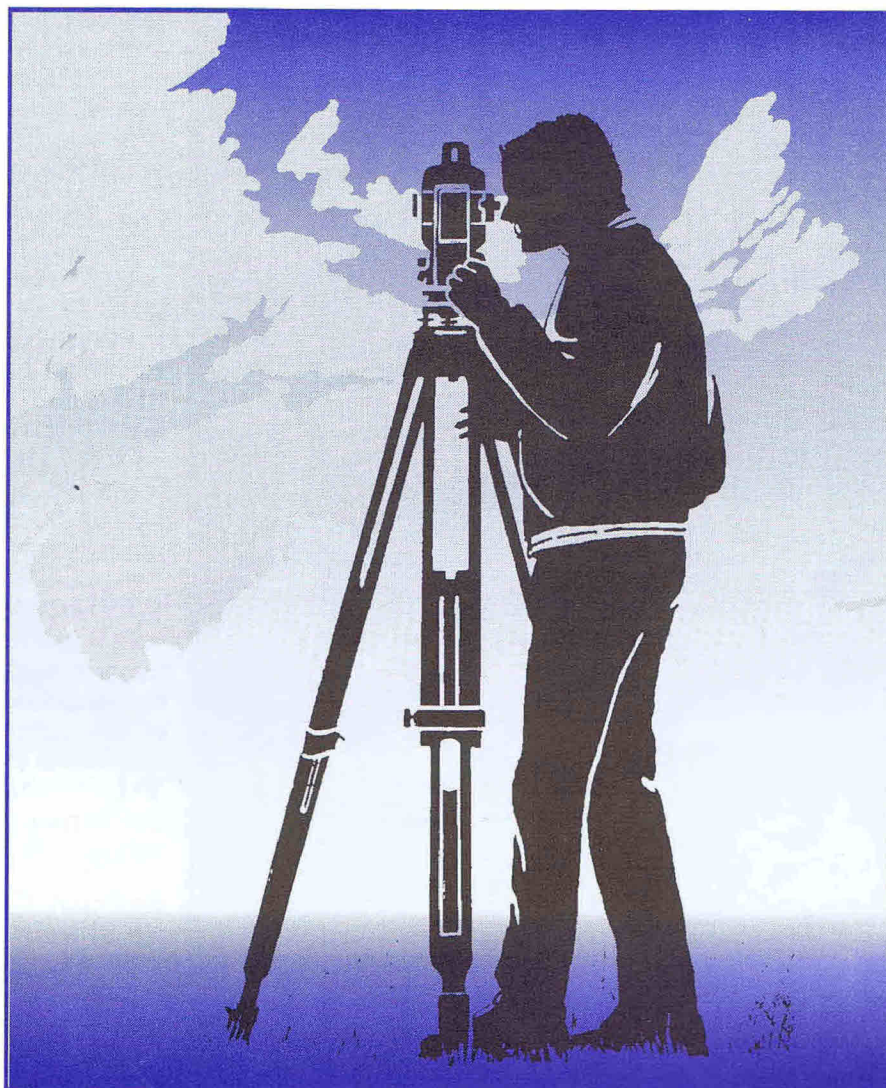


THE NOVA SCOTIAN SURVEYOR

Vol. 51

Fall 1991

No. 140



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THE NOVA SCOTIAN SURVEYOR

Vol. 51

Fall 1991

No. 140

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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THE NOVA SCOTIAN SURVEYOR

Editor - Michael Crant
Associate Editor - Ed Jeffrey
Association Affairs - Rosalind Penfound
Production - Janice Bell
 The Norman Wade Company Limited

Circulations:

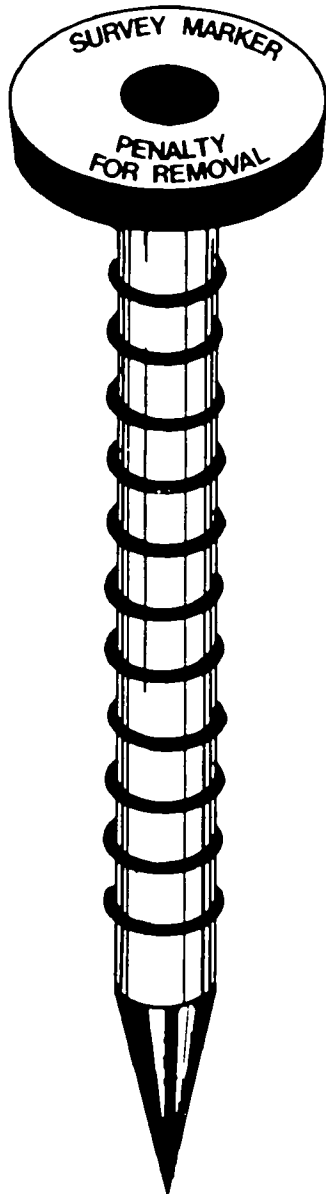
Free of charge to ANSLS members, to non-members at a yearly rate of \$12.00 in Canada or USA; \$16.00 for other countries, plus handling charges. Prices effective January 1989 - Vol. 42

The Nova Scotian Surveyor is published three times a year. Address all inquiries to: Association of Nova Scotia Land Surveyors, 159 Portland Street, Suite 301, Dartmouth, Nova Scotia, B2Y 1H9

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CONVENTION '91

NOTICE OF ANNUAL MEETING

Pursuant to By-law 5.5 you are hereby given notice that the 41st Annual Meeting of the Association of Nova Scotia Land Surveyors will be held at the Halifax Hilton, Halifax, Nova Scotia, beginning Friday, November 15, 1991 at 9:30 a.m. and continuing on Saturday, November 16, 1991.

Rosalind C. Penfound
Secretary
Association of Nova Scotia Land Surveyors

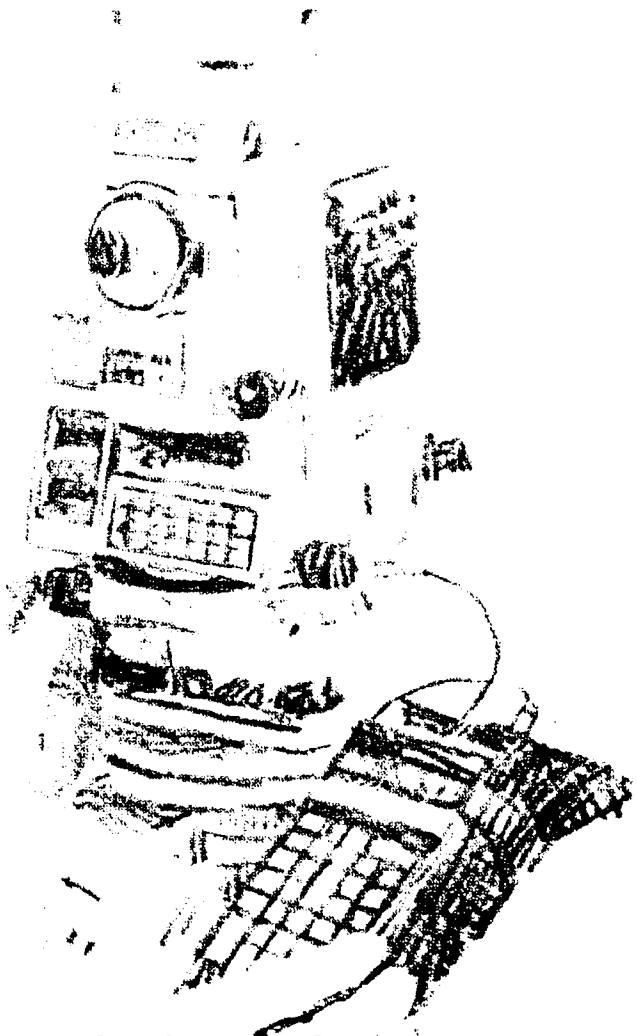
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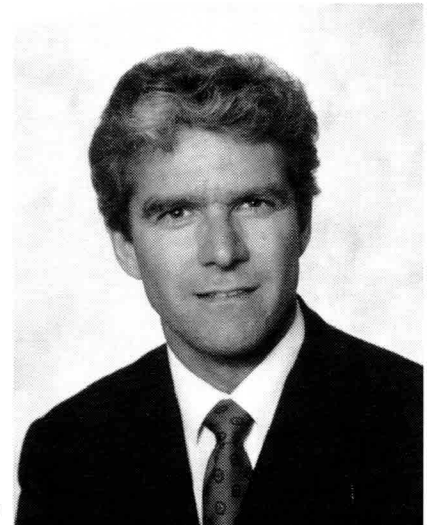
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PRESIDENT'S REPORT



