Regulations made under the Nova Scotia
Land Surveyors Act, S.N.S. 1977, c. 13.

I submit, attached hereto, proof of my insurance
coverage for the period June 1, 1990 to May 31,
1991. (Acceptable proof is a copy of a portion of
the policy sufficient to indicate the name of the
insured, the extent of coverage, deductible and
effective dates along with a copy of the receipt for
payment of the premium.

_____, N.S.L.S.
(signature)

DATE: _____

PART II **EXEMPTION**

{Section 106(1)(a) and (b)}

I, _____, N.S.L.S.,
Registration # _____, do solemnly declare and
undertake:

Complete A or B (as applicable)

A. (Re Municipal, Provincial, Federal Government or
Crown Agency)

1. That I am exempt from the professional
liability insurance requirements pursuant to
section 106(1)(a).

2. That I am employed by _____
_____ and do not
engage directly or indirectly in the practice of
professional land surveying for any member of

the public except on behalf of my employer,
whether for or without compensation.

3. I undertake to inform the Association of Nova
Scotia Land Surveyors of any change in my
status which would affect this exemption.

4. I undertake not to engage in professional land
surveying outside the scope of my employment
without first obtaining the required insurance
coverage.

or

B. (Re Private Employers)

1. That I am exempt from the professional
liability insurance requirements pursuant to
section 106(1)(b).

2. That I am employed by _____
_____ and do not
engage directly or indirectly in the practice of
professional land surveying for any member of
the public except on behalf of my employer,
whether for or without compensation.

3. That I will inform the Association of Nova
Scotia Land Surveyors of any change in my
status or that of my employer which would
affect this exemption.

4. That I will not engage in professional land
surveying outside the scope of my employment
without first obtaining the required insurance
coverage.

I make this solemn declaration conscientiously
believing it to be true, and knowing it is of the same
force and effect as if made under oath.

DECLARED before me at _____)
in the County of _____)
Province of _____, this _____)
day of _____, 19 _____.)

_____)
_____, N.S.L.S.)

(Please print or type name of)
Commissioner or Barrister below))

_____)
_____)

A _____ of the Supreme)
Court of Nova Scotia or, if sworn)
outside Nova Scotia, A NOTARY PUBLIC)
in and for _____)

**PART III
APPLICATION FOR EXEMPTION**

{Section 106(1)(c)}

I, _____, N.S.L.S.,
Registration # _____, hereby make application for
exemption from the mandatory liability insurance
requirements of Part V of Regulations under the Nova
Scotia Land Surveyors Act. Attached hereto is a
statement outlining the circumstances and facts which
I submit in support of this application.

I, do solemnly declare and undertake:

1. That the information contained in this application
is true and correct to the best of my knowledge.
2. That in the event that I am granted exemption I
will not engage in professional land surveying
without first obtaining the required insurance
coverage.

I make this solemn declaration conscientiously
believing it to be true, and knowing it is of the same
force and effect as if made under oath.

DECLARED before me at _____)
in the County of _____)
Province of _____, this _____)
day of _____, 19____.)

_____))
_____, N.S.L.S.)

(Please print or type name of)
Commissioner or Barrister below))

_____))

A _____ of the Supreme)
Court of Nova Scotia or, if sworn)
outside Nova Scotia, A NOTARY PUBLIC)
in and for _____)

2. By-law 19 entitled "Surveyor-Technician Liaison
Committee of Nova Scotia" be deleted in its
entirety.

(Reason for change: This Committee has been
functional for several years as the Association of
Certified Survey Technicians and Technologists of
Nova Scotia is inactive.)

3. The following section be added to By-law 20:

20.23 The insurance filing form set out as Form 14
of Schedule A may be used to satisfy the
requirements of section 107(1) of the regulations

(Reason for change): to provide a uniform mechanism
for members to meet the requirements of the
mandatory liability insurance regulations)

4. By-law 23 be amended as follows:

23.1 The term and amounts of scholarships,
bursaries and prizes shall be established by Council
from time to time and shall include but not be
limited to those set out in Schedule B to these by-
laws.

(Reason for change: to allow Council to fix the
amount of awards to ensure they appropriately reflect
their purpose.)

5. Schedule "A" to the By-laws be amended to add
Form 14 attached hereto.

(Reason for change: this is the form referred to in
proposed by-law 20.23.)

6. Schedule "B" to the By-laws be amended to appear
as attached

(Reason for change: to remove the specific monetary
reference and accordingly allow Council the discretion
referred to in the proposed amended by-law 23.1)

7. All references in the By-laws to sections of the Act
shall be changed to reflect section numbers
consistent with the Land Surveyors Act, Revised
Statutes of Nova Scotia 1989, chapter 249.

(Reason for change: to reflect changes to section
numbers as a consequence of the 1989 statute
revision.)

ATTACHMENT #3 TO THE MINUTES OF THE 40TH ANNUAL MEETING

In this Act (Land Surveyor's Act),

(a) "practice of surveying" means

- (i) the determination, establishment or recording by any means of the position of points or natural or man-made features on, over or under the surface of the earth,
- (ii) the determination of the form of the earth,
- (iii) the survey of any networks of control survey markers and the survey of photogrammetric control points,
- (iv) the practice of professional land surveying,

and includes the preparation of maps, plans, systems and documents and the giving of advice with respect to any of the matters referred to in subclause (i) to (iv);

(b) "practice of professional land surveying" means

- (i) the survey of land to determine or establish boundaries, including subdivision thereof,
- (ii) the survey of land to determine or establish the boundaries of any right or interest in land or under the surface of land or in air space,
- (iii) the survey of air space to determine or establish boundaries
- (iv) the survey of land to determine the location of any thing relative to a boundary for the purpose of certifying the location of it,
- (v) the survey of lakes, rivers, watercourses or other boundaries of water to establish or determine the boundaries of them,
- (vi) the survey, by any means including photogrammetric, electronic or astronomic methods of land, water or air space for the purpose of preparing plans and documents

connected in any way with the boundaries of or the laying out or establishing or determining any right or interest in land, water or air space,

- (vii) cadastral operations and compiling and recording information related to the matters specified in subclauses (i) to (vi),

and includes the preparation of maps, plans and documents and the giving of advice with respect to any of the matters specified in subclauses (i) to (vii).

Scope of Practice

A Nova Scotia Land Surveyor may, notwithstanding this or any other Act, engage in the practice of surveying.

ATTACHMENT #4 TO THE MINUTES OF THE 40TH ANNUAL MEETING

PROPOSED REGULATION SURVEYORS REAL PROPERTY REPORTS

DEFINITIONS

135. In this Part,

- (a) "Surveyors Real Property Report" means and shall consist of a survey, plan and report, prepared for the purpose of certifying the location of any improvement or building relative to the boundaries of a parcel of land.
- (b) "Improvement" includes any visible item constructed or placed on, in, over or under land.
- (c) "Parcel" means the unit of land which is the subject of the Surveyors Real Property Report.
- (d) "Building" means any structure used for the purpose of supplying shelter or storage and shall include, but not be limited to, dwellings, sheds, barns and garages.
- (e) "Limited property report" means a report prepared in accordance with section 139.

136.

- (1) Any survey, plan or report prepared for the purpose of certifying the location of any improvement or building relative to the boundaries of a parcel of land shall be prepared in accordance with PART VII.
- (2) A Surveyors Real Property Report shall be prepared in accordance with all regulations made pursuant to the Act, unless specifically provided otherwise in this PART.
- (3) Members shall ensure that at least one monument, (bearing proper identification) indicating an angle or point of curvature of the boundaries of the parcel is present at the completion of a Surveyors Real Property Report.

137.

A Surveyors Real Property Report shall include, consist of, contain or show, as the case may be:

- (a) the title "Surveyors Real Property Report";
- (b) on every part a notation in the form "Certified to.....";
- (c) the copyright symbol, the name of the member or firm holding the copyright and the year;
- (d) the scale of the plan;
- (e) a north symbol;
- (f) the designation of the parcel including lot number, subdivision name, plan reference and current document reference;
- (g) the name of the owner(s) or the identifier(s) of all adjoining properties;
- (h) the location and dimensions of easements and rights-of-way, with document references, which affect the parcel;
- (i) the civic address of the parcel, if indicated;
- (j) the accurately plotted boundaries of the parcel;
- (k) the bearings and distances of the parcel as determined by the survey or in the place of bearings the angular relationship of intersecting boundaries;
- (l) any monuments found and placed which indicate the boundaries of the parcel;
- (m) all buildings within the parcel and minimum distances from the boundaries of the parcel;
- (n) an indication of the part and surface of the building from which measurements were made and, in the case of an incomplete building, the stage of construction;

- (o) all encroachments by any improvement deemed to be associated with the parcel and the magnitude of the encroachment;
- (p) all encroachments, by any improvement into the parcel and the magnitude of the encroachment;
- (q) all improvements situated on the parcel which in the opinion of the surveyor have a significant impact on the value, use or enjoyment of the parcel.

138.

The report forming part of the Surveyors Real Property Report shall include:

- (a) the name of the member preparing the Surveyors Real Property Report;
- (b) the signature and stamp of the member preparing the surveyors Real property Report with a Certification in the following form:

"Certified to _____"

I, _____, Nova Scotia Land Surveyor, hereby certify that this Surveyors Real Property Report was prepared under my personal supervision and in accordance with the requirements of the Nova Scotia Land Surveyors Act and regulations made thereunder, dated this _____ day of _____, A.D. _____;

- (c) the date or dates on which the field survey was conducted;
- (d) a Survey Review Department Sticker in accordance with Section 94(2) of the regulations;
- (e) explanatory notes relevant to content;

139.

- (1) Notwithstanding sections 135,136,137 and 138, a member may prepare a limited property report for the purposes of certifying the location of any improvement or building relative to the boundaries of a parcel of land in the manner provided in this section;
- (2) Subsections (b),(c),(f) and (i) of Section 137 and subsections (a),(c),(d) and (e) of Section 138 shall apply to such limited property report;

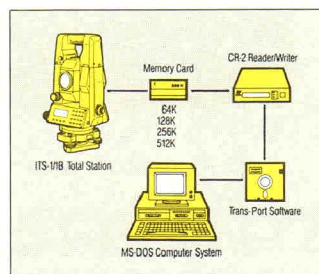
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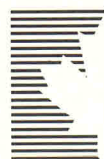
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- (3) A limited property report prepared pursuant to this section shall contain a certificate in the following form:

I, _____, Nova Scotia Land Surveyor, hereby certify that I have conducted sufficient research and made sufficient field measurements to determine that _____ is (are) (not) located entirely within the boundaries of the subject lands as said boundaries are defined by _____, and I further certify that this report was prepared under my personal supervision and in accordance with the requirements of the Nova Scotia Land Surveyors Act and regulations made there under.

- (4) No diagram shall accompany a limited property report prepared pursuant to this section.
- (5) Any report prepared in accordance with this section shall be entitled "limited property report".

GENERAL

140.

Notwithstanding the provisions of this Part, nothing herein shall be construed so as to relieve a member from his duty to practice professional land surveying competently and responsibly.

141.

Council shall prepare and circulate a sample form of Surveyor's Real Property Report to the members.

This part shall come into force on the _____ day of _____, 19____.

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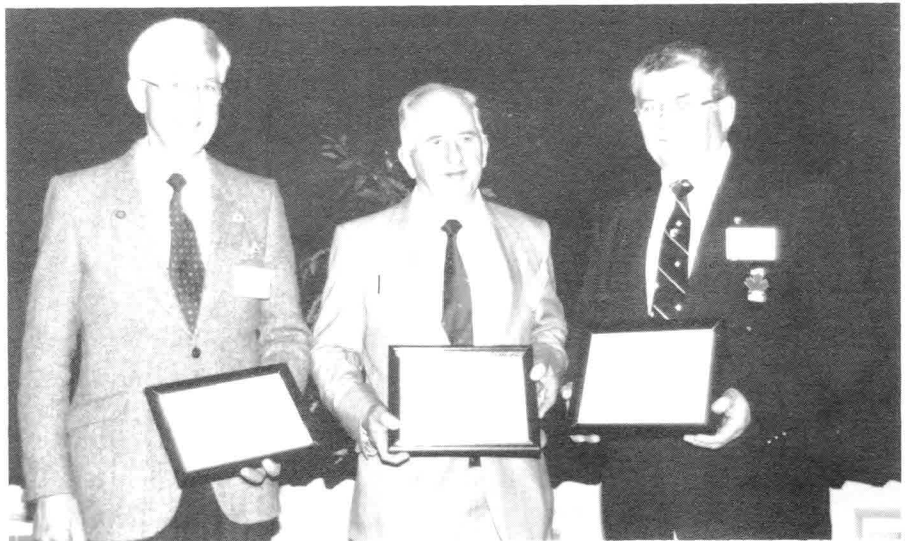
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PROFESSIONAL OBLIGATION OF THE LAND SURVEYOR

BY DAVID C. CLARK, NSLS

Land Surveyor's Associations across Canada in their continuing efforts to standardize the professional services provided by their members, have for several years been agonizing over the development of Regulations in respect to Surveyor's Real Property Reports. It is agreed that the preparation of SRPRs will be a function of professional land surveying. It follows, therefore, that Regulations will be necessary in order that all land surveyors provide this service to the public to a common standard of quality and accuracy.

The land surveyor is considered to be a public officer and as such cannot give undue consideration to a client's interests in disregard to the interests of the client's neighbour. Each boundary divides two unique properties, so the land surveyor has an obligation to have the impartial mind of an arbiter in order to fully represent the legal interests of all concerned. Not only do land surveyors have this legal duty to the public, but as professionals, we have ethical and moral obligations to provide our clients with a superior service.

This latter premise has been made quite clear in Evidence and Procedures for Boundary Location, Second Edition, by Brown, Robillard and Wilson. On Page 139 of this text under Surveyor's Obligations to the Client, it states that in giving service the surveyor assumes certain ethical obligations and liabilities. The client should be served faithfully, but also legally and ethically. Regardless of the fee, the surveyor is obligated to perform a correct survey within specified accuracies. In Clark on Surveying and Boundaries, Fifth Edition, by Robillard and Bouman, on Page 23 it states that "the Surveyor is responsible for locating and identifying any and all encumbrances affecting the land being surveyed".

So it can be seen that duty, obligation and responsibility all have a great deal to do with the way we carry out our certification procedures. This legal and moral obligation which we owe to our clients should be foremost in our minds as we anguish over the approval of these proposed Regulations.

There appears to be a misconception in some quarters that the location certification is an aspect of the services that land surveyors provide which is somehow separate from professional land surveying - something akin to construction layout. This perception is totally wrong and we must quickly convince ourselves and others that this attitude is not acceptable. The controversy over the introduction of the SRPR is far from over and will require a concerted effort by all of us to educate and convert some of the users.

It seems that many of us may need a quick boost of confidence to our professional attitude. As professional land surveyors are we not the experts on land surveying? It follows then that we really must be the experts to decide what the necessary survey requirements will be in order to certify extent of title. Although the lending institutions rely on our certifications, it must not be left up to them to determine for us the quality and extent of our investigative procedures.

We must collectively take a firm position on this issue and not allow ourselves to be dictated to by others seeking a less than adequate product at the last moment. It is imperative that we carry out all the necessary research and surveying fieldwork to provide a quality service and fulfill our professional responsibilities. If we have second thoughts about this, let us think about whose liability is on the line when we sign the certification!

Consider the analogy of a patient approaching a doctor with a medical problem. The patient does not tell the doctor how to perform the operation nor does the patient instruct the doctor to cut the costs by using bandaids instead of stitches to close up the incision. The doctor as the medical expert makes those decisions!

Why should land surveyors act any differently? Why should we not decide what professional service is required, how it will be carried out and how much the appropriate compensation will be for our work and our liability? We are not subservient to the lending institutions and the legal land tenure system. We are the experts, the one and only profession legally qualified to advise on the extent of title to real property.

All of this is not to say that dialogue is lacking between client and professional. Communication is crucial in order to determine details of the client's needs and to convey the professional's decision on what procedures are necessary to achieve the ultimate results.

Before giving a mortgage on real property, a lending institution requires a Certification of the extent of title from a professional land surveyor that the land exists as conveyed by the deed, that the buildings are located on the land, and that the land is free of encroachments and other problems affecting the extent of title. The lenders also require a Certification of the chain of title from a lawyer, to indicate that there are no significant defects in the transfer of title to the land over the preceding years, and that there is marketable title to the property.

Is one of these Certifications any more, or less important, than the other? No, they are equally important to the interests of the client. That being so, should one of these Certifications be prepared with less care than the other? Should shortcuts be taken because pressures are being exerted to meet an early closing deadline?

From the land surveyor, many of the lending institutions require an up-to-date, fully researched land survey giving full particulars about all boundaries and improvements to the parcel. Other lenders may unknowingly believe that a land survey has been performed, and when a land surveyor certifies that the building is on the right lot, they may also assume that the extent of title is clear and marketable. Therefore, what our clients assume they are getting, we have a duty to provide, and we are liable, even for what we do not include.

The purpose of a land survey of an existing parcel is to re-establish the original legal boundaries of a property, and to delineate the physical characteristics of that parcel of land in relation to those original boundaries. The land surveyor must consider the best evidence available and re-establish the boundary in the location where it was first established; not necessarily where it was described either in the conveying document or on a plan. If a significant variance is found it may be necessary to reconcile the document with the actual boundaries.

In addition to the determination of the property boundaries, the Surveyor's Real Property Report will also indicate the physical location of all structures, rights-of-way, easements, and any other thing which can affect extent of title. Factors may have occurred over time to alter the extent of title or to physically change the nature of real property and these must be determined relative to the property boundaries on the date the survey is prepared. Renovations may have altered the size of a structure or contravened a municipal by-law. Construction on an adjacent lot may have encroached across a property boundary, an easement may have been created, or a misdescription may have occurred in an earlier transaction.

The Surveyor's Real Property Report will be a combination of the graphic representation of the results of a full survey and a written report containing details of the investigation pertinent to the certification of the extent of title.

Certain fundamental obligations on the part of the land surveyor will come into play in the preparation of a Surveyor's Real Property Report. The surveyor has an obligation to the client. That obligation is to honestly try to find all the evidence that there is to discover, whether recorded or on the ground. It is the land surveyor's responsibility to enlighten and advise, not just to survey. It is an obligation to call attention to existing and potential problems to all affected parties.

The lending institutions need to know the physical characteristics of a property, and whether the conveying document portrays the property as it exists. The lender is preparing to advance money to a purchaser and the security for the loan is the property itself. The lender, therefore, must be satisfied that the property, and the title to it, are clear of all defects and encumbrances that might cause legal complications after the transaction has been completed. The fully researched survey when certified by the land surveyor to the client, as being correct on the date that the survey is completed, is vital to the lending institution's requirements for verification of marketable title.

Some controversy has developed as to whether there should be a hard and fast rule requiring the SRPR to be the equivalent of a full survey. In parts of the country still burdened with the Land Registry System, there is a justifiable concern that there will be instances where adherence to stringent requirements will cause financial hardship to a client. One such example would be the dwelling located in the centre of a large acreage which would require a great deal of time to survey. This is a legitimate concern which could be addressed by means of a written report.

The written or "limited use" report may have its place providing it is based on thorough research of all documentary evidence and sufficient surveying on the ground to determine whether any problems exist. If contentious issues are found, then the written communication to the client can so indicate.

It must be fully understood however, that a limited use report will not be a Surveyor's Real Property Report, as it will not be based on a full survey and it will not contain all the information that a prospective buyer should know. This limited use report will only contain essential information pertinent to the purpose for which it is required.

The problem will arise as to when and when not to use this alternative to the Surveyor's Real Property Report. Ideally, this should be left up to the professional conscience of the individual land surveyor. But are we now back to one of the original reasons for the Regulations - the danger of shoddy, unethical service? Surely though, the "drive-bys" have now gone the way of the dinosaur. Indeed, the time has come for all of us to act as professionals, by performing only professional services.

It is an obligation of the land surveyor to protect the interests of both the purchaser and the lender, and ensure that both parties are fully aware of any details which may affect the marketability of title. If a full survey and Surveyor's Real Property Report are required to verify the extent of title, then so be it.

The enhancement of our certification procedures has been a subject of consideration and discussion for many years. Every land surveyor has had the opportunity for input at zone meetings, the Annual Meeting or through written comments to the Committee. The time has come to demonstrate our professional responsibility by approving Regulations which will guarantee the public a standardized quality service.

The land surveying profession is on the threshold of dramatic changes caused by tremendous advances in technology. This new technology is challenging the traditional land surveyor to evolve into a land information specialist. As we expand our horizons let us remember that we are public officers and hold to our traditional moral and ethical obligations in serving the public.

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3. Doing a task yourself that could have been delegated.
4. Lost time due to waiting for others as a result of poor scheduling.
5. Allowing long discussions of inconsequential or personal matters.
6. Permitting the late afternoon drag to slow things down. Save new and interesting assignments for the end of each day.
7. Spending too much time on a problem or project, when asking advice would provide a more rapid or better solution.

If you find one or more of these distractions cutting into your time, make a conscious effort to eliminate it. Consider time a valuable commodity.

Reprinted from **The Nebraska Surveyor** Winter 1988



WOMEN IN SURVEYING

JUDY M. MORRISON, A.L.S.

Hi! My name is Judy Morrison and I'm a female A.L.S. Officially, the abbreviation stands for Alberta Land Surveyor, but a friend of mine says that in my case, it stands for A Lady Surveyor. I was asked ever so nicely to do an article for Boundaries and was addressed as, "the girl who brings a breath of fresh air into the stuffy old boy's club", so I could not refuse.

How did I get myself into surveying? That's always an embarrassing question. I was initially going to take Forestry at a college in B.C. but at the last minute, my application was rejected and in the resultant scramble to go anywhere, I applied to several institutions, to any class in which there was an opening. Survey Technology at SAIT (Southern Alberta Institute of Technology) accepted me, so I went. Now you see why I'm embarrassed. It would be much nicer to make up a story and tell you about this great yearning I had when I was a little girl to grow up to be a surveyor and how I accomplished it, but it's not the truth. It's funny how something like being rejected at a college can shape one's life.

Rumour has it that my application should have been rejected at SAIT. It seems that they did, at that time, reject people on the basis of sex, and on my application form I printed my initials only. Apparently someone missed the little tick mark beside "female".

I spent two years at SAIT and graduated in 1973 with an honours diploma in Surveying Technology. Four years and nine exams later I received my commission as an Alberta Land Surveyor. I studied hard for the exams. One of my best memories of that period of my life was spending a sunny, spring, Sunday afternoon, closeted in the bedroom while my husband did yard work, and then being let out of the room to eat a fantastic steak supper. Those were prechildren days, of course. Nothing like that happens now!

My children, Jem, Tracy, and Alli (ages 9, 7, and 4 respectfully) have no idea that I am an anomaly in my profession. I have kept them rather ignorant about my work and I'm sure they think there are lots of women surveyors. I want my daughters to think that they can grow up to do whatever they want to do and then do it. I want my son to never think that jobs can be categorized by sex.

At the time that I applied at SAIT, I had no idea of what surveying was, that it was a predominately male profession, but I quickly learned. The first day in class, I was the only female and it stayed that way for two years. It seemed odd to me that it was "male only" because academic skills are definitely an asset in surveying and girls have as much of those as the average male. But let's face it men on average have more strength than girls, so we don't do the "brawn" jobs as well. I have learned to compensate though. It isn't only how hard the sledge hammer hits the iron post but how well. As a petite female, I try to perfect the technique and concentrate on skill. Also, a lot a surveying is done in the office with calculations, administration and client contact, and women do that as well as men, so physical strength shouldn't be the only criterion upon which to base a judgment of a surveyor.

Getting a summer job at the end of the first year of surveying was a struggle but, thanks to the efforts of my instructors, and a great fellow surveyor, willing to take a chance on me, I got a job as a rodman, low man on the survey crew. That summer was a wonderful experience - lost plumb bobs, trucks stuck in gravel pits, and plenty of beer. I had so much of the great outdoors that I used to fall asleep every lunch hour. Not so my fellow crew members. We usually parked at MacDonald's and they girl watched for their lunch hour.

The next summer I was a graduate and resumed employment at the same firm and, excepting one brief stint of work at another firm, worked there until my "retirement" in 1983. I raised my family until they could all walk and then went back to work part time. I still very much enjoy my work, but now I have to arrange babysitting before I go out.

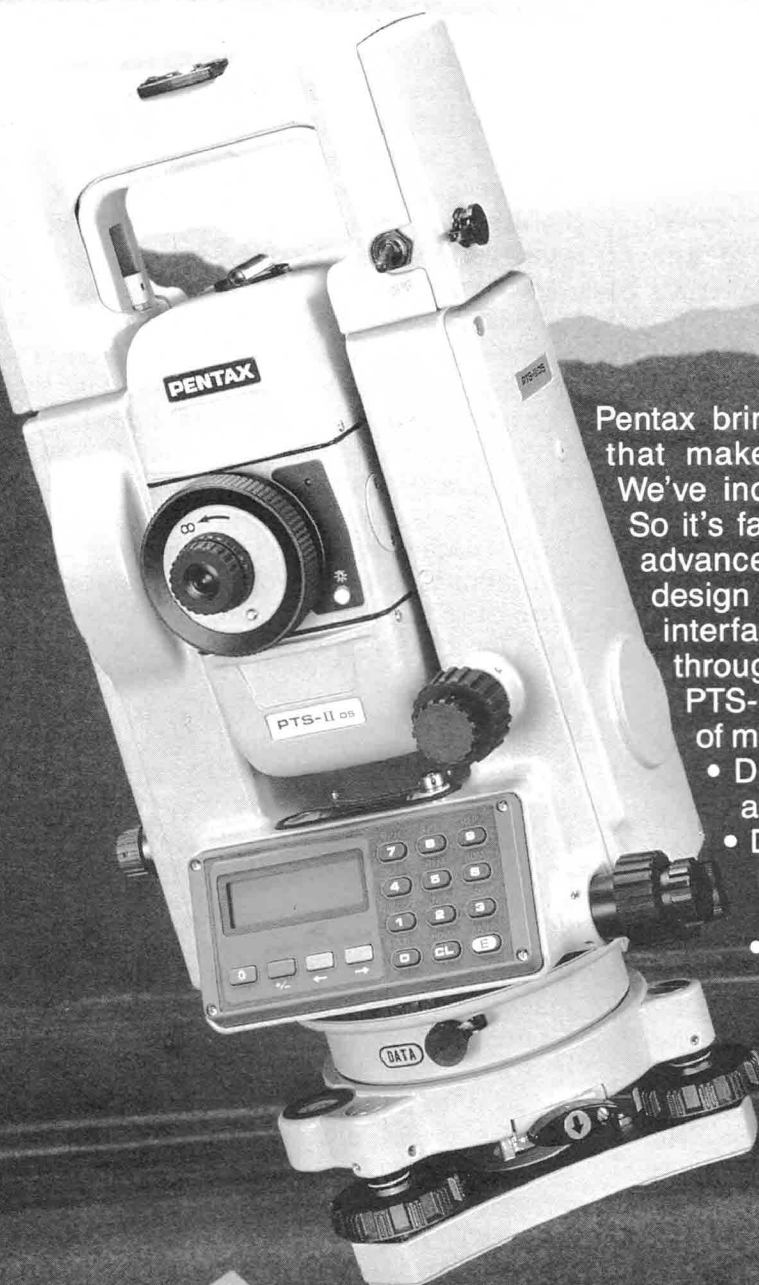
I've had a great working life and anticipate it staying that way. I have always felt sorry for anyone working in a job which they don't love. I like "number crunching" (calculations) and "pretty pictures" (plans), so surveying is the right choice for me.

My one regret is that of never having worked out of town on pipeline related work. When I graduated from SAIT, co-ed camps were unheard of, so the work I did was in town and subdivision related - creating new lots for an increasing population. But that was challenging too! The calculations involved in street design and lot layout are horrendous but when it is completed, there is certainly a feeling of accomplishment.

Out of town work has opened up for females, but I now have a family and home commitments. I

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extracted a promise from my husband that when all the kids were in high school, I could work in the Great White North (1997 that will be), and I'm really looking forward to it.

As a woman in a man's field, people are somewhat surprised when they find out the "J" in my name stands for "Judy". In most correspondence I add "Mrs." after my name to eliminate confusion. I don't like to embarrass people. My profession is predominately male, so it's a natural assumption for people to think that I'm one too. It's up to women to change that attitude and it will have to be gradual. Sometimes when I answer the phone whoever it is assumes that I'm a secretary. Again, as long as the enquirer hasn't assumed that I'm stupid too, I clarify the mix-up nicely.

I'm not a feminist per se, or what I define as a feminist. I think feminists are militant and that if clients or employers are pushed, they push back. I think I just have to be competent and then I've accomplished the goal, but what if I never had that first job to prove myself? I suppose then that militancy would have worked and I could have used my sex to land the job. Luckily, I haven't had to resort to those tactics.