The Annual General Meeting of the Association of Nova Scotia Land Surveyors will be held at the Halifax Hilton on November 14, 15 and 16, 1991. The Convention Committee is working hard putting together a program which, hopefully, will be enjoyable and beneficial to all concerning both business and social activities.

The business meeting will focus on two major items: regulations concerning Real Property Reports and changes to our Act concerning complaints and discipline. I urge all of you to attend the meeting to voice your opinion and vote on these issues.

The council has met every two months over the past year and the executive committee has met four times. Most issues will be reported through committee reports to the Annual Meeting.

Janice and I attended four sister association meetings throughout the year, as well as the Canadian Institute of Surveying and Mapping Annual General Meeting. Your Vice-President, Grant McBurney, and his wife Mary, represented this Association at one provincial meeting as well as the Annual Meeting in Massachusetts.

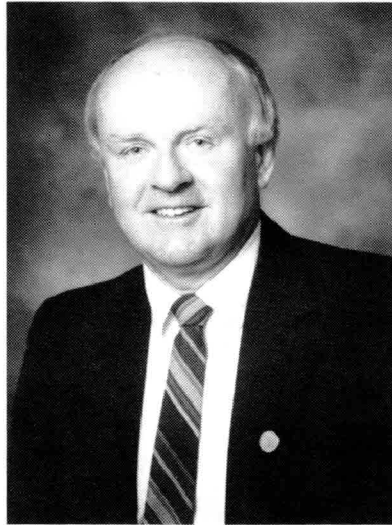
The past year has been interesting and exciting for me as your President. I look forward to continuing to serve this Association in the future.

See you at the Annual General Meeting!

David A. Steeves
President



NOMINATIONS FOR COUNCIL



CANDIDATE FOR PRESIDENT R. GRANT MCBURNEY

R. Grant McBurney, B.A. Sc., B. Ed., P.Eng., C.L.S., O.L.S. (Ret.), N.S.L.S., graduated from the University of Waterloo in 1967 with a Bachelor of Applied Science degree in Civil Engineering. His other formal education includes a degree in Survey Science from the University of Toronto (Erindale) in 1977, and a Bachelor of Education degree from Acadia University in 1985.

He became commissioned as a Canada Land Surveyor in 1973, Ontario Land Surveyor in 1977, and Nova Scotia Land Surveyor in 1985.

Grant was employed from 1967 until 1980 with the Federal Department of Energy, Mines and Resources. Most of this period was spent in the Field Surveys Section of the Legal Surveys Division performing surveys on Canada Lands in Ontario, Quebec and the North West Territories. He also spent one year with Geodetic Surveys of Canada, doing horizontal and vertical control surveys.

From 1980 until present he has been employed as a survey instructor at the College of Geographic Sciences. He has served on a number of ANSLS committees - Survey Standards, Statutes, Land Court, and is presently chairman of the Statutes Committee and Vice President. He is a member of the Association of Professional Engineers of Nova Scotia, the Canadian Institute of Surveying and Mapping, and is the Nova Scotia representative on the Atlantic Provinces Board of Examiners for Land Surveyors.

Grant lives near Middleton, N.S., with his wife, Mary, and a daughter, Erica. He also has a son, Stephen, working in British Columbia, and a daughter, Renee, attending University in Halifax.

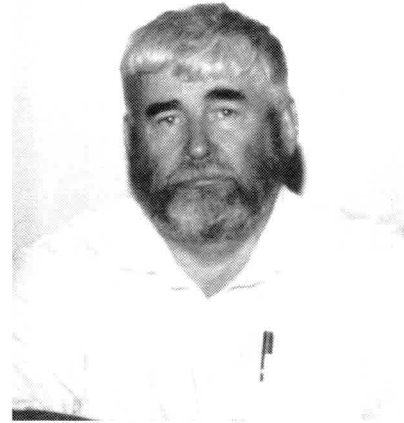
**CANDIDATE FOR COUNCIL -
 Zone 2
 SHAUN STODDART**

Shaun Stoddart was born in Middleton, Annapolis County, N.S. He was raised in Aylesford, Kings County where he now lives with his wife Christine and their two children, Seth and Amie.

Shaun graduated from the Nova Scotia Land Survey Institute in 1980 and received his commission as a Nova Scotia Land Surveyor in 1983.

During the period 1980 to 1983, Shaun was employed with James B. Gillis Land Surveying Limited.

From 1987 to the present, he has been in full-time private practice in the Aylesford area.



**CANDIDATE FOR COUNCIL -
 Zone 3
 RUSSELL ATKINSON**

Russell Atkinson was born in Amherst, N.S. on August 8, 1937. He attended school at New Canaan and Parrsboro, graduating from Parrsboro Regional High in 1956. Russell also attended Ranger School in Fredericton, N.B. and studied at the Nova Scotia Land Survey Institute, graduating in 1964.

He was previously employed by the Maritime Lumber Bureau, Amherst, N.S. and has held supervisory and teaching positions in lumber grading.

He received his commission as a N.S.L.S. in 1969. His experience in surveying includes work with David Clark, N.S.L.S., All-Can Engineering and Surveys of Calgary, the Nova Scotia Department of Transportation and CBCL Limited (18 years). During his time with CBCL Limited, Russell was temporarily assigned to Servant, Dunbrack, McKenzie & MacDonald Limited to assist on the survey of Alderney Drive, Dartmouth.

During the period 1983-1984, Russell was employed with Public Works Canada, Real Estate Services Branch.

In August 1985, he entered the private sector with the formation of Russell Atkinson and Associates and remains self-employed to the present.

Russell and his wife, Eleanor (MacKinnon), have three children: Jenna (16); David (13); and Blair (12).

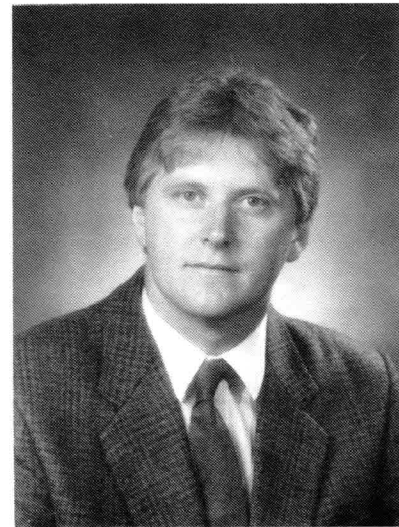


**CANDIDATE FOR COUNCIL -
Zone 3
DONALD L. ELDRIDGE**

Donald L. Eldridge holds a Land Surveying Certificate and Bachelor of Forestry from the University of New Brunswick. He is a member of the Canadian Institute of Forestry, the Canadian Institute of Surveying and Mapping, the Association of New Brunswick Land Surveyors and is a member and Past-President of the Association of Nova Scotia Land Surveyors.

Mr. Eldridge has held positions in the forest industry in the private and public sectors including: 1951-58, Woodlands Manager of George Eddy Company Limited; 1968-1979, Executive Director of Nova Scotia Forest Products Association; 1979-1986, Deputy Minister, Nova Scotia Department of Lands and Forests; 1986-1990, Commissioner of Forest Enhancement for the Province of Nova Scotia. He is a past-director of the Maritime Resource Management Service and Land Registration and Information Service of the Council of Maritime Premiers.

Mr. Eldridge and his wife Jean Margaret (Horton) have three children, and reside in Truro.



**CANDIDATE FOR COUNCIL -
Zone 5
HORACE LOVELL**

Horace Lovell, N.S.L.S., was born in New Waterford, N.S. in 1959. He attended Public Schools there until graduating from Breton Education Center in 1977. After graduating from N.S.L.S.I. in 1980 he began working with the Nova Scotia Department of Lands and Forests until 1982 when he joined the Cape Breton Development Corporation. Horace received his commission as a Nova Scotia Land Surveyor in 1983. In 1988 he entered private practice and remains self employed to this date. Horace, his wife Maureen and their two children live in River Ryan, N.S.



**CANDIDATE FOR COUNCIL -
Zone 6
JAMES D. MCNEIL**

James D. McNeil, N.S.L.S., graduated from the Nova Scotia Land Survey Institute in 1978 and received his certificate of qualification as a Nova Scotia Land Surveyors in 1982.

Past survey employment was with the Department of Energy Mines and Resources in Newfoundland, The Nova Scotia Department of Transportation, The Nova Scotia Department of Lands and Forests, Chris Masland Surveys, Chester Basin, N.S., Can-Am Surveys Limited, Calgary, Alberta, Redden and Lyon Surveys Limited, Windsor, N.S., and Frank Longstaff Surveying Limited, Dartmouth, N.S..

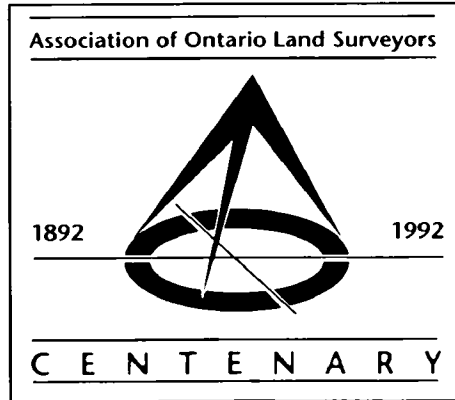
James is presently employed at and was one of the founding partners of the firm CRANT SLAUNWHITE & MCNEIL LIMITED, Dartmouth, N.S. Volunteer work for the Association includes serving on the Statutes Committee. Hobbies and activities include Jaycees, hockey, skiing, photography and night school courses.

James and his wife, Nancy, reside in Dartmouth, N.S.



**CANDIDATE FOR COUNCIL -
Zone 6
ALLAN OWEN**

Allan Owen a native of Dartmouth, received a Bachelor of Science Degree from Dalhousie University in 1975 and attended the Nova Scotia Land Survey Institute from 1976 to 1978. After graduation he was employed by the Department of Lands and Forests for a three month term before joining the staff of Frank Longstaff Surveying Limited where he received his commission as a Nova Scotia Land Surveyor in 1983. He then spent a year as a construction surveyor and is currently employed by F.C. Hutchinson Surveying Limited. Allan is the chairman of the Surveyor-Barrister Liaison Committee, the Secretary of the Halifax Wildlife Association and a Hunter Safety Instructor. He is an avid hunter and fisherman and enjoys spending time at his camp in Pictou County. Allan and his wife Mary reside in Lower Sackville, N.S.



The Centennial Meeting

Association of Ontario Land Surveyors
100 YEARS SINCE INCORPORATION

~~~~~

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**PLACE:**      *Royal York Hotel, Toronto*

**DATES:**      *March 3rd - 7th, 1992*

~~~~~

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COMMITTEE REPORTS

ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS

COMPLAINTS COMMITTEE

1990-1991 ANNUAL REPORT

The Complaints Committee has held regular meetings once a month over the past year.

- Individually, as small groups and as a full committee, we have met at other times with complainants and surveyors on numerous occasions.
- Eleven new files were opened this year which formed part of the sixteen active files.
- Eight of these files were part of a list of thirteen complaints laid by one of our members.
- Two of the complaints were referred to the Discipline Committee on which hearings were held. The results of one hearing has been published and the second will be published shortly.
- This year we received the lowest number of complaints from the general public.
- One of our members challenged the Association's right to investigate complaints. The court confirmed our rights in this matter.
- The complaints laid by land surveyors relate to non compliance with the regulations, i.e., curves, monumentation, plan preparation, research, lack of field notes, poor field and office practices.
- Many of the complaints laid by the public related to boundary problems.

- I would like to thank all the Committee Members and our Executive Director who attended all our regular meetings and many of the special meetings with complainants and surveyors for their support, dedication and time.
- The committee for 1990-1991 consisted of John Conn, Bob Daniels, Bruce MacDonald, David Hiltz, Ted Webber and John Macinnis.

John C. MacInnis, NSLS
Chairman



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ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS

BOARD OF EXAMINERS

1990-1991 ANNUAL REPORT

The Board of Examiners met twice during the past year.

- There are at present eighteen students registered as surveyors in training, but apparently not all are active.
- Two students wrote our exams in January and June of 1991.
- The new student handbook was prepared this year, approved by the Board and Council and distributed to all members and students (surveyors in training).
- Our monitor system was started this summer with the appointment of two Board members to monitor the progress of two articling students.
- No students qualified for membership this year, however, there are two students working on their survey projects presently and projects are being selected for two more students.
- The Board, through the Secretary, has assisted the Atlantic Board by supervising examinations at our Portland Street office.
- All the Nova Scotia members of the Atlantic Board attended the meeting of the Atlantic Board held in Charlottetown, P.E.I. on June 15, 1991.

I would like to thank the Board members for their continued dedication and support as well as the Secretary to the Board, Rosalind Penfound.

The present Board consists of James Doig, Bruce Gillis (Barrister's Representative) Keith AuCoin (Ministerial Representative), David Cushing (Engineer's Representative), Forbes Thompson, Jim Chisholm, Rosalind Penfound (Secretary) and John MacInnis, Chairman.

John C. MacInnis, NSLS
Chairman

MUNICIPAL AFFAIRS LIAISON COMMITTEE -1991

Jim Banks (Chairman)
Jim Gunn
David Roberts
George Sellers

The committee dealt with several issues during the year.