The key words there are "prove myself". No matter what job I do, I always have to prove myself to someone. People, in general, don't accept my competency until I've proved it. That is inherently wrong, but is still an improvement over what our mothers' expectations of employment were. I've made a small step for womankind, but I hope that my daughters will be accepted for employment regardless of sex. All the things I do and have done for women in the work force are long term, and our children will benefit most. I believe that is generally true to all working women today. But men, including my fellow surveyors, have to be aware of the changing times. Women are now part of the work force and have the capabilities, both physical and academic, to be good surveyors and we should all be aware of that.

As a woman alone, I have to obey certain rules. One of these rules is sexuality. Most of my friends, fellow employees and clientele are men, so I must tread lightly. If I "slip", I am categorized as "all women" and tarnish the image. Ron, my husband TRUSTS me in all my relationships, so I behave. I don't swear or tell dirty jokes. I try to maintain a good image of myself and that's my method of attack.

Field and office personnel have a hard time taking orders from me and I have a hard time giving them. I feel I have to be a "heavy" because of negative

responses I have experienced, so come across badly. I prefer to work WITH personnel and, once I've proven myself, that is easily accomplished. One has to remember most people taking my orders are men, and a lot had the example of submissive mothers, so taking orders is against their nature. In retrospect, the little office spats are hilarious, but at the time, they are very demeaning.

There are rewards too! Where else can a woman attend a meeting with one hundred and fifty men and feel part of the group? The camaraderie at a land surveyor's convention is a wonderful thing and I'm really glad that I'm part of it (apparently though, there were more jokes at the meetings before I started attending). We renew friendships interrupted by time and distance and it's great! Overall, I can think of no career I would enjoy as much as surveying. Most of my surveyor friends are aware of the changing times and treat me as an equal, and I know it.

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INSTRUMENT OF SUBDIVISION

BY JAMES GUNN, NSLS, CLS

January 1991

Instrument of Subdivision

For the past three years, fourteen rural municipalities in Nova Scotia have been using Instrument of Subdivision. This procedure was introduced through revisions to the Planning Act in 1987 as a replacement for the infamous "four lot rule". Instrument of Subdivision provides for subdivision approval of certain lots that do not meet the usual subdivision criteria. Title is assured for subdivisions of this nature inasmuch as compliance with the Planning Act is concerned.

The basic underlying principle behind Instrument of Subdivision and its predecessor, the four lot rule, is not without merit. They were both designed to facilitate the occasional single lot transfer between family members and neighbours in rural communities. They are based on the premise that people in low value, slow growth areas of the province should be offered some relief from the onerous subdivision process.

We should indeed give the rural property owner every consideration, provided of course, that any such benefit to this particular group is not detrimental to any other members of society or to the long term development of the province. In particular, we must weigh the short term benefit to the land owner/developer against the added costs and risks to subsequent owners and adjoining.

The four lot rule was far from perfect, but it did accomplish its objective in exempting a minimal amount of subdivision activity from the rules. The major problem that led to its downfall was the difficulty of interpreting the wording of the rule. Lawyers, in particular, found the wording ambiguous and often disagreed with each other as to whether the remnant parcel formed the fourth lot. There was also

the question of whether a newly created lot could then be further subdivided into four new lots using this rule. Since there was no requirement to record this subdivision activity, searching was difficult at best.

Good title to a property is of course dependent on compliance with prevailing legislation. It was often difficult however, to determine if an unapproved lot had truly qualified for the four lot rule exemptions. In response to this expanding problem, legislators changed the Planning Act, did away with the four lot rule, and replaced it with Instrument of Subdivision. They also introduced a form of amnesty over all prior subdivision transactions.

The problem with Instrument of Subdivision comes in drafting some sort of minimum requirements so the planning offices will have a document to approve. In keeping with the spirit of the four lot rule, the legislators wanted to give the rural property owner every possible consideration. Therefore, a standard form was introduced that required a sketch of the property on one side and certain assurances as to minimum size, on the other side. The whole thing could be prepared by the landowner in a matter of minutes and approval was assured on presentation to the development officer.

The main difference between the Four Lot Rule and Instrument of Subdivision is that the former allowed for the creation of a limited number of unapproved lots whereas the latter allows for any number of approved lots. It should be pointed out however, that lots approved by Instrument differ substantially from those created by a proper Plan of Subdivision. Instruments carry a number of disclaimers, ie:

APPROVAL OF INSTRUMENT OF SUBDIVISION

This approval does not warrant the size, location, or boundaries of the lots described in the instrument and the development officer has no duty to verify the information submitted by the applicant as to the size, location, or boundaries of the lots.

As a result, these lots may not have access to a public street or highway.

This approval does not in any way imply that the lots created by this instrument would be eligible for any or all of the following permits:

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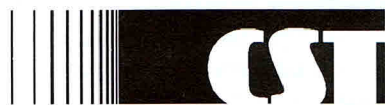
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feet is only 0.26 feet on the ground. Might not this monument be a reasonable attempt to mark the cornerpoint? Was the distance so unreasonable? Do you really think your traverse, after being adjusted, is all that significantly different? A pipe in the ground for 25 years should carry a lot of weight with the present-day surveyor if it reasonably marks the originally intended corner point.

There are situations where the surveyors must set other monuments. When an uncalled-for monument is not within reason, or appears to have been set incorrectly (I did not say inaccurately), then a second monument may need to be set, and the plat should clearly state your rejection of the found corner, and why. The multiple monument syndrome is usually not a result of careful consideration, research, or professionally-based common sense. Rather, it is the result of measurement, adjustment or technique disagreements.

In short, a second monument is only needed when there is clear reason why the found point should be rejected. It should never be based on reasons of accuracy, measurements, or precision alone. When you consider the principles of why a monument is so "sanctified" in land boundary law, you will understand why precision was never a factor in land surveying. The major test is harmony with record angles, distances and areas, but these must be realistic and reasonable.

Some will misread this to say that I am not in favor of good survey practices or precision. Not true! The real issues in property surveying are legal, not mathematical. When we cross the line and worry more about precision than "right", we undo the purpose of our profession, and literally curse the public whom we are supposedly protecting.

Some very good reading on this subject is found in sections 4.22 and 5.16 of Boundary Control and Legal Principles, 2nd edition, by Curtis Brown. He discusses the uncalled-for monument in metes and bounds and simultaneous conveyance situations.

The second type of double monumentation occurs, for instance, when a plat states the surveyor found a rebar, but the true point is ".04 North, .07 West of the rebar." Really? I know of firms that do this all the time, and yet have never heard of a prism offset. They never adjust their tribrachs and they have no concept of positional tolerances. Their traverse closes 1:20000 over a four-mile length, but is not on the state plane coordinate system. There is no way their work is even remotely accurate enough to make this kind of

judgment. These licensed computation artists (COGO slaves) are a further detriment to an honorable profession.

This practice defies all logic. The public cries out, where is the corner? The rebar, or the theoretical point? What service does this do to the client, the adjoiners, or the public in general? None! At what point does the monument finally take its rightful sanctity and become the corner? When every surveyor in town agrees to it within .01 foot? Within .001 foot? When will it end?

Some surveyors cannot seem to make a commitment. Is it the corner or not? That is what they were hired to determine. When certain circumstances are present, there may be good reason to set a second monument, but this should be the exception rather than the rule.

While various groups and organizations for surveyors continue to roam the country preaching the paths to professionalism, there has always been only one true test - the quality of the work performed. The setting of double monuments is almost always a sure sign some amateur has been there before. Perhaps they left a real record of "why" on a plat. But usually it is simply a game of multiple choice at the corner point. Choosing the oldest is not always the solution.

These games are creating more and more disputes, contraversies, and ill will toward the surveying profession. I urge all who read this to consider what they are doing. Are you really practising surveying? Or just a mathematical shadow of the profession?

Dennis Mouland is President of Cadastral Consultants Inc., a continuing education firm for surveyors and the title industry in Albuquerque, New Mexico.



DOUBLE MONUMENTATION

To allow the setting of multiple monuments is one of the most damaging things the surveying profession can do to itself.

BY DENNIS MOULAND

Can you imagine the consternation of a person who has just driven many miles to his newly-purchased (and surveyed) country estate for the purpose of fencing it in, and, having left his plan at home, discovers that the corners all have two or three monuments, some several feet apart? Can you imagine the phone call that surveyor is going to get on Monday?

Most people believe that once they hire a surveyor, their boundaries are fixed and certain. As surveyors, we should recognize that this is often not the case. We can report the facts. Sometimes the facts are quite clear and a boundary is very safe and secure. Other times the appearance of possible unwritten rights, both for or against a client, can lead the surveyor to a less certain conclusion. Such problems should be thoroughly represented on the plan and also explained to the client.

Occasionally surveyors themselves create or perpetuate illogical conclusions or grey areas that need not exist. These actions cause a great deal of justifiable heartburn to the client. It is the practice of double monumentation.

Double monumentation occurs in two basic ways. One occurs when surveyors disagree with found monuments and so decide to "set the correct" corner. Another occurs when surveyors note on a plan that found monuments are certain distances or moves from the "true point," but do not set other monuments. This article analyzes these two common practices.

To allow the setting of double monuments is one of the most damaging things the survey profession can do to itself. As many surveyors have seen, it can result in three or more monuments, all claiming the same corner point. This sends a terrible message to the public. We look like a bunch of prima donnas, all trying to out brag each other about our accuracies. Some even brag on their plats how they adjusted their

traverses, or how well they closed. While, on the surface, this may all seem professional, it is actually highly unprofessional.

The heart of the issue is simple: when should a surveyor accept an existing monument and when should it be rejected? This is basically why we have surveyors and why we license them. It is my observation that most second monuments are set for entirely the wrong reasons.

If a deed description calls for a monument, and you find that monument, some very basic principles of land law say you should accept it, even if it is not at the called-for distance or bearing. The call for a monument is the most powerful call in any description. But some "measurers" are apparently not aware of this concept. They will set their own "superior" monument half-a-foot away, and create confusion where none need exist.

Often an uncalled-for monument is found at a point where a deed has taken the surveyor. We must not automatically reject such a monument simply because it does not fit our precise measurements. An element of common sense must enter in when dealing with the uncalled-for-monument. Does the position monumented mark the corner point within reason?

For example, consider a description you are retracing that calls for "thence North 150 feet" to a property corner. Your survey locates an iron pipe at this approximate point. But you calculate the pipe to be 6 minutes off bearing and 30 feet too far. Should you set another? You must ask some questions about this uncalled-for monument:

- * Is there a record of this monument?
- * Where did it come from? Who set it?
- * What deed (or deeds) were being used to establish this position?
- * Is there a conflict with those deeds and your deed?
- * How long has it been in place?
- * Was it set with reasonable accuracy given all the circumstances?
- * Will it better serve the public to set an additional monument?
- * Who and what has relied upon this position, and for how long?
- * Has acquiescence taken place?

In the previous example, the bearing error is meaningless unless you have been very prudent to know the basis of bearings you are retracing, and the factors that may have influenced the "precision" of the record bearings. Let's face it, 6 minutes in 150



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feet is only 0.26 feet on the ground. Might not this monument be a reasonable attempt to mark the cornerpoint? Was the distance so unreasonable? Do you really think your traverse, after being adjusted, is all that significantly different? A pipe in the ground for 25 years should carry a lot of weight with the present-day surveyor if it reasonably marks the originally intended corner point.

There are situations where the surveyors must set other monuments. When an uncalled-for monument is not within reason, or appears to have been set incorrectly (I did not say inaccurately), then a second monument may need to be set, and the plat should clearly state your rejection of the found corner, and why. The multiple monument syndrome is usually not a result of careful consideration, research, or professionally-based common sense. Rather, it is the result of measurement, adjustment or technique disagreements.

In short, a second monument is only needed when there is clear reason why the found point should be rejected. It should never be based on reasons of accuracy, measurements, or precision alone. When you consider the principles of why a monument is so "sanctified" in land boundary law, you will understand why precision was never a factor in land surveying. The major test is harmony with record angles, distances and areas, but these must be realistic and reasonable.

Some will misread this to say that I am not in favor of good survey practices or precision. Not true! The real issues in property surveying are legal, not mathematical. When we cross the line and worry more about precision than "right", we undo the purpose of our profession, and literally curse the public whom we are supposedly protecting.

Some very good reading on this subject is found in sections 4.22 and 5.16 of Boundary Control and Legal Principles, 2nd edition, by Curtis Brown. He discusses the uncalled-for monument in metes and bounds and simultaneous conveyance situations.

The second type of double monumentation occurs, for instance, when a plat states the surveyor found a rebar, but the true point is ".04 North, .07 West of the rebar." Really? I know of firms that do this all the time, and yet have never heard of a prism offset. They never adjust their tribrachs and they have no concept of positional tolerances. Their traverse closes 1:20000 over a four-mile length, but is not on the state plane coordinate system. There is no way their work is even remotely accurate enough to make this kind of

judgment. These licensed computation artists (COGO slaves) are a further detriment to an honorable profession.

This practice defies all logic. The public cries out, where is the corner? The rebar, or the theoretical point? What service does this do to the client, the adjoiners, or the public in general? None! At what point does the monument finally take its rightful sanctity and become the corner? When every surveyor in town agrees to it within .01 foot? Within .001 foot? When will it end?

Some surveyors cannot seem to make a commitment. Is it the corner or not? That is what they were hired to determine. When certain circumstances are present, there may be good reason to set a second monument, but this should be the exception rather than the rule.

While various groups and organizations for surveyors continue to roam the country preaching the paths to professionalism, there has always been only one true test - the quality of the work performed. The setting of double monuments is almost always a sure sign some amateur has been there before. Perhaps they left a real record of "why" on a plat. But usually it is simply a game of multiple choice at the corner point. Choosing the oldest is not always the solution.

These games are creating more and more disputes, contraversies, and ill will toward the surveying profession. I urge all who read this to consider what they are doing. Are you really practising surveying? Or just a mathematical shadow of the profession?

Dennis Mouland is President of Cadastral Consultants Inc., a continuing education firm for surveyors and the title industry in Albuquerque, New Mexico.



SURVEYOR LIABLE FOR IGNORING MONUMENTS

A surveyor sued a landowner for the unpaid balance of his fee. The landowner counterclaimed for damages arising from the surveyor's alleged error in disregarding a record distance, relying on an unrecorded fence line observed in the field and depending on acreage computations. Expert witnesses called by the surveyor testified that the surveyor's methods met the locally prevailing standards of skill, care and dilligence. The case was submitted to a jury which found in favor of the surveyor.

The appellate court reversed and found that the trial court erred in submitting the case to the jury. While the question of whether a professional departed from

the standard of care is ordinarily an issue of fact to be resolved on the basis of conflicting expert testimony, exceptions exist which have become rules of law. Such exceptions fix binding standards which are not left to the exercise of professional judgement. As rules of law, they are not subject to expert opinions regarding local practices. Land surveyoprs are governed by certain standards which have ripened into rules of law. A natural monument or landmark should prevail over measurement of acreage. The appellate court concluded that the surveyor was negligent as a matter of law in ignoring this rule.