Jim Gunn has been working against Instrument of Subdivision and last spring brought a proposal to the committee from the Land Resources Coordinating Council. At the instruction of ANSLs Council, the LRCC was told that ANSLs did not want a revised Instrument of Subdivision and would continue to lobby to have Instrument of Subdivision abolished. The LRCC eventually dropped the issue and Jim Gunn has taken the case against Instrument of Subdivision to the newly formed Law Reform Commission.

The Department of Municipal Affairs requested our comments on a proposed subdivision by-law for Cumberland County. At a meeting ANSLs outlined its opposition to relaxing the survey requirements in the subdivision process. Our concerns were later confirmed by letter. The Department is aware of the damage being done by Instrument of Subdivision and further bad examples were provided to their people by Jim Gunn.

Any changes to the Cumberland County Subdivision by-law are probably more than a year away. The Department assured the committee that ANSLs would be kept informed of the progress and we would be given the opportunity for input at County Council public meetings.

L.R.I.S. requested our comments on a proposal to have Registry Office staff mark PID's (Property Identification Numbers) on survey plans as they are filed. A positive response was drawn up, cautioning against any obliteration of information shown on plans of survey. It was also suggested that ANSLs be involved in developing an explanatory note to be stamped on plans as they are filed.

Respectfully submitted,
Jim Banks
Chairman

SURVEYOR/BARRISTER LIAISON COMMITTEE

Our Committee has not been active during the past year. However, we are awaiting the results of a planned meeting between our Association executive and N.S. Barristers' Society executive to discuss further promotion of the Land Titles System for Nova Scotia.

Chairman Allan Owen

DEPARTMENT OF TRANSPORTATION AND COMMUNICATION LIAISON COMMITTEE REPORT

A one-on-one meeting was held with the executive assistant to the Minister of Transportation and Communication. Thereafter a brief was completed and contact was made with the Minister's office to arrange a meeting date. That was last May. I have remained in contact with the Minister's office and have been told that we are still on their waiting list.

Committee Members

Glenn Crews (c)
David Wedlock
Douglas MacDonald

REGULATIONS COMMITTEE 1990-91

C.K. Hartlen, Chairman
R.E. Humphreys
R.F. Penfound

The majority of the committee's effort was directed toward the "Surveyors Real Property Report". In conjunction with the Continuing Education Committee a seminar was held in early June to pinpoint areas of concern regarding the "Report" as presented at the 1990 annual meeting. A report based on comments received was subsequently prepared.

At the same seminar several sections of our regulations respecting monumentation were also addressed. Similarly a report on the discussion was prepared.

As a result of this seminar new regulations respecting all items will be drafted and presented at the annual meeting for approval.

The implementation of the Survey Review Department has led to a continual review of our regulations, as well as the plans themselves. This review process, together with input from all members is critical if we intend to keep our regulations in step with changing times.

I would like to thank all those who have assisted the committee in our efforts.

Carl Hartlen,
Chairman

MANUAL OF GOOD PRACTICE COMMITTEE

Robert Ashley
Marcellin Chiasson
Alan Comfort
James Gunn

Fred Hutchinson
Gordon Isaacs
Jack Kaulback
Jerome MacEachern

A motion at the 1990 Annual Meeting directed Council to establish a committee for the purpose of examining the feasibility of a Manual of Good Practice for the Association.

A report was presented to a June 24 Council meeting covering the general content of manuals of other provincial associations. At this time the Committee was expanded to consider recommendations regarding the advisability of a manual and possible formats.

Meetings were held on July 24 and August 28 where recommendations to Council were developed.

Jack Kaulback,
Chairman

ANSLS/COGS LIAISON COMMITTEE

G. MacBurney (c)
J. Alcorn
D. MacDonald
D. Wedlock
D. Woolnough
P. Milo

Committee members met on April 29, 1991 at COGS. One of the issues dealt with concerned revising the Surveymath contest which has been run for the past two years in selected Nova Scotia high schools. It was agreed that the present \$25.00 prize does more harm than good for ANSLS, COGS and the survey profession. It was suggested that the contest be run province-wide annually, with a substantial prize such as an entrance scholarship into COGS.

The issues of COGS involvement in continuing education and correspondence courses were also addressed.

STATUTES COMMITTEE

G. MacBurney (c)
J. McNeil
D. Roberts
M. Banks

The Statutes Committee met twice during the year - once at the workshop in Truro, and once at our Association office. On other occasions the chairman met with members of the Discipline and Complaints Committees, and with the Executive Director. The main concern continues to be making modifications to our own Act.

Although the entire Land Surveyors Act has been looked at and draft revisions made, the primary sections to be dealt with at the 1991 Annual Meeting concern complaints and discipline. These parts of the Act have been re-written to accomplish the following:

- (1) allow the Complaints Committee to have more flexibility when dealing with "minor" complaints, and to enable the committee to resolve problems without taking the major step of referral to Discipline.
- (2) expand the powers of the Discipline Committee, and clarify those clauses of the Act concerning cost recovery when a member is found guilty of professional misconduct.

These issues should be discussed at the fall zone meetings, and the revised Act will be presented for approval at the annual meeting in November.

LIAISON COMMITTEE WITH THE ASSOCIATION OF PROFESSIONAL ENGINEERS OF NOVA SCOTIA

ANSLS

K.M. Whalen (c)
James F. Doig
L. Robert Feetham

APENS

J. Leo Brooks (c)
Calvin Archibald
John Sheppard

Our committee has worked toward the goal of composing a document mutually acceptable to both associations, regarding our respective services to the public. Unfortunately this has not been achieved.

As a committee we had made great strides in attaining a document that would have been satisfactory to the members of both associations. Our efforts broke down when the APENS committee members felt it necessary to present the document to their staff and solicitor for their approval. The staff and solicitor comments and instructions rendered the document a directive from APENS as to how things would be done by engineers. We tried to rebuild on their stance and impress upon the APENS committee members our statutory right to perform our professional duties.

During this process the ruling of the Nova Scotia Supreme Court Appeal Division was given, regarding the APENS charge against K.W. Robb for practicing engineering. Our committee, Mr. Doig, Mr. Feetham, and I felt that this decision gave a very clear directive to our respective Associations. We incorporated the principles of this decision into the agreement and presented the revised document to the APENS committee members. They rejected it on the grounds that they did not agree with the findings of the court. They presented the document to their Council, with their recommendation to reject it, which they did.

APENS holds the position that only professional engineers may design roads (at any stage), size and configure lots, and design the proposed location of a dwelling (both horizontally and vertically) on a lot. They consider that "non engineers" do not have the expertise to perform these duties in a satisfactory manner, and they feel the public will not be protected otherwise.

It is our firm belief that Nova Scotia Land Surveyors serve the public in a professional manner. We work within the scope of our expertise, consulting with other professionals; lawyers, architects, planners, engineers, etc., as necessary. It is true that in the performance of our duties we sometimes utilize engineering principals, but we also utilize legal principals without practicing law.

Possibly in the future our two Associations will be able to reach a mutual agreement, one that will show true professionalism and mutual respect. Hopefully this end will be achieved without spending a great deal more time and money in the courts.

Once again I thank Jim Doig and Bob Feetham for their commitment of time and energy spent on this committee.

Respectfully,
Ken Whalen

PUBLIC RELATIONS COMMITTEE

ANNUAL REPORT 1991

Committee Members:

Sandy Cameron
Brian MacIntyre
David Lorimer
Gerald Pottier

The main thrust of the work accomplished this year involved attendance at Trade and Home Shows. The following is a list of appearances:

Halifax - March 14-17, N.S. Ideal Home Show

Sydney River - April 6 & 7, Y's Men's Home Show

Windsor - June 14-16, Provincial Forestry Exhibition

The shows provide an excellent opportunity to convey information to the general public and should be continued in the future.

Attendance at High School Career Day Seminars by various members also served as an effective means of education to students about the scope and educational requirements for entry into our profession.

Public relations is every members business and I would like to thank all who volunteered their time and the equipment suppliers/survey firms who provided survey equipment and display materials for use at the Home/Trade Shows.

Brian J. MacIntyre, NSLS

EDITOR'S REPORT

THE NOVA SCOTIAN SURVEYOR

The Nova Scotian Surveyor is the Official Publication of the Association of Nova Scotia Land Surveyors. Traditionally, The Nova Scotian Surveyor has been published four times a year. However during the past year, it was decided, with Council's approval, to cut back to three issues per year. Our committee felt that this would help ensure the continued quality of our publication and at the same time save on printing costs. This was also made possible with the help of the Association's newsletter, The Right Angle.

Advertising rates were increased in 1991 to help offset costs. Efforts will also be made in the coming year to attract additional advertisers to The Nova Scotian Surveyor.

During the past year, we were once again fortunate to be able to present the writing talents of our regular contributors David Clark, Jim Doig, Jim Gunn and Rosalind Penfound. We thank all of them for their continued support and outstanding work.

I would also like to thank Gordon A. Webster, SLS, CLS for his regular column entitled; "The Professional Liability Insurance Corner".

Special thanks to Janice Bell of the Association office for her continued hard work in production.

As always we would like to hear more from you, the members. Please write or send in anything you think would be of interest to our readers. We need your support.

Michael Crant
Editor

TO: ALL MEMBERS

**FROM: CARL HARTLEN
CHAIRMAN, REGULATIONS COMMITTEE**

Re: June Workshop: Monumentation Issues
Surveyors Real Property Reports

On June 8, 1991 the Association held a Workshop to address the Proposed Surveyors Real Property Report and monumentation issues that have arisen due to the implementation of the Survey Review Department. The Workshop was very well attended with a total of 80 members present. It should be noted that the members voted on these issues at the 1990 Annual Meeting.

What follows is a brief summation of the comments made and the direction the Regulations committee will take in attempting to resolve these issues.

I. MONUMENTATION ISSUES

Section 24 - Blazing of Boundaries

It was agreed that the regulations needed to be reworded. Generally all lines through wooded areas should be brushed out with the exception of Highway boundaries, but the surveyor should have some discretion.

The following concerns were expressed about section 24

1. it clearly states that all lines through wooded areas shall be brushed and blazed - we presently do not blaze subdivision lot boundaries.
2. fore and aft at forty-five degree angles is contradictory
3. "when required" is perhaps too loose
4. it contradicts directly with section #15 (long narrow pieces of land)

It is proposed that section 24 be rewritten to read as follows:

- s.24
- (1) Notwithstanding section 15, all boundary lines through wooded areas shall be well brushed out, unless in the opinion of the surveyor such action would have an adverse effect on the value or esthetics of the property;
 - (2) All boundary lines not brushed out shall be clearly indicated as such on the plan of survey;
 - (3) In any instance where the distance between two monuments on a particular line or part thereof exceeds one kilometer the line or portion thereof should be blazed as follows:
 - (i) suitable trees standing within one metre of the line shall be blazed fore and aft and on the side toward the line or the trees shall be blazed at forty-five degree angles to the line;
 - (ii) suitable trees standing between one and two metres from the line shall be marked with a single blaze facing the line;
 - (iii) trees left standing on a boundary shall be marked with a single blaze fore and aft;
 - (iv) all blazes shall be made with an axe;
 - (4) Road, street or highway boundaries need not be brushed or blazed as the case may be.

SECTION 44 (l)(a) Witness Monuments

There was clear agreement that the regulation as written allows for the offsetting of front corners, eg., new subdivisions. There was concern that witness monuments, in general, can be misleading and perhaps their use in subdivisions should be restricted to areas where the street has not yet been constructed.

It is proposed that section 44 (l)(a) be rewritten as follows:

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.

MONUMENTS

As pointed out in the workshop handouts, our regulations respecting monumentation definitely conflict. However, there was agreement that we should not be replacing found evidence with current monuments solely on the basis that our regulations indicate we must. The solution is to reword our regulations to satisfy our intentions.

It is proposed that section 36 be rewritten as follows:

s.36 Placed monuments shall be classified as follows:

- (a) _____
- (b) _____
- (c) _____

Adding the word placed will eliminate the need for including iron bars, iron pipes etc. as monuments and subsequently becoming acceptable monuments to be placed.

It is proposed that section 37(a) be rewritten as follows:

s.37(a) When 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 regulation or by found evidence which in the opinion of the surveyor adequately marks the boundary.

It is proposed that section 40 be rewritten as follows:

s. 40 Where in the course of a survey, evidence from a previous survey is located, that evidence shall be completely described and all references to it prefixed by the abbreviation "Fd"

"Monument" has been changed to "evidence" to avoid confusion with Section 36. Sections 27(1) & (3) can then apply as intended.

It is proposed that section 27(3) be rewritten as follows:

s.27(3) Damaged, deteriorated or disturbed evidence shall be replaced with monuments that meet current regulations.

There is some support for the tagging of found evidence. It would seem practical to tag only that evidence which does not bear proper identification.

To accommodate this Section 40 could be expanded to include the following:

s.40(2) Where found evidence not bearing proper identification is to be used to mark a boundary, that evidence, where possible, shall be tagged in a manner prescribed by these regulations.

If there is sufficient support for this practice the detail and form for the tags can be addressed.

SECTION 37(a) - MONUMENTATION OF PC'S

The most contentious issue was of course the monumentation of points of curvature on road boundaries. The audience was treated to presentations by Athol Grant and Al Wallace who enlightened us on both sides of the issue. Unlike the previously mentioned regulations the problem here is not one of interpreting regulations but one of philosophy. Should we or should we not monument P.C.'s? From the comments received the membership appears to be divided.

At present our regulations are explicit that all pc's must be monumented if the road boundary forms part of the survey. Relief from surveying (defining and monumenting) road boundaries can be achieved by specifying those boundaries which have been surveyed. Therefore in support of complete monumentation the regulations would not have to be revised, but only continue to be enforced.

One proposed option was to determine (mathematically) the road boundary and show it on the plan without monumentation; this proposal met with some approval. However comments received in support of this, indicated restrictions such as "old woods roads", "large tracts", "Rural areas" etc. It is dangerous to write regulations which contain adjectives as it is these adjectives which inevitably lead to interpretation problems; eg. what is old and what is large?

The solution appears to be draft a regulation that would give relief from monumenting PC's, somewhat along the lines of the proposal at the workshop and present it at the annual meeting for a vote.