Spainhower v. B. Aubrey Huffman & Assoc., 377 S.E.2d615 (Va.1989).

Excerpt from **LEGAL HIGHLIGHTS** Vol.XX, Number 7 (Virginia)



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CODE OF ETHICS

How long has it been since you referred to our Code of Ethics for guidance on a doubtful point? Unless you're a student studying for an exam in ethical conduct (or the person who is setting it), it's a safe wager that it's been quite some time.

Why so? Can it be that surveying is so simple and its business affairs so straightforward, that no guidance is ever needed? Or at least, not very often? Perhaps, on the other hand, all land surveyors have a built-in directional system that keeps us on track without the need for reference to externals. As comforting to dream about as both these ideas might be, we know that neither the one nor the other happens to be true. Neither surveying nor the people who engage in it, are much different in ethical matters from other businesses and groups within the community.

Which brings us back to the original question: why so little reference, on a regular basis, to our Code of Ethics? After all, this is part of the rules of conduct which govern our day-to-day work, at least as much (in theory, at any rate) as does the Land Surveyors Act with the regulations and the by-laws made under its authority.

Is this because there's nothing really helpful in the Code of Ethics in the first place? Given that one knows the difference between right and wrong (and if one doesn't, an ethical code isn't going to help anyway), can a case be made that there is little in our Code that anyone doesn't know already? If one is doubtful about how to behave, what is the likelihood one will there find the answer? Is there any substance to the view, "Probably not"?

That which we have as a guide to our ethical conduct as land surveyors, consists of eight motherhood statements of principle. Each of these is amplified by five or six related statements of not very much greater precision. It seems rather unlikely that any of us would get much satisfaction were we to consult our Code to resolve doubt about the propriety of conduct we were contemplating, or which was being urged upon us by others, or by circumstances. Perhaps now might be an appropriate moment to look at our Code of Ethics to see just what I am suggesting.

We are enjoined, for example, to avoid even the appearance of professional impropriety without being told what such might amount to. Granted, some supposed instances follow; but most are as vague in their essentials as is their associated statement or

principle. What, for example, are conflicts of interest in terms of circumstances which can arise from time to time in a surveyor's work? Should there not be some specifics here? Is making a survey for a member of one's immediate family a conflict of interest? But is it always? What might make it so in one case and not in another? Or is it possible, or is it worth the effort, to distinguish between circumstances?

It occurs to me that points of this kind are worth pursuing, if we want a better guide to what is and what is not acceptable ethical conduct. To that end, our editor has agreed to find space in each of the next few issues for a short composition on an ethical theme.

Suggestions for specific topics are welcome. So are observations, agreements, examples, counter-examples, disagreements, arguments, notes on how matters are handled elsewhere or even solutions. Unless a contributor wants to be identified on a particular item, and says so, each contribution will be passed along without attribution. Communications should be addressed to: Ethical Essays, The Nova Scotian Surveyor, Suite 301, 159 Portland Street, Dartmouth, N.S., B2Y 1H9.

A meaningful and useful code of ethics is the collective opinion of all those charged with a common duty. An open exchange and examination of some particular items can do no great harm and may even prove of some interest. Such an exercise, moreover, might improve our understanding of what others, and ourselves, have a right to expect of land surveyors by way of ethical behaviour. Of course, such expectations would only apply to land surveyors while they were working at land surveying. Or should this be? Perhaps, already, I'm confused.

At any rate, the first of my "Ethical Essays" will be found on a later page of this issue. It's on moonlighting.

J.F. Doig



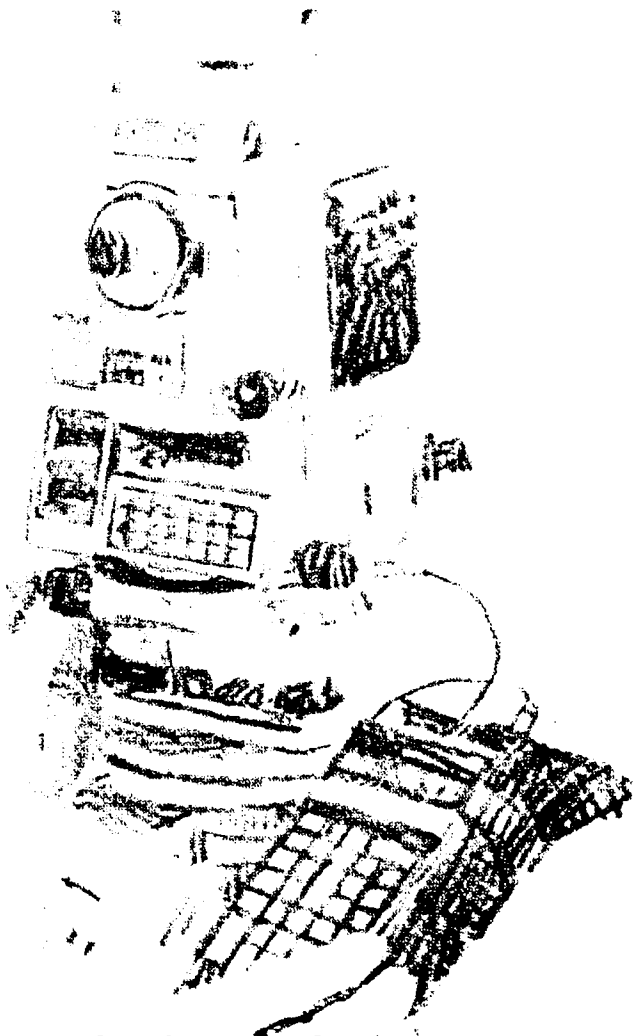
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OBITUARY

**GEORGE TRESSLER BATES
REG. NO. 108**

George T. Bates, an Honorary Member of the Association of Nova Scotia Land Surveyors and an Honorary Member of the Canadian Institute of Surveying and Mapping, died in Halifax on October 29, 1990, a few days before his 78th birthday.

Born at Nottingham, England, George came to Nova Scotia as a young man and worked on farms in Nova Scotia and Ontario for several years.

In 1936, in Halifax, he got employment as an axeman on a survey crew and progressively took on more responsibility. In 1937 he became apprenticed to Charles Roper, civil engineer and provincial land surveyor. George studied mathematics and drafting at night school, and took surveying by correspondence from the Technical University of Nova Scotia. He qualified as a Nova Scotia Land Surveyor in 1939.

He opened his own practice as a land surveyor in Halifax in 1944, eventually building up a staff of 25 employees. Much of his business was advising local municipalities on town planning matters. In 1949 and for some years subsequently, he was involved almost entirely with land acquisition and surveys for the MacDonald Bridge, the first to span Halifax Harbour.

George was an accomplished historian and calligrapher. His historical maps of Nova Scotia and surrounding areas, as well as his illuminated parchments, were works of art. They always reflected their maker's consummate sense of form and style. A life member and past secretary of the Royal Nova Scotia Historical Society, he was awarded a Certificate of Merit in 1965 for outstanding contributions to local history.

George served on the Council of the Association of Nova Scotia Land Surveyors for five years, and was President of the Association in 1967. In 1971 he was appointed an Honorary Life Member of the Massachusetts Association of Land Surveyors and Civil Engineers.

Well known within the surveying and mapping community at large for his enthusiastic promotion of Nova Scotia, coupled with his colourful, enthusiastic and cheerful capacity to bring his own special recipe

of "joy and quiet dignity" to meetings and conventions, George will be long remembered for his love affairs with both history and good fellowship.

Annually since 1984, the Association of Nova Scotia Land Surveyors has presented the George T. Bates Scholarship to the best first-year student in Surveying at the College of Geographic Sciences.

George is survived by his wife, Helen, and four daughters: Chris Lamont, Toronto; Eleanor, Compeigne, France; Elizabeth Dunsworth, South West Cove; and Helen McTague, Halifax.

/s/



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THE PROFESSIONAL LIABILITY INSURANCE CORNER

BY: GORDON A. WEBSTER, SLS, CLS
Chairman Professional Liability Insurance
Committee, Canadian Council of
Land Surveyors.

The following column is a regular feature and will attempt to give examples of claims made against the CCLS insurance program. The examples will relate to problems incurred against the program anywhere in Canada and may or may not have resulted in a settlement. Claims may be closed or open and the opinions given are that of the author. It is the intention of the author to maintain confidentiality in all examples.

The claim we are looking at in this issue will again involve construction layout. The layout is an addition to an institutional building. Our insured was contracted to provide excavation stakes and grid line reference points for a contractor on an addition to a large building. It appears that the critical criteria for one of the walls of the addition was that it was to be 23.5 feet from a property boundary.

The surveyor established the boundary in question and laid out the points for the excavation to be done. The surveyor then returned to establish the grid lines in order that the contractor could begin the construction of the required footings and foundation walls. It appears that the surveyor used a reference point other than the previously established property boundary in the setting of these grid lines.

When the contractor was setting up forms for the footings he noticed that there appeared to be some discrepancy in the location of the grid lines when compared to the excavation. When the forms for one of the outside walls were in place there was much more room between the forms and the edge of the excavation than was normal. The contractor immediately contacted the insured and a crew was sent out to determine why there was this difference. The surveyor checked out his work on the grid lines and could find no error in his grid line layout. He did not at this time check the critical measurement to the property boundary. The surveyor informed the contractor that the grid lines were correct and that the discrepancy must be an error in the architectural drawings. Nothing further was done to confirm this discrepancy.

When the foundation walls were in place our insured was called to issue a surveyor's real property report on the property in question. In the process of completing the real property report the distance between the wall, which was in question previously, and the property boundary was measured. It was determined that this tie was some + 7.0 feet larger than the minimum 23.5 feet which was the original critical criteria. The new foundation wall was in the wrong place by + 7.0 feet and this made the addition smaller than intended. The owner was contacted and it was determined that the smaller building would be unacceptable. The only alternative was to remove the wall and replace it in its intended location. The remedial work was completed by the contractor at a cost in excess of \$60, 000.00. The cost of this replacement was also confirmed by a quotation from an independent contractor.

Was this claim preventable? I would suggest that this claim was preventable. It appears to me that our insured did not take proper precautions in his original establishment of the grid lines as no tie was made to the property line in question. A further opportunity to prevent the claim was provided when the discrepancy between the excavation and the grid lines was noted by the contractor and brought to the attention of the insured. Again our insured neglected to make the tie from the grid line to the property boundary. It appears that this claim resulted from inadequate checks of the insured's work.

As this is not the first claim we have seen caused by inadequate checks I would urge all surveyors involved in layout work to ensure that adequate checks are done. If surveyors continue to inadequately check their work insurance premiums will only increase. It is in your best interest to add these extra checks to attempt to avoid claims of this type in the future.



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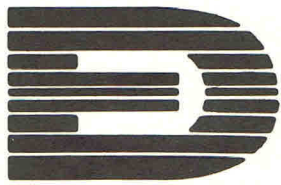
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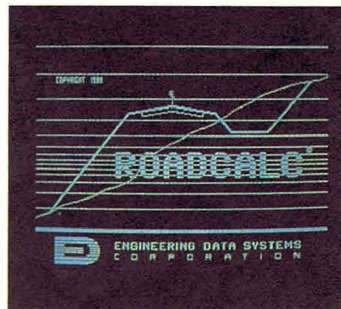
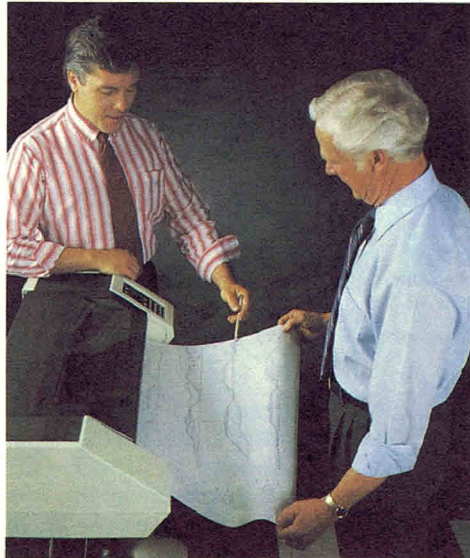
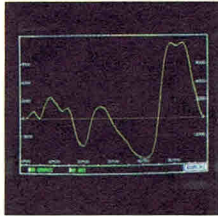
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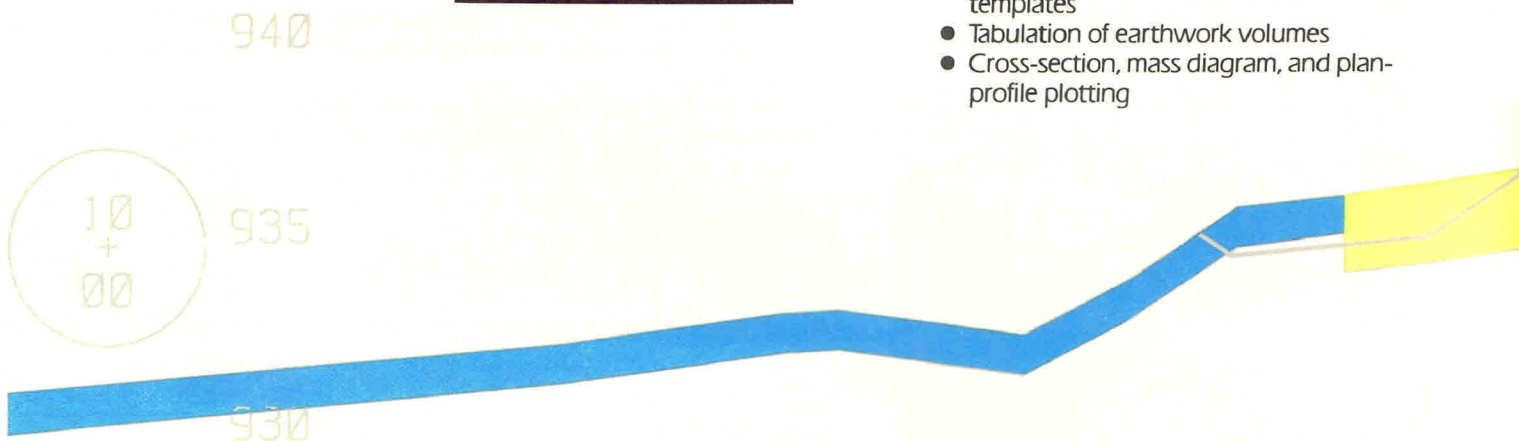
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HR - ANG AZIMUTH BY HOUR ANGLE (ASTRONOMY PROGRAM)

This program is written for the 41 series calculators: 41C, 41CV, 41CX.

108 registers are dedicated to the program with the memory sized for 40 storage registers.

The compilation and design of this program was prepared by.