Most agreed that relief from monumenting PC's should be restricted to retracement surveys. Another concern was that the placement of a PC marker in close proximity to a lot line marker would lead to confusion. The same problem exists with back lines that kink and abutt other subdivisions. NOT monumenting lot corners could be more dangerous than monumenting them.

It is proposed that section 37(a) be rewritten as follows:

- s.37(a) When 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 or by found evidence which in the opinion of the surveyor adequately marks the boundary; 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.

II SURVEYORS REAL PROPERTY REPORTS

Based on the comments received it was concluded that the format of the Report is generally acceptable. There was no direct opposition to the procedure of absolute boundary definition as proposed. As with the previous section we will identify the major concerns brought forth by the members and possible solutions.

Surveyors Discretion

The surveyor will always have discretion when determining boundaries, however allowing discretion for format and content undermines all efforts to standardize.

Education

In April 1990 Bob Daniels and Rosalind Penfound attended a Real Property Conference presented by the Continuing Legal Education Society of Nova Scotia at which Bob presented a paper entitled "Location Certificate - Pitfalls and Problems"

The ANSLS Executive and the Nova Scotia Barristers' Society Executive met in early September and discussed Real Property Reports.

There has been ongoing liaison between our association and the Provinces Real Estate Boards in the form of seminars for new real estate agents.

Monumentation

There was a great deal of support for complete monumentation at the workshop. Although certainly not discouraged, it is felt one monument will be sufficient.

Consider reports prepared on new lots, eg. footings, usually one or two monuments can still be found at this stage of development. Resetting missing monuments may prove inadvisable at this time.

The cost for this type of report should remain as is.

On any lot where one monument exists it may eliminate the need for a second trip to set monuments.

Some lots may have 10 to 20 corners with over half of them already in place.

It is proposed that Section 136(3) of the SRPR draft regulations be revised to read:

- s.136 (3) Members shall ensure that at least one angle point in the boundaries of the parcel excluding points of curvature, be marked by a monument at completion of a Surveyors Real Property Report.

Zoning Bylaws, Municipal Restrictions and Covenances

These are generally of more concern at the time of the initial development proposal. Their inclusion could be optional as opposed to mandatory. Covenants are sometimes quite lengthy and usually accompany the document.

Reissuing Old Certificates

Surveyors are from time to time asked to reissue or provide a copy of an old certificate. The proposed SRPR regulation would not prevent this. Surveyors will continue to exercise their discretion in this regard. We can not control what will be acceptable to a lender or other users.

An increasing awareness of copyright and liability issues should discourage this practice.

Under the proposed SRPR regulation any certification dated after the regulation came into effect would be in the form required by that regulation.

Tolerance Level

At present this appears to be the surveyors way to reduce liability. The Report will eliminate the need as boundaries will be defined.

The following changes are proposed to the draft SRPR regulation.

Section 137(f) change "and current document" to "or present document"

Section 137(h) revise to include "encumbrances"

Section 139(2) delete (d) - Survey Review Department Stickers, from requirements.

One Boundary Certification

Not considered under present proposed regulations - see section 136(l). A surveyor can always prepare a plan of survey of any boundary in the normal manner.

Definition of Improvement

Concern was expressed about the definition of "improvement" (s.135(b)). Suggestions are solicited.

Manual of Good Practice

This is of course something which, if created, could assist the surveyor in their day to day practice. It is a different issue than what we are trying to address here and is under consideration by another Committee.

Limited Property Reports

There was a great deal of discussion with respect to this part of the report. The limited report was intended to "create a document the public could use to obtain mortgage funds on properties in areas where the survey fabric is weak or on large properties, at a reasonable cost."

One concern was that perhaps restrictions should be placed on when a limited report could be issued. Unfortunately only one suggestion was put forth (by size). It is not anticipated that the limited report would become the norm, but consider the following:

1. the lenders demands
2. the clients wants
3. the surveyors liability
4. the cost

If they all point to a limited report - why not?

Again we would solicit any recommendations for this area at the report.

It was also suggested that they should be by request only. The request comes from the lender or the lawyer. We can only provide products and let them decide what will meet their needs. They will soon become familiar with what we offer and act accordingly.

Subdivision by Instrument

What better reason could there be for a complete boundary survey or a limited report?

Access to Real Property Reports

Although a formal system for registering SRPR's may be further down the road, the monumentation requirements will at least set surveyors and/or land owners in the right direction by indicating that a land surveyor has been on site.

The committee realizes that all issues may not have been addressed here but there is still time to initiate change. If this format cannot ultimately be accepted only two alternatives are foreseen: (1) take the position that in fact "certifications" already are encompassed within our definition of "professional land surveying" and they should be prepared in accordance with our existing regulations; or at least revise our definition to ensure they are; or (2) retain the status quo and embark on an educational process that will concentrate on what a "certificate" does not include as opposed to what it does.

When considering any proposed revisions recommended here in either monumentation issues or the Real Property Report, attempt to understand the intent. The wording can be fine tuned at a later date.

In closing I would like to thank everyone who helped to organize the workshop and of course those who attended. Notices of motion concerning the above proposal are included in this mailing.

Carl Hartlen
Chairman, Regulation Committee

NOTICE OF MOTION

Proposed Regulations Regarding SURVEYORS REAL PROPERTY REPORTS

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 Halifax Hilton, Halifax, Nova Scotia beginning at 9:30 a.m. on Friday, November 15, 1991:

BE IT RESOLVED that the membership approve the addition of PART VII, Surveyors Real Property Reports, as attached, to regulations made pursuant to the Land Surveyors Act.

Rosalind C. Penfound
Secretary
Association of Nova Scotia Land Surveyors

September 19, 1991

PART VII

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 point in the boundaries of the parcel, excluding points of curvature, be marked by a monument at 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 present 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, and encumbrances 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 or 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;
- (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 (c) and (e) of Section 138 shall apply to such limited property report;

(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.

140

This Part shall come into force and effect on _____.

NOTICE OF MOTION

BLAZING, BRUSHING OUT AND MONUMENTATION

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 Halifax Hilton, Halifax, Nova Scotia, beginning at 9:30 a.m. on Friday, November 15, 1991:

BE IT RESOLVED that sections 24, 27(3), 36, 37(a), 40 and 44(l)(a) of regulations made pursuant to the Land Surveyors Act be amended to read as attached hereto.

Rosalind C. Penfound
Secretary
Association of Nova Scotia Land Surveyors

September 19, 1991

I Re: BLAZING OF BOUNDARIES

- s.24 (1) Notwithstanding section 15, all boundary lines through wooded areas shall be well brushed out, unless in the opinion of the surveyor such action would have an adverse effect on the value or esthetics of the property
- (2) All boundary lines not brushed out shall be clearly indicated as such on the plan of survey
- (3) In any instance where the distance between two monuments on a particular line or part thereof exceeds one kilometer the line or position thereof should be blazed as follows:
- (i) suitable trees standing within one metre of the line shall be blazed fore and aft and on the side toward the line or the trees shall be blazed at forty-five degree angles to the line;
 - (ii) suitable trees standing between one and two metres from the line shall be marked with a single blaze facing the line;
 - (iii) trees left standing on a boundary line shall be marked with a single blaze fore and aft;
 - (iv) all blazes shall be made with an axe;
- (4) Road, street or highway boundaries need not be brushed or blazed as the case may be.