1. MICHAEL L. MARSHALL - Student of the College of Geographic Sciences studying in the Survey Diploma program 1990, 1991.
2. ALEX CATCHPAUGH - Student of the College of Geographic Sciences studying in the Survey Diploma program 1990, 1991.

NOTICE

The program material contained herein is supplied without warranty of any kind. The authors therefore assume no responsibility and shall have no liability consequential or otherwise, of any kind arising from the use of the program material or any part thereof. Loss of data or incorrect results are the sole responsibility of the user.

INTRODUCTION

This program is designed to calculate the astronomical AZIMUTH of a line on the ground between instrument station and reference object (R.O.), from field measurements which have been taken, on stars (including POLARIS), and the SUN. This program has the ability to compute the azimuth of each individual pointing, and average the mean of all pointings calculated by the hour angle method.

This program works in conjunction with information obtained from the STAR ALMANAC FOR LAND SURVEYORS (S.A.L.S.).

Available from: Bernam-UNIPUB
4611 F Assembly Drive
Lanham
MD 20706-4391

INPUT: The necessary field observations required, include:

1. BACK SIGHT READING - reference object usually on the line which the azimuth is required
2. HORIZONTAL READINGS TO SUN/STAR - direct or reverse horizontal circle readings (H.C.R.)
3. TIME OF OBSERVATION - the instant of time at which the pointing is taken on the SUN/STAR, recorded in Standard, Local, U.T., etc. the difference between the observers local time and U.T. time is known as (U.T. inc=?).
4. LATITUDE & LONGITUDE - can be interpolated from a map of suitable scale, or obtained from other means.

WEST = +LONG. NORTH = +LAT.
EAST = -LONG. SOUTH = -LAT.

SUN OBSERVATIONS require:

1. E-0HR and E-24HR - where E-0HR is the value of E at 0 hours on the Greenwich date of observation. E-24HR is the value of E at 0 hours at the beginning of the next Greenwich day.
2. DEC-0HR and DEC-24HR - where DEC-0HR is the declination at 0 hours on the Greenwich date of observation. DEC-24HR is the declination at 0 hours of the next Greenwich day.
NORTH DEC. +
SOUTH DEC. -
3. This program is designed to compute an azimuth using the same number of observations on each side of the sun. Will not work with semi-diameter method, if used will have to be applied after.

STAR OBSERVATIONS require:

1. R-0HR and R-24HR is the value of R at 0 hours on the Greenwich date of observation. R-24HR is the value of R at 0 hours at the beginning of the next Greenwich day
2. R.A. - is the right ascension of the star for the Greenwich date of observation.
3. DEC. - is the declination of the star for that day. Northern declinations are positive, southern are negative.
NORTH DEC. +
SOUTH DEC. -

OUTPUT: Astronomic azimuths from instrument station to R.O. for each pointing, and the mean of this calculated pointing.

WORKING EXAMPLE

The following is an example of observations taken on a STAR.

STAR OBSERVATION Star: Polaris
Date: November 27, 1990
Latitude: 44-55-35 west
Longitude: 65-09-39 north
Time: Hp-41CX
Crew: #7

SUN OBSERVATION Refer to chapter 8 of "The Elements of Astronomy for Surveyors" by J.B. Mackie for field procedures.

FIELD DATA

STA.	HORIZONTAL ANGLE (D.M.S.)	TIME (H.M.S.)
DIRECT		
R.O.	227-32-40	
STAR	342-46-59	01-29-37
STAR	342-46-48	01-30-07
REVERSE		
STAR	162-46-16	01-32-02
STAR	162-46-08	01-32-52
R.O.	47-32-25	

NOTE: The difference on the direct and reverse pointing on the R.O. This difference is due to systematic errors in the instrument. It is recommended that equal observations on direct and reverse be taken to eliminate these errors.

KEYSTROKES	DISPLAY	REMARKS
<u>XEQ</u> HR-ANG	SUN-A STAR-B	
B	LAT=?	
44.5535 <u>R/S</u>	LONG=?	
65.0939 <u>R/S</u>	U.T. INC=?	-Difference between Greenwich and local time.
4 <u>R/S</u>	S.W.=?	
1.2937 <u>R/S</u>	U.T.=5.2937	
<u>R/S</u>	R-OHR=?	
4.22362 <u>R/S</u>	R-24HR=?	-R values on pages 1-25 of S.A.L.S.
2.26327 <u>R/S</u>	R.A.=?	

2.2333 <u>R/S</u>	G.H.A.*=7.29343	
<u>R/S</u>	L.H.A.*3.08557	
<u>R/S</u>	T>=3.08557	
<u>R/S</u>	DEC=?	DEC cannot equal zero.
89.1342 <u>R/S</u>	Z=0.48269	
<u>R/S</u>	AZ*=359.11331	
<u>R/S</u>	B.S.<0.00000>=?	
227.3240 <u>R/S</u>	H.C.R.=?	
342.4659 <u>R/S</u>	AZ R.O.=243.57141	Az. of R.O. of first pointing.
<u>R/S</u>	ANOTHER Y/N	
Y	S.W.=?	
1.3007 <u>R/S</u>	B.S.<227.324007>=?	
<u>R/S</u>	H.C.R.=?	
342.4648 <u>R/S</u>	AZ R.O.=243.57193	Az. of R.O. from second pointing.
<u>R/S</u>	ANOTHER Y/N	
Y	S.W.=?	
1.302 <u>R/S</u>	B.S.<227.32400>=?	
47.3225 <u>R/S</u>	H.C.R.=?	
162.4616 <u>R/S</u>	AZ R.O. =243.57142	-Az. of R.O. from third pointing.
<u>R/S</u>	ANOTHER Y/N	
Y	S.W.=?	
1.352 <u>R/S</u>	B.S.<47.32250>=?	
<u>R/S</u>	H.C.R.=?	
162.4608 <u>R/S</u>	AZ R.O. =243.57126	-AZ. of R.O. from final pointing.
<u>R/S</u>	ANOTHER Y/N	
N	MEAN AZ=243.57150	-mean Az. of all pointings to R.O.

SUN OBSERVATIONS

When calculating this type of observation the format works on the same principles as a STAR observation computing the azimuths in the same format. The only difference that will be noted is the fact that you will be asked for the input of (E), which is the difference between the Greenwich hour angle of the sun and universal time for the Greenwich date observation.

For those who prefer not to key in this program it may be purchased on magnetic cards for \$30.00.

Send to: College of Geographic Sciences
c/o Mike Marshall and Alex Catchpaugh
P.O. Box 10, Lawrencetown, Annapolis Co.
Nova Scotia, B0S 1M0

SUPREME COURT DECISION REGARDING COMPLAINTS AND DISCIPLINE PROCEDURES

The following decision was delivered on December 4, 1990 by Mr. Justice G. A. Tidman following a hearing on November 27, 1990.

1990

S.H. 74218

IN THE SUPREME COURT OF NOVA SCOTIA TRIAL DIVISION

BETWEEN:

K.W. ROBB & ASSOCIATES LIMITED,
a body corporate and K.W. ROBB

Applicants

-and-

ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS,
a body corporate and GRAEME LEE et ux
FLORA LEE and L. MARION GATES, ROSS SHOTTON,
PATRICK GARETY and HEATHER O'BRIEN

Respondents

TIDMAN, J. (Orally)

This is an application to restrain the Complaints Committee of the Nova Scotia Land Surveyors Association, one of the respondents, from further dealing with complaints made by the remaining respondents against the personal applicant, Mr. Robb.

The personal applicant, an officer and director of the corporate applicant, was retained to do survey work by one Mr. Banks in connection with a land boundary dispute between Mr. Banks and his neighbours, Dr. and Mrs. Lee, two of the respondents herein. The boundary dispute was settled during trial. Following trial, Dr. and Mrs. Lee registered apparently several different written complaints regarding the professional conduct of Mr. Robb in connection with his survey work done in preparation for the trial. The complaints were directed to the Executive Director of the Association of Nova Scotia Land Surveyors. The

Complaints Committee of the Association dismissed the complaints and so informed the Lees by letter dated June 28, 1989, which stated that the complaint was dismissed on "procedural grounds". The letter went on to explain the procedural grounds by stating:

"Over the course of the investigation we received from you several packages of documents. We have just lately discovered that they all had covering letters dated December 18, 1988 that differed in content. As these letters significantly differed in the substance of the allegations made against Mr. Robb, we had no choice but to dismiss the complaint."

Following that decision of the Complaints Committee, the Lees registered a further complaint against Mr. Robb with the Association arising out of the same subject matter. They also advised other neighbours that their, as well as the Lees' property lines had been altered as a result of the Robb survey. The neighbours, who are the four remaining respondents, also registered written so-called complaints with the Association regarding Mr. Robb's professional conduct in connection with the survey.

The Association has indicated to Mr. Robb that its Complaints Committee intends to deal with the complaints.

The applicants now apply to this court for relief which would restrain the Association from further acting on the complaints. Specifically they seek:

- (a) An Order in the nature of prohibition proscribing the Association of Nova Scotia Land Surveyors Complaints Committee from proceeding with the complaints;
- (b) A Declaration that the defence of **res judicia** is available with respect to the complaints of the named respondents sought to be entertained by the Complaints Committee of the Association of Nova Scotia Land Surveyors;
- (c) A Declaration that the Association of Nova Scotia Land Surveyors is estopped from considering the aforementioned complaint;
- (d) A Declaration that the Association of Nova Scotia Land Surveyors exceeds its jurisdiction and/or operates contrary to statute and/or operates contrary to the intention [sic] of the Act, insofar as it considers the aforementioned complaints;
- (e) An order for costs."

Mr. Coles, acting for the applicant, basically sets out two positions:

1. That the complaints made to the Association of Nova Scotia Land Surveyors against his client have been previously dealt with by the Association and on the principles of **res judicia** or estoppel, the Association is prevented from again dealing with them; and failing success in that position;
2. That section 13 of the **Canadian Charter of Rights and Freedoms** dealing with self incrimination, prevents the Association from dealing with the complaints.

In his first position, Mr. Coles argues that although this application deals with so-called complaints by respondents which have not previously been dealt with by the Association, those complaints "gather their information from Mr. and Mrs. Lee", and therefore since the subject matter of their so-called complaints is the same as that of the Lees, the same arguments of estoppel and **res judicia** apply as well to those so-called complaints. I use the term so-called complaints because the second string to Mr. Cole's bow is that, in any event, the so-called complaints of the other personal respondents are not complaints at all, but rather only letters seeking information from the Association.

I agree with Mr. Stern when he says letters from laymen to the Association regarding the conduct of its members, which all the so-called complaints in the case are, do not have to be precisely termed as complaints in order to be so considered by the Association. The letters sent to the Association by the respondents, other than the Lees, in my view, were correctly considered by the Association to be complaints.

I agree with Mr. Coles, however, that these complaints deal with the same subject matter as complaints by the Lees, that is, Mr. Robb's professional conduct in relation to the same land survey and thus agree that his arguments of **res judicia** and estoppel in relation to the Lees' complaint apply equally to the complaints of the other personal respondents.

The Association of Nova Scotia Land Surveyors is governed by the **Land Surveyors Act**, which is an Act of the Provincial Legislature. The **Act** states that the Association is, among other things, to govern the profession in order to serve and protect the public interest. The **Act** provides specifically how the Association is to deal with complaints made by members of the public against its members.

Two separate committees deal with complaints. A complaint is first vetted by a Complaints Committee. That committee has the power to investigate the complaints and after doing so, it must either dismiss the complaint or advise the complainant that the complainant may proceed further.

If the complainant wished to proceed, the complaint is then dealt with by the Discipline Committee. If the Discipline Committee finds the member guilty of misconduct it may punish the member in a number of ways set out in the **Act**, including by reprimand, by suspension, or by cancelling the member's membership in the Association.

The Discipline Committee is also given power under the **Act** to hold hearings, require witnesses to give evidence under oath, order the production of any document, and to certify contempt. The rules of evidence apply at its hearings and counsel may be present. Witnesses may be examined and cross-examined, the hearings are recorded and the right is given to appeal the Committee's decision.

Generally then, as Mr. Stern points out, the Complaints Committee investigates and the Discipline Committee hears and adjudicates.

The purpose of the prerogative writs, which include the writ of prohibition sought by the applicant, was stated by Atkin, J. in **R. v. Electricity Commissioners** (1923), A.E.R., p. 161, and expanded upon by Disbery, J. in **R. v. Saskatchewan College of Physicians and Surgeons et al** (1966), 58 D.L.R. (2d) 622. At p 636. Disbery, J. states:

"with the continuing development in more recent times of a multiplicity of tribunals, boards, commissions, local authorities and other statutory bodies and officials, and clubs, professional and other associations and trade unions (all of which are hereafter referred to as "tribunals") who exercise judicial or quasi-judicial powers, the use by this Court of these Crown writs has been extended to keep such tribunals within the proper limits of their jurisdiction."

I agree with Mr. Stern's submission that prohibition is not an appropriate remedy for actions of the Complaints Committee, since it does not exercise "judicial or quasi judicial" powers.

Mr. Coles argues that the power to determine, which the Complaints Committee does possess, is a "judicial or quasi judicial" function. Again, however, I agree with Mr. Stern's submission that there is a distinction

between the power to investigate and determine and the power to investigate, determine and adjudicate, and that it is the power to adjudicate which is the "judicial or quasi judicial" function.

I thus find that the Complaints Committee of the Association is not a "judicial or quasi judicial" tribunal and consequently will not grant an order in the nature of prohibition proscribing that Committee from proceeding on the complaints.

Although there is authority which indicates that the doctrine of *res judicata* is not applicable in relation to administrative bodies, which the Complaints Committee is, the remedy I find is none the less not warranted on the merits.

The first complaint of the Lees' was dismissed because the Complaints Committee could not determine the basis for the complaint. The basis for the complaint was subsequently made clear to the Committee by the Lees' further complaint. The Committee as a result has now decided to investigate their complaint as well as the complaints of the other respondents concerning the same subject matter. The complaints have not been dealt with on their merits and therefore the principle of *res judicata* would not apply. Neither, for the same reasons, would the principle of estoppel apply, since the original complaint was dismissed only on procedural grounds.

I thus do not accept the first position put forward by Mr. Coles.

In regard to Mr. Coles' second position, he submits that the information upon which the complaints are based comes from evidence given by Mr. Robb in the civil action brought against him by the Lees, and thus, by virtue of Section 13 of the Charter, it cannot now be used against him by the Association.

Section 13 of the Charter provides:

"A witness who testifies in any proceeding has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or the giving of contradictory evidence."

Mr. Stern submits that what the Complaints Committee has done or proposes to do, is not a proceeding in the sense used in the Charter section. He argues that the Complaints Committee seeks only to continue an investigation which is not a formal proceeding as contemplated by the section, and thus the section of the Charter does not apply.