II Re: MONUMENTS

- s.27 (3) Damaged, deteriorated or disturbed evidence shall be replaced with monuments that meet current regulations.
- s.36 Placed monuments shall be classified as follows:
- (a) _____
 - (b) _____
 - (c) _____

TO: ALL MEMBERS

FROM: ROSALIND C. PENFOUND

**Re: Proposed Amendments to the Land Surveyors Act
Regarding Complaints and Discipline**

In 1990 a joint meeting of the Complaints and Discipline Committee was held to discuss ways of improving the Associations complaints and discipline procedures. As a result the Complaints and Discipline Policies and Procedures Committee was formed. Members of this Committee are the Chairman of Discipline, Walter Rayworth; the Chairman of Complaints, John MacInnis (formerly A.E. Wallace); and Rosalind Penfound, Executive Director.

Proposed amendments to the Land Surveyors Act were drafted and circulated to all members of both Committees and the Executive for comment. Comments and suggestions were reviewed with Grant McBurney, Chairman of the Statutes Committee and the resulting final draft was presented to and approved by Council, to be brought to the membership at the next Annual Meeting.

If implemented these amendments would have the following effects.

After having completed its investigation of a complaint, the Complaints Committee would no longer be faced with only two options, i.e., dismissal or advancement to the Discipline Committee for formal hearing. The Committee could choose from the following:

1. dismiss the complaint
2. counsel a member, including requiring the revision of plans to ensure compliance with the regulations
3. caution a member
4. advance to Discipline Committee for formal hearing

The powers of the Discipline Committee would be expanded and clarified, to indicate when a member is found guilty of professional misconduct:

1. reprimand (s.26(1) (a))
2. a fine not to exceed three thousand dollars (s.26 (1)(b))
3. suspension with or without conditions (s.26(1)(c))
4. cancellation of membership (s.26(1)(d))
5. suspension of the imposition of any penalty (s.26(1)(c))
6. costs to be taxed (s.26(1)(f))
7. costs of up to \$5000 fixed by the Committee (s.26(1)(g))
8. publication of the decision or order (s.26(1)(b))

Should the Discipline Committee conclude that there was a complete lack of evidence to justify referral by the Complaints Committee for a formal hearing, it could order costs in favour of the member (s.26(2)).

The Discipline Committee's ability to order payment of any costs by any party to any party would be clarified (s.26(1)(f) and (g)). This will rectify the ambiguity in the Act revealed by the Supreme Court of Nova Scotia in the Backman appeal regarding costs. This decision will be reproduced in the fall 1991 Nova Scotian Surveyor. The underlying premise behind this approach to the question of costs is that if a member is found guilty of professional misconduct the Discipline Committee should be able to order that member to pay all associated costs. If not, then all members of the Association bear these costs as they become an expense which can only be met through members dues.

At the investigative level, the Complaints Committee will have more and flexible power to deal with matters which do not warrant formal hearing but which indicate practice falling below that which should be expected of a professional land surveyor. Counselling is remedial in nature intended to assist the surveyor through the provision of advice and direction. Cautioning equates to a warning that conduct must be improved. Repeat occurrences may result in referral to Discipline.

The general thrust of these amendments is to ensure that the Discipline Committee has the authority to deal with serious cases, including cost recovery, and to allow remedial action by the Complaints Committee where appropriate.

Please review the proposed amendments included in this mailing.

Rosalind C. Penfound
Executive Director

NOTICE OF MOTION

Proposed Amendments to the Land Surveyors Act Respecting

COMPLAINTS AND DISCIPLINE

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 Halifax Hilton, Halifax, Nova Scotia, beginning at 9:30 a.m. on Friday, November 15, 1991:

BE IT RESOLVED that sections 24, 25 and 26 of the Land Surveyors Act be amended to read as attached hereto.

Rosalind C. Penfound
Secretary
Association of Nova Scotia Land Surveyors

September 19, 1991

Proposed Amendments regarding Complaints and Discipline

(Note: Changes to the existing sections of the Act are underlined)

Complaints Committee Established

- s.24 (1) There shall be a Complaints Committee appointed by Council, whose composition and function shall be provided for by Council in the by-laws.

Caution, Counsel, Complainant Defined

- (2) For the purposes of this Act

- (a) "Caution" means the expression by the Complaints Committee of its dissatisfaction with the members conduct and forewarns the member that if such conduct recurs it may be considered as evidence of professional misconduct
- (b) "Complainant" shall include a person, a member, a holder of a certificate of authorization and the Association through a person duly authorized by Council to swear and file a complaint of and on behalf of the Association and in the name of the Association;
- (c) "Counsel" means the provision of advice by the Complaints Committee to a member complained of and may include direction respecting remedial action and compliance with the Act and regulations considered appropriate by the Committee respecting the members conduct generally, a specific complaint or specific existing or future plans of survey.

Conduct may be investigated

- (3) The conduct of any member, holder of a certificate of authorization or student member, may be investigated by the Complaints Committee upon receipt by the Secretary from any complainant of a written statement alleging, on the part of the person being complained of, conduct which may constitute professional misconduct or misrepresentation.

Duties of the Complaints Committee

(4) Upon the Secretary receiving a complaint as described in subsection (2), the Complaints Committee shall investigate the complaint, and after investigation may adopt one or more of the following courses of action as it deems appropriate:

(a) where it is satisfied that there is some evidence disclosed by the investigation, which might reasonably be believed, which could support a finding of professional misconduct or misrepresentation, advise the complainant that the complainant may either

(i) request the Association to appoint a person to swear a complaint under oath on behalf of the Association in which case the Association shall have the responsibility of carrying the expenses and costs of proceeding with the complaint, or

(ii) swear a complaint under oath in which case the complainant and not the Association shall have the responsibility of carrying the expenses and costs of proceeding with the complaint

(b) where it is satisfied that, although the evidence disclosed by the investigation which could reasonably be believed, could not support a finding of professional misconduct, it merits cautioning or counselling or both

(i) counsel the member;

(ii) caution the member

(c) where it is satisfied that the evidence disclosed by the investigation, which could reasonably be believed, could not support a finding of professional misconduct or misrepresentation, dismiss the complaint and accordingly notify the member complained of and the complainant.

Election by complainant

(5) Where a complainant has been advised by the Complaints Committee of the provisions available to the complainant pursuant to clause (a) of subsection (3), the complainant may elect to proceed with the complaint either pursuant to subclause (i) or subclause (ii) of clause (a) of subsection (3).

Association to bear costs

(6) Where a complainant elects to proceed with the complaint pursuant to subclause (i) of clause (a) of subsection (4) and so notifies the Complaints Committee, the Chairman of the Complaints Committee shall notify the Secretary and the Association shall have the responsibility of carrying its own costs and expenses of proceeding with the complaint.

Complainant to bear costs

(7) Where a complainant elects to proceed with a complaint pursuant to subclause (ii) of clause (a) of subsection (4), the complainant may swear a complaint under oath and file the complaint with the Secretary and the complainant shall have the responsibility for the complainant's costs and expenses of proceedings with the complaint.

Council to appoint person to swear complaint

(8) Upon the Secretary being notified by the Chairman of the Complaints Committee of a request made by a complainant pursuant to subsection (6), the Secretary shall notify Council and Council shall appoint a person to swear a complaint under oath of and on behalf of the Association and to file such complaint with the Secretary.