I tend to agree with Mr. Stern, but in any event, I would not interfere at this point with the proceedings of the Association.

In my view, the situation here is similar to that in Ripley v. Investment Dealers Association of Canada et al (1988), 86 N.S.R. (2d) 434, where a committee of the Investment Dealers Association had called a formal hearing to deal with charges made against Mr. Ripley. In that case, the Trial Division of the Court had granted injunctive relief restraining the Association from proceeding with the hearing.

In reversing the grant of injunctive relief, Hart, J.A., stated at para 9:

"This Court should be reluctant to interfere with the affairs of a domestic tribunal, such as the IDA. It should be permitted to carry on with the procedures adopted by its members. Should it fail to follow the course of natural justice, the respondent has his remedies to pursue. It would be premature at this stage that the respondent would not receive a fair hearing under the Constitution of the Association of which he is a member."

There are no facts here which compel the court to interfere, at this stage, with the affairs of the Surveyors Association and consequently I decline to do so.

If at the conclusion of the Association's proceedings it is considered that the Association failed to follow the course of natural justice, the applicants will have their remedies to then pursue.

The application is therefore dismissed with costs but only to the respondent Association.

Halifax, Nova Scotia
December 4, 1990

AS

APENS vs. K.W. ROBB & ASSOCIATES LIMITED

The following decision was given on January 30, 1991 by His Honour Judge R.A. Stroud, Judge of the Provincial Court.

IN THE PROVINCIAL COURT

HER MAJESTY THE QUEEN

VERSUS

K.W. ROBB & ASSOCIATES LIMITED

DECISION

JANUARY 30, 1991

THE COURT: This is a matter originally scheduled for decision today. I can advise counsel that I am prepared to give a decision, if counsel so wishes but it may be that, with the other appeal not having been decided, that it may muddy the waters more or confuse matters or give rise to more paperwork than it would if I didn't give a decision so I leave that to counsel. If you want my decision, I'll give it. If you want an adjournment until we hear from the Appeal Division, I'll do that as well.

MR. RYAN: Speaking for the Crown, if Your Honour is prepared to render a decision, I'd like to have the decision.

THE COURT: All right. Mr. Coles?

MR. COLES: The matter has been argued. I suppose the ...

THE COURT: You have no problem with it?

MR. COLES: Yes.

THE COURT: All right. I'll do so. We're dealing here with two charges under Section 20(a) of the Engineering Profession Act of Nova Scotia. The facts

are not in dispute and very briefly, during the course of preparing subdivision plans for Blackforest Mobile Home Estates at Porters Lake, Halifax County, Nova Scotia and Gervais Mallet Subdivision at West Lawrencetown, Halifax County, Nova Scotia, the defendant applied engineering specifications of the Department of Highways to delineate roads and ditch profiles in those subdivisions. As a result, the defendant has been charged with two counts under Section 20(a) of the Engineering Profession Act. That section, for the purposes of this prosecutions reads:

"Any partnership, association of persons or body corporate, not having as a partner or full-time permanent employee a person who is a member or licensed to practice which (sic)

(a) undertake or carries out the application of engineering;"

et cetera, is guilty of an offence and then the penalty provisions are set out. Engineering is defined in Section 1(h) of that Act. Again, as it relates to this prosecution as follows:

"Engineering means the science and art of designing"

and various matters are set out and the pertinent words in this situation are "transportation systems or any part thereof."

The leading case in this province, dealing with the interpretation of the Engineering Profession Act is the O'Malley case, referred to by both counsel in their arguments. While the facts, I believe, can be distinguished insofar as, in this case, we're dealing with two professions, both of which have their own, so to speak, monopolistic provisions and definitions and that was not the case in the O'Malley case, as I understand it, as it related to the electrical contractor, O'Malley's Electric Limited. However, there are some principles that can be gleaned from that case which are applicable to this case. The first being that it is the duty of the Court to construe a statute according to the ordinary meaning of the words used. Secondly, monopolistic provisions in statutes such as the Engineering Profession Act are to be strictly construed. Anything which is not clearly prohibited may be done with impunity by anyone not a member of such a closed association. Three: the provisions of the Act must be interpreted in accordance with their primary purpose which is the protection of the public, particularly public safety and four: Section 20(a) of the Engineering Profession Act is a strict liability section which leaves the defense of due diligence available to anyone charged under that section.

I've already referred to the definition of Section 21 — I'm sorry, Section 1(h) which defined engineering. I think it's also important to look at Section 2(l)(j) of the Nova Scotia Land Surveyors Act which defines surveying as:

"Means the advising on or the reporting on or the supervision of and the conducting of surveys to determine the horizontal and vertical positions of any point and the directions and length of any line required to control, establish, locate, define or describe the extent or limitations of title."

And I emphasize the words 'and the conducting of surveys'. I would also say as far as distinguishing, the O'Malley case is concerned that public safety, in my opinion, is not as relevant in this case because the Department of Transportation is involved in the process and employs engineers to serve that purpose. I don't think I need go beyond the ordinary meaning of the words in the Engineering Profession Act for purposes of this decision. There is no question in my mind that what the defendant did was design. The difficult issue is whether what the defendant designed was part of a transportation system. I agree with defense counsel that there could be a point where the extension of a part of a transportation system to some very small and incidental part could become absurd, though I don't think that applies particularly to the examples used of gravel and paint because I don't think there's any question of designing or supervising construction or anything obviously in relation to those products. However, I can see small components that could be considered part of an overall transportation system that would not envisage the requirement to use engineering principles or involve the use of engineers.

However, I don't think the roads and ditch profiles in question here reach that absurdity. But the issue is, when do they become part of the transportation system? In my view, when the defendant prepared his subdivision plans in this case and set out the roads therein, it was acting within Section 2(l)(j) of the Nova Scotia Land Surveyors Act in that it was conducting a survey to control, establish, locate, define or describe the extent or limitation of title within the subdivision. The fact that it used engineering standards and specifications determined by the Department of Transportation did not change the nature of that service. The Department of Transportation employs engineers to protect the public by seeing that roads in subdivisions must contain engineering standards, established by them, from time to time.

In my opinion, subdivision roads do not become part of a transportation system until the tentative plans are approved by the Department of Transportation. therefore, the prosecution must fall on this point. To find otherwise and prohibit surveyors from performing such functions and insert another profession in the subdivision process would clearly be against the public interest because of the obvious increase in cost of lots to the public. If the legislature intends such to be the result of the provisions in the Engineering Profession Act, it must do so in clear and unambiguous language which it has not done when one looks at the two Acts and also bearing in mind the strict interpretation to be applied to such legislation. I must also say that I think the prosecution must also fail on another issue, even if the foregoing determination is in error. It is trite to say that it is incumbent on the prosecution to prove all the elements of the alleged offence beyond a reasonable doubt. Assuming the Crown did raise a prima facie case, because this is a strict liability offence, it is open to the defendant to raise a defense on the basis that it was exercising due diligence in the performance of the service. I agree with defense counsel that there is some overlap in the activities which surveyors and engineers are authorized to do under their respective enactments. I am satisfied on the evidence that one of the services authorized under Section 2(l)(j) of the Nova Scotia Land Surveyors Act is the designing of subdivision plans which incidently includes the location of roads in those subdivisions. As I've already said, the fact that it uses engineering standards determined by the Department of Transportation does not change the nature of that service. Since the defendant is acting within the provisions of the Nova Scotia Land Surveyors Act, surely it cannot be said that is an overlap or ambiguity, the defense is also available to the defendant. I therefore dismiss both counts in the information and find the defendant not guilty.

S.C.A. No. 02340

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

Hallett, Matthews and Freeman, J.J.A.

BETWEEN:

K.W. ROBB & ASSOCIATES LIMITED
appellant

David G. Coles
for appellant

- and -

Michael S. Ryan, Q.C.
for respondent

HER MAJESTY THE QUEEN
respondent

Appeal Heard:
January 14, 1991

Judgement Delivered:
February 12, 1991

THE COURT: Appeal allowed and conviction and fine set aside per reasons for judgment of Freeman, J.A.; Hallett and Matthews, J.J.A., concurring.

FREEMAN, J.A.:

The issue in this appeal is the line between the statutory authority of land surveyors under the Land Surveyors Act, R.S.N.S. 1989, c. 249 and that of civil engineers under the Engineering Profession Act, R.S.N.S. 1989, c. 148.

The appellant, a land surveyor, prepared the road profiles and cross-sections which were included with plans submitted by his client as part of an application for tentative approval of a subdivision under the Halifax County subdivision bylaw. He was convicted in Provincial Court on a charge of carrying out "the application of engineering by designing a transportation system or a part thereof" contrary to s.

20(a) of the Engineering Profession Act. The actual offence under s. 20(a) is the unauthorized practice of professional engineering, a particular instance of which was alleged in the information. The conviction was upheld in an appeal to the County Court.

Section 2(g) of the Engineering Profession Act defines "engineering" as follows:

" 2(g) "engineering" means the science and art of designing, investigating, supervising the construction, maintenance or operation of, making specifications, inventories or appraisals of, and consultations or reports on machinery, structures, works, plans, mines, mineral deposits, processes, transportation systems, transmission systems and communication systems or any other part thereof;"

The dictionary meaning of "designing" is extremely broad, and with respect to a part of a transportation system could include the crudest sketch of the sidelines of any proposed road. Obviously, everything that may constitute road design is not within the exclusive domain of professional engineers. In the full context of the Act, the meaning must be limited to the application of the special skills of the engineer to the designing of transportation systems by applying engineering principles for engineering purposes, that is, with a view to eventual construction.

"Professional land surveying" under s. 2(j) of the Land Surveyors Act means...

"the advising on, the reporting on, the supervising of and the conducting of surveys to determine the horizontal and vertical position of any point and the direction and length of any line required to control, establish, locate, define or describe the extent or limitations of title;"

The Crown has urged that the practice of land surveying should be confined to the measurement of existing features of the landscape, including boundaries. In laying out subdivisions, a land surveyor should start by having a professional engineer establish centre line profiles for proposed roads. With respect, this approach is too narrow and leaves out of account the traditional role of the land surveyor in proposing new boundaries and laying out road allowances, a role which can only be diminished by the clear language of a statute. It may be noted, for example, that S. 11(l)(a) of the Public Highways Act deems "all allowances for highways made by surveyors for the Crown" to be common and public highways.

The appellant argues that he had to prepare the profiles and cross-sections in order to show that a road could be built within his proposed road allowance limits to specifications published by the Nova Scotia Department of Transportation. This argument would suggest that there is an engineering aspect of road design for purposes of construction, and a land surveying aspect of road design for purposes of location. There may be a semantic alternative, if it could be said that whatever a surveyor does to position a proposed road is not really road design. But that places an artificial strain on the ordinary meaning of "design". The two Acts will support an interpretation that both land surveyors and engineers are involved in road design, surveyors in a rudimentary, preliminary way for the surveying purpose of locating road allowances, engineers in a much more complex and specific way for the engineering purpose of road construction. Obviously, there is a gray, overlapping area of some magnitude between the two professions.

The demarcation line should long since have been determined between the two professions by negotiation, fixed by regulation or statutory amendment, and settled by practice. In the absence of such a boundary line the Crown is faced with a task of no small difficulty in establishing beyond a reasonable doubt that it has been overstepped.

The definition of engineering in s. 2(g) of the Engineering Profession Act was considered with respect to the design of an electrical system by Jones, J.A., in R. v. O'Malley Electric Limited (1987), 77 N.S.R. (2d) 344. He cited with approval the decision of McLachlin, J., of the British Columbia Supreme Court in Brough Marine Consultants Ltd. v. Agua Terra Flotations Ltd., 18 D.L.R. 217:

"... it is necessary to set out certain principles of construction applicable to ss. 1 and 21 of the (British Columbia) Engineers Act. First, the monopolistic provisions of the Engineers Act are to be strictly construed. In Laporte v. Que. College of Pharmacists, [1976] 10 N.R. 602, de Grandpre, J., reaffirmed the principle enunciated by Taschereau, J., in Pauze v. Gauvin, [1954] S.C.R. 15 [at 18]:

[Translation]

"The statutes creating these professional monopolies, sanctioned by law, access to which is controlled and which protect their members in good standing who meet the required conditions against any competition, must however be strictly applied. Anything

which is not clearly prohibited may be done with impunity by anyone not a member of these closed associations."

"Secondly, the provisions of the Act must be interpreted in accordance with their primary purpose, which is the protection of the public, particularly, public safety: Advance Geophysics Ltd. v. Acheron Mines Ltd. (N.P.L.) [1973] 1 W.W.R. 358; 32 D.L.R. (3d) 518, at 520 (B.C.S.C.);

"With respect I think it is important to emphasize the public interest factor particularly in relation to the engineering profession."

Jones, J.A., said the definition of engineering in the Nova Scotia Act "must be read having regard to the objects of the Act and in particular that engineering means the science and art of designing and supervising construction by persons who through education and training are skilled in the principles of engineering. The legislature intended that it was necessary in the public interest to have those works designed and constructed under the supervision of professional engineers."

In the O'Malley case an electrical contractor was convicted under s. 20(a) of the Engineering Profession Act for designing and supervising the actual construction of an electrical system.

In the present case the plans related to tentative subdivision approval only. There are three stages: (1) preliminary approval, which can be based on a rough sketch requiring no professional preparation, (2) tentative approval, and (3) final approval, which requires detailed engineering drawings signed and sealed by a professional engineer. Requirements for the tentative stage include a boundary survey, a survey plan showing the proposed lots, and a centre line profile of proposed roads. In addition, the Department of Transportation requires road cross-sections at this stage. The bylaws do not specify whether tentative road profiles and cross-sections must be prepared by a professional engineer rather than a land surveyor.

The owner, Al Deveau, testified that he hired the appellant "to survey those lots and to do the designing, whatever it would take, to conform to those lots so I would get, you know, the maximum of ... the idea basically was to get the maximum lots out of it. That's what I try to do, that will conform to the bylaws of the county."

In direct examination the following questions and answers were given:

"Q. And did you hire Mr. Robb to lay out the roadway as well...?"

"A. Not particularly. It was basically to ... no, I suppose he had to do some ... you know, some sketch there so the lots would fit properly."

A drainage plan was submitted to the Municipality as part of Mr. Deveau's application. He said Kenneth Robb, apparently the principal of the appellant, told him he was not an engineer and was not allowed to design a drainage plan, so he referred him to a professional engineer whom Mr. Deveau engaged to prepare it.

Even the location of roads on a tentative plan, measured on a horizontal plane, might fit a definition of road design, but that appears to have excited little concern. What apparently led to the charge was the inclusion of the centre line profile and cross-sections of the road. These are measured on the vertical plane; both go beyond existing conditions and show the ground altered by cutting, filling and ditching for the proposed road. The trial judge, Her Honour Judge Frances K. Potts, found these to be part of a transportation system consisting of more components than simply a road. She found it met Department of Transportation specifications, which required the application of engineering principles.

Judge Potts stated:

"... it seems to me whether or not you apply engineering in a limited sense or an extended sense the question is whether or not there has been the application of engineering principles. It seems to me that given the evidence with respect to the Department of Transportation Specifications, and there's no question that those specifications were relied on and had to be relied on in determining the proposed centre line profile, I would find that under the circumstances and although only in a very limited way that K.W. Robb & Associates in preparing the plans which were tendered here as an exhibit referable to Les Collins Avenue are indeed a design of a part of a transportation system and that in so doing K.W. Robb & Associates carried out the application of engineering."

With respect, merely determining whether there has been an "application of engineering principles" is not the test. The burden on the Crown is to prove, not that the appellant performed certain acts which might be

classified as road design or the application of engineering principles, but that he did so in a manner that constituted the practice of professional engineering. In order to do so it must show that the acts the appellant performed went beyond what was reasonably necessary under the Land Surveyors Act for locating a road allowance and thus fixing lot boundaries on a plan intended for tentative subdivision approval, and amounted to the design of a road for construction purposes.

That seems far removed from the purpose of plans for tentative approval, with their emphasis on locations and dimensions of various features of the subdivision or its environment. Under s. 7.4 (a) (iii) such plans "must be accompanied by two copies of the plan showing the centre line profiles of the proposed public streets or highways or proposed private roads."

The bylaw does not require that the profile submitted at the tentative stage be prepared by an engineer, perhaps because of the onerous requirements for the engineering drawings needed for final approval.

Plans submitted for final approval must, under s. 9.6, be accompanied by engineering drawings showing existing and proposed public streets or highways and private roads within the proposed subdivision, and including plans, design calculations, profiles, cross-sections, details and specifications. In addition, s.9.7 requires that the engineering drawings include information relating to roads, drainage and services vastly more complex and specific than the road profile required with the tentative plan. The engineering drawings and design must be signed and stamped by a professional engineer. While the engineer would presumably make use of the surveyor's measurements, he would not be bound by anything the surveyor proposed for tentative approval, including the road profiles and cross-sections. It is difficult to see how the public interest would be protected by a requirement that the profiles and cross-sections submitted with the tentative plans be prepared by an engineer as well.

A surveyor has a duty to his client to establish the location of roads as accurately as possible; he must be aware that the subdivision approval his client seeks depends on the approval of the proposed road locations by the Department of Transportation. He must take Department of Transportation specifications for roads, the so-called "blue book", into account to the fullest extent of his ability. Those specifications, which are necessarily based on engineering principles, are public information, prepared in non-technical language. Any member of the public, to say nothing of a surveyor, is entitled to

consult them and treat them as guidelines in the early planning stages of various enterprises. Indeed, Crown evidence established that developers are required to be familiar with the contents of the book and to adhere to its requirements. If the surveyor ignores them, the location of roads on his plans, and the tentative boundaries of proposed lots, may become merely lines on waste paper.

At the tentative approval stage the surveyor is simply making proposals which the engineer may or may not follow at the final stage. The more closely the surveyor anticipates the engineer's requirements, the better the chances that the road allowances on the tentative plans will not have to be changed. If the engineer finds the terrain in the proposed road allowance will not support road construction, the surveyor may be faced with resurveying the whole subdivision.

It was explained in the evidence that the Municipality forwards copies of plans at the tentative approval stage to the Department of Transportation to determine the answer to this question:

"does the private road, as shown on the attached subdivision plan, meet all the applicable right of way alignment and gradient requirements of the Department of Transportation?"

The evidence of Ian Foote, divisional engineer for the Department of Transportation, was that at the tentative approval stage the Department was not interested in criteria of road construction: "we're just looking for the geometry on the road." However a cross section and profile were required "before we give tentative approval of any subdivision road."

Mr. Foote further stated that for proposed public roads, "... we require cross-sections to prove that the road can be built within the right of way that he's going to eventually deed over to us."

In the present case the Crown must show that the surveyor went beyond what was necessary to establish location of subdivision roads with the greatest degree of accuracy within his ability for the purpose of defining the limitations of title of the proposed lots. That is, it must prove that he went beyond the authorization in s. 2(j) of the Land Surveyors Act in preparing the profiles and cross-sections and practiced professional engineering as defined in s. 2(g) of the Engineering Profession Act.

It must do so in the absence of evidence that the road locations in the plans prepared for tentative subdivision approval were intended to be acted upon

for engineering purposes, or construction, as opposed to surveying purposes to locate road allowances, and thereby, lot boundaries or limitations of title. It is relevant that roads cannot be lawfully built within the road allowances on the subdivision plans, no matter how feasible the profile and cross-sections show them to be, without final subdivision approval. Final subdivision approval is not possible without engineering drawings signed and sealed by an engineer.

The burden is on the Crown to prove beyond a reasonable doubt that the appellant was practicing professional engineering in the manner alleged. On the evidence before the court it must be doubted that a properly instructed jury, acting judicially, could have reached that conclusion, beyond a reasonable doubt.

In effect, this is a finding for the appellant on the second of his three grounds of his appeal from the County Court, which is as follows:

"Did the learned County Court Judge on Appeal err in law insofar as he failed to overturn the learned trial Judge's determination that the Appellant's actions were not lawful and authorized by the Land Surveyors Act, R.S.N.S. 1989, c. 249?"

I would allow the appeal and set aside the conviction and fine.

FREEMAN, J.A.

AS

ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS

DISCIPLINE COMMITTEE

DECISION AND ORDER

IN THE MATTER of the Land Surveyors Act,
Revised Statutes of Nova Scotia 249.

AND IN THE MATTER of a formal complaint
against Ritchie F. MacInnis, N.S.L.S. No. 537,
of New Glasgow, Pictou County, Nova Scotia.

WHEREAS the Discipline Committee of the Association of Nova Scotia Land Surveyors conducted a hearing on December 4, 1990, with respect to a formal complaint sworn on June 21, A.D. 1990, by Rosalind C. Penfound, Secretary of the Association of Nova Scotia Land Surveyors against Ritchie F. MacInnis, N.S.L.S.

Upon being satisfied that all requirements of the Land Surveyors Act, Regulations and By-laws respecting the swearing of the complaint and convening of the hearing have been met; and

Upon hearing Thomas J. Burchell, Q.C. on behalf of the Association of Nova Scotia Land Surveyors; and

Upon hearing Roseanne M. Skoke on behalf of Ritchie F. MacInnis, N.S.L.S.; and

Upon considering all evidence and exhibits before it, the Discipline Committee of the Association of Nova Scotia Land Surveyors hereby makes the following findings and orders:

1. That with respect to a survey and plan prepared under the supervision of Ritchie F. MacInnis, which plan is dated and described as follows:

Plan of Survey Showing Partial Boundary of Lands of Jim Langille, Mount Williams Road, Pictou County, Province of Nova Scotia dated 12th March, 1989.

Ritchie F. MacInnis, N.S.L.S. is found guilty of Professional Misconduct as defined in section 2 of Nova Scotia Regulation 188/88

2. That the Professional Misconduct is comprised of

(a) Pursuant to Regulation 13, failing to refer to all available pertinent documentary evidence relating to the land being surveyed and the lands adjoining or any such evidence that may affect the boundaries under survey;

(b) Pursuant to Regulation 14, failing to measure all boundaries directly or by closed traverse, triangulation or trilateration between corners or between stations close to each corner with the corner tied in by a check-measured offset;

(c) Pursuant to Regulation 17 (a), failing to adhere to the minimum standard of accuracy whereby if the angular closure in any traverse exceeds "n" seconds divided by thirty (30) (where "n" equals the number of angles measured in the traverse) and if the gross error cannot be detected and corrected by localized remeasurement, all the angles in the traverse shall be remeasured;

(d) Pursuant to Regulation 17 (c), failing to adhere to the minimum standard of accuracy whereby the maximum allowable error of closure of a traverse after angular adjustment shall be one part in five thousand plus 20 millimetres (1:5000 plus 20 mm.);

(e) Pursuant to Regulation 24 (1), (2) and (3), failing to properly mark out boundary lines through wooded areas, failing to properly blaze trees within 1 metre of the line, failing to properly mark trees with a single blaze facing the line, and failing to make blazes with an axe;

(f) Pursuant to regulation 28 (a), failing to keep proper field notes including a neat detailed sketch with a north arrow to indicate the orientation;

(g) Pursuant to Regulation 28 (d), failing to keep proper field notes including the type and identification of all measuring equipment used;

(h) Pursuant to Regulation 28 (g), failing to keep proper field notes including the entry of all

quantitative observations or measurements, including slope, sag, temperature and tape correction, where applicable;

(i) Pursuant to Regulation 41 (1), failing to use the proper identification cap on survey markers with the proper lettering and failing to place on the identification cap the member's number and identification of the member and/or his firm;

(j) Pursuant to Regulation 60 (f), failing to show on the plan the name of the owner(s) or the identifier(s) of all adjoining properties;

(k) Pursuant to regulations 60 (k), failing to show on the plan the graphic indication of the co-terminal boundaries of all adjoining properties.

3. That Ritchie F. MacInnis, N.S.L.S., is reprimanded, such reprimand to be recorded on the Roll.

4. That Ritchie F. MacInnis, N.S.L.S., pay the costs and disbursements on the investigation as taxed by the Taxing Master.

5. That the above amount as set by the Taxing Master shall be due and payable 60 days after the posting of a notice of this amount to him Ritchie F. MacInnis, by registered mail. Further to this, Ritchie F. MacInnis shall take notice that in accordance with the Land Surveyors Act 1989, c. 249, s. 26(1) (g) he shall not carry on the practice of professional land surveying, after the said due date, until he has made payment of such costs.

6. That Ritchie F. MacInnis, N.S.L.S. be suspended for a 60 day period, upon receipt of notice from the Discipline Committee, unless he complies with the following:

(a) That Ritchie F. MacInnis shall again take measurements to the available evidence of the northerly boundary of James Gordon Langille, deed recorded in Book 902 at Page 201, said boundary extending between the Mount William Road and the Trans Canada Highway in Pictou County, Nova Scotia

(b) That Ritchie F. MacInnis shall again take measurements from Nova Scotia Co-ordinate Monuments to the easterly and westerly ends of the said boundary

(c) That Ritchie F. MacInnis shall reset any disturbed or missing survey marker previously shown on the said boundary on his Plan dated 12 March 1989

(d) That Ritchie F. MacInnis shall request the approval of James Gordon Langille to brush out and blaze the line, and contingent upon receiving this approval, shall brush out and blaze the boundary line between the survey markers mentioned in 6c above

(e) That Ritchie F. MacInnis shall revise and correct his Plan of Survey dated 12 March 1989, and submit the said revised plan to the Survey Review Department of the Association of Nova Scotia Land Surveyors along with copies of relevant field notes regarding 6a to 6d above for the review of said Department before April 30, 1991

(f) That Ritchie F. MacInnis shall, as of the 1st of February, 1991, send along with the next 10 plans that he submits to the Survey Review Department (and not including the Revised Plan in 6e above) copies of the relevant field notes for each of the 10 surveys to be reviewed by the Survey Review Department.

7. That in the event of failure on the part of Ritchie F. MacInnis to comply with the provisions of paragraph 6 a, b, c, d, e, and f, of this Order he shall be suspended for a period of sixty days upon receipt of notice from the Secretary of the Association on behalf of the Discipline Committee posted by registered mail.

8. That this Order shall be published in full in the Nova Scotian Surveyor.

Walter C. Rayworth
Chairman, Discipline Committee

December 18, 1990

(NOTE: Costs have not yet been taxed.)

ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS

DISCIPLINE COMMITTEE

DECISION AND ORDER

IN THE MATTER of the Land Surveyors Act,
Revised Statutes of Nova Scotia, Chapter 429.

AND IN THE MATTER of a formal complaint against
Arthur C. Backman, N.S.L.S., No. 474, of Chester,
Lunenburg County, Nova Scotia.

WHEREAS the Discipline Committee of the Association of Nova Scotia Land Surveyors conducted a hearing on July 5, 1990, with respect to a formal complaint sworn on March 26, A.D. 1990, by Rosalind C. Penfound, Secretary of the Association of Nova Scotia Land Surveyors, on behalf of the Association of Nova Scotia Land Surveyors against Arthur C. Backman, N.S.L.S.

UPON being satisfied that all requirements of the Land Surveyors Act, Regulations and By-laws respecting the swearing of the complaint and convening of the hearing have been met; and

UPON hearing Thomas J. Burchell, Q.C., on behalf of the Association of Nova Scotia Land Surveyors; and

UPON hearing Daniel L. Weir on behalf of Arthur C. Backman, N.S.L.S.; and

UPON considering all evidence and exhibits before it, the Discipline Committee of the Association of Nova Scotia Land Surveyors hereby makes the following findings and orders:

1. That with respect to a survey and plan prepared under the supervision of Arthur C. Backman, which plan is dated and described as follows:

Plan of Subdivision showing Lot 1 of the Lands of Herbert Collicutt, Marriotts Cove, Lunenburg County, Nova Scotia dated 9th August, 1987

Arthur C. Backman failed to completely satisfy the provisions of Nova Scotia Regulation 42/79 as follows:

- (a) failure to use the words "Ordinary High Water Mark" as required by section 27;
- (b) failure to indicate the orientation of a sketch contained in field notes with a north arrow as required by section 32(a);
- (c) failure to indicate the type and identification of all measuring equipment used as required by section 32(d);
- (d) failure to show on the plan a survey marker previously set by Errol Hebb, N.S.L.S., 2.67 feet from a poplar stump, as required by section 32(h);
- (e) failure to show on the plan sufficient quantitative data respecting the right of way which touches the property at the location of the poplar stump as required by section 67(b);
- (f) failure to show on the plan sufficient deed references for adjacent properties and to adequately identify Lot 1A as Lot 1A as required by section 71;
- (g) failure to use the heading "SURVEYOR'S CERTIFICATE" above his certification on the plan, as required by section 74(2);

2. That notwithstanding the above and keeping in mind the provisions of section 24(12) of the Land Surveyors Act, it is the decision of the Discipline Committee that although it is the responsibility of all Nova Scotia Land Surveyors to comply with the regulations in effect at the time of survey, the failure by Arthur C. Backman, N.S.L.S., to completely satisfy the provisions of Nova Scotia Regulations 42/79 as outlined above, cannot support a finding of professional misconduct as defined in section 2 of that regulation; and
3. That the complaint is accordingly dismissed.

Walter Rayworth,
Chairman, Discipline Committee
Dated: August 13, 1990



ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS

DISCIPLINE COMMITTEE

DECISION AND ORDER

IN THE MATTER of the Land Surveyors Act,
Revised Statutes of Nova Scotia, Chapter 429.

AND IN THE MATTER of a formal complaint against
Arthur C. Backman, N.S.L.S., No. 474, of Chester,
Lunenburg County, Nova Scotia.

WHEREAS the Discipline Committee of the Association of Nova Scotia Land Surveyors conducted a Hearing on June 8, A.D. 1990, with respect to a formal complaint sworn on March 26, A.D. 1990, by Rosalind C. Penfound, Secretary of the Association of Nova Scotia Land Surveyors, on behalf of the Association against Arthur C. Backman, N.S.L.S.

Upon being satisfied that all requirements of the Nova Scotia Land Surveyors Act, Regulations and By-laws respecting the swearing of the complaint and convening of the hearing have been met; and

Upon Hearing Thomas J. Burchell, Q.C., on behalf of the Association of Nova Scotia Land Surveyors; and

Upon hearing Christopher Robinson, on behalf of Arthur C. Backman, N.S.L.S.; and

Upon considering all evidence and exhibits before it, the Discipline Committee of the Association of Nova Scotia Land Surveyors hereby makes the following findings and orders:

1. That with respect to a survey and plan prepared under the supervision of Arthur C. Backman, which plan is dated and described as follows:

Plan of Subdivision Showing Lot 1 of the Lands of Edith Pearl Butler, Boutilliers Point, Halifax County, Nova Scotia dated 10th December, 1987; and

That with respect to a description contained in a deed from Edith Pearl Butler to Harold Murray Munroe dated March 7, 1988, recorded in the Registry of Deeds in Book 4567 at Page 1107; said description bearing the Surveyor's Stamp and signature of Arthur C. Backman and being a description of Lot 1 of the aforementioned plan,

Arthur C. Backman, N.S.L.S., is found guilty of Professional Misconduct as defined in section 2 of Nova Scotia Regulations 42/79

2. That the professional Misconduct is comprised of

(a) failing to show on the plan a previously recorded right-of-way, specifically a right of way to the Frederick and Sarah Manuel property over the lands of Edith Pearl Butler, in accordance with section 67(b) of Nova Scotia Regulation 42/79;

(b) failing to adequately describe in the description the southern boundary of the lands of Charles Mitchell, known as the Gael Driveway, as a curved boundary and to give its radius, in accordance with section 84(1) of Nova Scotia Regulation 42/79;

(c) failing to show on the plan documentary and field evidence used, specifically a plan showing the Subdivision of Lands owned by Her Majesty in Right of Canada, Public Works Canada, by Douglas B. Mehlman, N.S.L.S., previously filed in the Registry of Deeds, in accordance with section 71 of Nova Scotia Regulation 42/79;

(d) failing to show on the plan apparent encroachments, specifically the Manuel and Coolen driveways, in accordance with section 67(m) of Nova Scotia Regulation 42/79;

(e) failing to indicate on the plan the exterior boundaries of the lands dealt with by the survey in solid black lines easily distinguishable from all other lines on the plan by their greater weight, in accordance with section 57 of Nova Scotia Regulation 42/79; and

(f) failing to show on the plan a graphic indication of the coterminal boundaries of all abutting properties, in accordance with section 67(k) of Nova Scotia Regulation 42/79.

3. That Arthur C. Backman, N.S.L.S., is reprimanded, such reprimand to be recorded on the Roll.

4. That Arthur C. Backman, N.S.L.S., pay to the Discipline Committee its costs and disbursements on the investigation as taxed by the Taxing Master.
5. That the above amount as set by the Taxing Master shall be due and payable 30 days after the posting of a notice of this amount to him, Arthur Backman, by registered mail. Further to this, Arthur C. Backman shall take notice that in accordance with the Land Surveyors Act 1989, c.429, s.26(1)(g) he shall not carry on the practice of professional land surveying, after the said due date, until he has made payment of such costs.

6. That this Order shall be published in full in the Nova Scotian Surveyor.

Walter C. Rayworth
Chairman, Discipline Committee

Dated: August 13, 1990

(NOTE: Costs were taxed at \$6477.99.
The taxation is under appeal.)

/s/

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1990CAM7003

**IN THE COUNTY COURT OF DISTRICT
NUMBER FIVE**

BETWEEN

**MR. & MRS. JOHN CAMPBELL -
APPELLANT**

-and-

R.A.(RAY) FULTON, P.ENG., N.S.L.S.

RESPONDENT

Before the Honourable Judge H.J. MacDonnell, a
Judge of the County Court of District Number Five

Brian S. Creighton, Esq., of Counsel for the Appellant

James W. Stonehouse, Esq., of Counsel for the
Respondent

Amherst, Nova Scotia

DECISION

1991, March 5, MacDonnell, H.J., J.C.C.:

On October 30th, 1990, Mr. and Mrs. John Campbell (Campbell) filed a Claim in the Small Claims Court of Nova Scotia, at Amherst, N.S., claiming the sum of five hundred and thirty-five dollars and seven cents (\$535.07). The particulars of the Claim are:

1. The Claimants are the owners of property located at Wentworth, Cumberland County, Nova Scotia.
2. The Defendant is a certified Nova Scotia Land Surveyor carrying on business in Truro, Colchester County, Nova Scotia.
3. On or about January, 1990, the Claimants employed the Defendant to carry out survey work with respect to the above-mentioned parcel of land which the Claimants were about

to purchase. The Defendant carried out the survey on the land and on or about the 25th day of January, 1990 he issued a survey certificate stating that no easements, rights of way or encroachments existed upon the said parcel of land.

4. In reliance upon the survey certificate issued by the Defendant the Claimants completed the agreement of purchase and sale with respect to the said property and were given a deed dated February 28, 1990.
5. In or about July of 1990, survey work was being carried out on the lot adjacent to the Claimants' property. The survey determined that a portion of the Claimants' land was in fact overlapped by a public highway belonging to Her Majesty the Queen in the right of the Province of Nova Scotia.
6. As a result of the discovery of the said encroachment, the Claimants have been subjected to the added expense of having to purchase that portion of the abandoned roadway which encroaches upon their land, from the Department of Transportation. In addition, the Claimants have incurred those legal costs arising in remedying this defect in title.
7. The Claimants therefore claim that the Defendant was negligent in not identifying the aforementioned encroachment and that as a result of the Defendant's negligence, the Claimants have suffered damages.
8. The Claimants therefore claim:
 - (a) \$200.00, being the cost of obtaining a deed from Her Majesty the Queen in the right of the Province of Nova Scotia, to rectify the title problems caused by the Defendant's negligence;
 - (b) \$335.07 being legal costs incurred by the Claimants to rectify the aforementioned problem with Claimants' property.
 - (c) costs of this action.

The Claim came on for a hearing before Morris J. Haugg, Q.C., an Adjudicator of the Small Claims Court of Nova Scotia, on December 6th, 1990. After hearing the evidence, the adjudicator, on December 7th, 1990 filed an Order which reads:

THAT the claim against R.A. (Ray) Fulton by Mr. & Mrs. John Campbell be dismissed with-out costs to either party.

On December 18th, 1990, Campbell filed an Appeal to this Court on the following grounds:

"It is erroneous in point of law."

The Adjudicator has filed a Stated Case, which is attached hereto as Schedule "A".

Counsel for the Appellant, Campbell, in his submissions states the issues are:

1. Did the learned adjudicator error in law, by concluding that the surveyor should not have noted that the possible encroachment of the abandoned highway on the Appellant's land, owing to the fact that the survey problem was one of boundary?
2. Did the learned adjudicator error in holding that no "easements, rights-of-way, and/or encroachments" existed on the Appellant's property?
3. Did the learned adjudicator error in law by concluding that the Defendant carried out his duties earnestly and carefully and with the appropriate amount of skill?

Counsel for Campbell submits that the abandoned public highway clearly falls in the category of an easement, and that Fulton had a duty to note the said easement or potential encroachment upon the survey certificate plot plan he provided. The failure to so note the abandoned highway on the plot plan provided to Campbell resulted in a standard of care which was below what was required of a surveyor in the circumstances.

Counsel on behalf of Fulton submits that this is a boundary dispute, and there is no evidence of negligence on the behalf of Fulton. He was aware of the existence of the old abandoned highway, however was not required to show this as his only duty was to determine that the foundation of the house was within the boundaries of the lot. Further, that the foundation

being located within the boundaries of the lot, and there being no apparent easements, right-of-ways and/or encroachments, Fulton provided the services he was required to do under the circumstances.

The facts as disclosed by the Stated Case was that Fulton was aware that a surveyor's certificate was required by the Campbells, and the work would have been done on their behalf. He erroneously believed that the Surveyor's certificate was required for mortgage purposes.

Fulton was provided with a description of the lot, and accompanied by an employee conducted an investigation of the property, during which he located the metal pins designating the four corners of the lot. He was aware of the fact that there was an old road at the rear of the property, however made no attempt to verify if the road boundary encroached on the property in question, as he had formed an opinion that the road was north of the lot.

Fulton provided a certificate, the particulars of which are set out in paragraph 13 and 14 of the Stated Case. Despite the notation that the existence of any apparent easements, right-of-ways and/or encroachments is noted on the attached sketch, he did not show or make any mention of the abandoned road. It was later determined by another surveyor that the iron pin which Fulton indicated as being the northwest corner of the property in question was in the middle of the abandoned road. Thus, the sketch was clearly in error, as a portion of the land which he indicated in this sketch as being owned by the vendors and being purchased by the Campbells, was actually owned by Her Majesty the Queen in the right of the Province of Nova Scotia.

The fact that the lot was covered in snow at the time Fulton investigated the site is of no relevance, and does not excuse him from his duty to establish that the corner posts were on the land being purchased. His reliance on the LRIS map and the location of certain trees also is no excuse for his negligence in not showing on his certificate and sketch that the northwest corner of the lot being purchased by the Campbells was located in the middle of the abandoned road.

The learned Adjudicator was in error when he found as a matter of fact and law that the certificate provided by Fulton was correct, and as there were no "easements, right-of-ways and/or encroachments", and that the problem discovered by the later survey was a boundary problem.

There is no question whatsoever that **Fulton was negligent** in not disclosing on his sketch and certificate that the abandoned road ran across the corner of the lot being purchased by the Campbells. The boundary of the road plainly encroached on the property being purchased by the Campbells, and even though the survey requested was for the purposes of determining the location of the dwelling house on the lot being purchased, this encroachment should have been shown by Fulton. **This was a minimal requirement** for such a sketch and certificate prepared by a professional surveyor. Fulton was in breach of the standard of care required of him as a professional surveyor in such a situation.

I find that the Order of the Adjudicator is **erroroneous in law**, and I allow the Appeal. The Order made by the Adjudicator is set aside.

In the first paragraph of the Stated Case, the **Adjudicator states that** the material facts were pretty well agreed to between the parties. Thus, it must be presumed that the amount of the Claim of two hundred dollars (\$200.00) for obtaining a deed to rectify the title problem, and three hundred and thirty-five dollars and seven cents (\$335.07) legal costs was not challenged.

I would allow the Claim of the Campbells in the amount of five hundred and thirty-five dollars and seven cents (\$535.07), together with costs in the amount of fifty dollars (\$50.00) against the Respondent, Fulton.

**H.J. MacDonnell,
Judge of the County Court
of District Number Five**

AS

ETHICAL ESSAYS

Moonlighting

To have two paid occupations, esp. one
by day and one by night.

Concise Oxford
Dictionary

Though true as a statement of the general case, this definition doesn't tell everything as far as land surveying is concerned. So already we could be off on an ethical exercise were we to raise the question, "Is it proper to tell the truth without telling the whole story?" Anyone who has drafted replies to questions asked in parliament knows one answer: you reply to the question asked, not the question which should have been asked. Other circumstances might make another response quite appropriate.

Much has been said about moonlighting and much, perhaps most, has been opinion rather than fact. There is one point though that is not debatable: our Act and regulations apply to all boundary surveys executed within this province. Hence the same standards apply to surveys carried out on evenings and weekends by part-timers as those done during normal working hours by regulars. If anyone has a problem with this, probably the Discipline Committee will have to sort matters out in due course; nothing we read here will be likely to.

If we decide to become a moonlighter, ought the approval or consent of our boss be sought? There may be dangers here; what if she is obviously uneasy with the idea, but doesn't come right out and say "no"? Then again, she might say "NO" immediately. Where are we then? Is it best not to raise the question? Or, to be quite plain about things, is it any of her business? What you or I may do before 8:30 a.m. and after 4:30 p.m. hasn't anything to do with our work at the office, has it?

Suppose, though, we refuse to take counsel of our fears, tell the boss what we have in mind, and find she has no problem with moonlighting, as we have explained it. Two weeks later she pops in to the Registry Office (where neither of us are normally taken by our work) to leave off the deed to her new house. There we are, up to our armpits in deed books. Would we feel the need to explain then or later? My experience tells me that when explanations are forthcoming in such situations, I've either been

somewhere I shouldn't have been, or been doing something I shouldn't have been—or both. And I knew it too, even if the other parties did not.

If an employer is paying an employee's annual membership fee, should the employee indulge in moonlighting? Does having permission from the employer make a difference? If so, how does that relate to the situation of the land surveyor with a modest practice who has to pay his fees from his profits? Might others see this as using "the advantages of a salaried position to compete unfairly with other surveyors?"

On the other hand, perhaps we are exploring questions which have to do with a dying habit. Last June, as we had previously agreed and arranged, liability insurance became *derigueur* for all who offer their services to the public. Such insurance costs at least \$1200 per year, which could be a significant portion of one's annual profit from moonlighting. Maybe liability insurance will bring an end to the practice.

Or is \$1200 just peanuts in the average "after-hours and weekend, with a quick dash to the registry office over an extended lunch-break thrown in" surveying business? Possibly my age and innocence are showing again. But the large moonlighting practice is precisely where the greatest danger may lie to the public, to the profession, and to the individual (even if he is making a lot of money).

In matters of pure business, the introduction of the GST has brought a brand new factor onto the scene. One can have a gross income up to \$30,000 and not have to charge GST. And this rule applies to a business where out-of-pocket expense (on which tax paid is not recoverable) is a bare minimum. I know this from personal experience. (You wouldn't want me to be writing on a topic about which I was *totally* ignorant, would you?) Thus one is 7% ahead of (or below, depending how one looks at it) the surveyor in full-time practice.

Readers may wish to comment on matters such as gross and net incomes (and other gems)—not from their own practices, of course. Good substantial rumours about someone else's moonlighting will do. After all, rumours are the most dependable things one can get hold of on this spare-time activity, which may be the subject of another essay later.

J.F. Doig



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