Secretary to deliver complaint

(9) Upon a complaint under oath being filed with the Secretary, whether or not sworn by a person appointed by the Association, the Secretary shall deliver the complaint to the Discipline Committee to be heard on the questions of professional misconduct or misrepresentation and discipline.

Complaints Committee to investigate

- (10) No complaint with respect to professional misconduct or misrepresentation shall be referred to the Discipline Committee unless the complaint has been investigated by the Complaints Committee, pursuant to subsection (4).

Person includes others

- (11) For the purposes of this Act, the "person whose conduct is being investigated" shall include a member, student member and holder of a certificate of authorization.

Objects of Committees

- (12) The objects of the Complaints Committee and the Discipline Committee are the protection of the public and the preservation of the reputation of the surveying profession.

Restriction on use of Committees

- (13) Unless desirable for the attainment of the objects enumerated in subsection (12), the Complaints Committee and the Discipline Committee shall not permit their procedures to be used,

- (a) for the sole purpose of harassing any member, person or the Association in general;
- (b) as a form of discovery for civil litigation;
- (c) for the sole purpose of pursuing relief normally available only through a decision or judgment rendered by a civil court;
- (d) for any other purpose extraneous to the objects stated in subsection (12)., 1986, c.59, s.17.

- s.25 There shall be a Discipline Committee appointed by the Council, and the composition and function of the Discipline Committee shall be provided for by the Council in the by-laws. 1986 c.59, s.18.

- s.26 (1) Subject to subsection (2), where the Discipline Committee finds a person who is a member, student member or holder of a certificate of authorization guilty of professional misconduct or finds that a person has obtained admission as a member, student member or holder of a certificate of authorization by reason of misrepresentation, the Discipline Committee may, by order, do one or more of the following:

- (a) reprimand such person and direct the reprimand be recorded on the roll;
- (b) impose a fine in an amount not exceeding three thousand dollars payable to the Association;
- (c) suspend membership in the Association for such time and on such conditions as the Discipline Committee considers proper;
- (d) direct the cancellation of membership in the Association and the removal of the members name from the roll;
- (e) direct the imposition of any penalty be suspended or postponed for such period of time and upon such terms as the Discipline Committee considers proper and that at the end of such period of time and upon compliance with such terms, the penalty be remitted;
- (f) notwithstanding the provisions of subsection 24(6), direct the member to pay the costs and disbursements of the Complaints Committee, the Discipline Committee and the Association relating to the investigation and hearing in an amount to be taxed by the taxing master and the member shall not carry on the practice of professional land surveying until he has made payment to the Association of such costs;
- (g) notwithstanding the provisions of section 24(6), direct the member to pay the costs and disbursements of the Complaints Committee, the Discipline Committee and the Association relating to the investigation and hearing in an amount not exceeding five thousand dollars to be fixed by the Discipline

Committee and the member shall not carry on the practice of professional land surveying until he has made payment to the Association of such costs;

(h) direct that the decision or order of the Discipline Committee be published in detail or in summary in such manner or medium as the Discipline Committee considers appropriate.

(2) Where the Discipline Committee finds a complete lack of evidence to have warranted a complaint under oath being sworn against the member complained of, it may order the complainant or in the case of a complaint sworn on behalf of the Association, the Association to pay to the member his costs and disbursements on the hearing in an amount to be taxed by the Taxing Master or fixed by the Discipline Committee and when fixed by the Discipline Committee such costs shall not exceed five thousand dollars.

Restrictions on Discipline Committee

- (3) The Discipline Committee shall not take any action under subsection (1) unless
- (a) a complaint under oath has been filed with the Secretary and a copy thereof has been served on the person whose conduct is being investigated;
 - (b) the person whose conduct is being investigated has been served with a notice of the time and place of the hearing; and
 - (c) the Discipline Committee has heard evidence of or on behalf of the complainant and, if the person whose conduct is being investigated appears at the hearing and wishes to adduce evidence or to have evidence adduced on his behalf until such evidence is heard, and the Discipline Committee has reached the decision that he is guilty.

provided that, if the person whose conduct is being investigated fails to appear in answer to the notice at the time and place appointed, the hearing may be conducted in his absence.

Evidence and administration of oath

- (4) Any person presiding at a hearing may administer oaths to witnesses and require them to give evidence under oath.

Hearing

- (5) Hearings shall be held in camera, but if the person whose conduct is being investigated requests otherwise by a notice in writing delivered to the Secretary before the day fixed for the hearing, the Discipline Committee may conduct the hearing in public or otherwise as it thinks proper.

Adjournment of hearing

- (6) The Discipline Committee may adjourn any hearing at any time and from time to time.

Rights of person investigated

- (7) A person whose conduct is being investigated has the right to be represented by counsel or agent, to adduce evidence and to make submissions and any such person may be compelled to attend and give evidence in the manner provided in subsection (10).

Oral evidence

- (8) The oral evidence submitted at a hearing shall be taken down in writing or by any other method authorized by the Evidence Act.

Rules of evidence

- (9) The rules of evidence applicable in civil proceedings are applicable at hearings, but at a hearing members of the Discipline Committee may take notice of generally recognized technical and scientific facts or opinions within the specialized knowledge of the members of the Discipline Committee if the person whose conduct is being investigated has been informed before or during the hearing of any such matters noticed and he has been given an opportunity to contest the matter so noticed.

Summons

- (10) The Chairman of the Discipline Committee or the Secretary may issue a summons in the prescribed form commanding the attendance and examination of any person as a witness, and the production of any document the production of which could be compelled at the trial of an action, to appear before the Discipline Committee at the time and place mentioned in the summons and stating that failure to obey the summons will render the person liable to imprisonment on an application to the Trial Division of the Supreme Court, but the person whose attendance is required is entitled to be paid for travel and attendance the amount prescribed for witnesses in the Supreme Court.

Contempt of hearing

- (11) If any person

- (a) on being duly summoned to appear as a witness, makes default in attending;
- (b) being a member who has been complained of and with regard to which a formal complaint has been sworn and a Discipline hearing convened, fails to appear at the hearing,
- (c) being in attendance as a witness, refuses to take an oath or affirmation legally required to be taken or to produce any document in his power or control legally required to be produced by him or to answer any question which he is legally required to answer; or
- (d) does any other thing which would, if the Discipline Committee had been a court of law having the power to commit for contempt, have been contempt of court,

the person presiding at the hearing may certify the offence of that member or person under his hand to the Trial Division of the Supreme Court and the Court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after

hearing any statements that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of court.

Right to examine and cross-examine

- (12) At a hearing the complainant and the person whose conduct is being investigated have the right to examine the witnesses called by them, respectively, and to cross-examine the witnesses opposed in interest.

Notice of decision and right of appeal

- (13) The decision taken after a hearing shall be in writing and shall contain or be accompanied by the reasons for the decision in which are set out the findings of fact and the conclusions of law, if any, based thereon, and a copy of the decision and the reasons therefore shall be served upon the person whose conduct is complained of and the complainant, together with a notice to the person whose conduct is being investigated of his right of appeal, within thirty days from the day upon which the decision is served upon the person whose conduct is complained of.

Order and notice to be in writing and served

- (14) An order made after a hearing pursuant to subsection (2) shall be in writing and a copy of the order shall be served upon the person whose conduct is being investigated, together with a notice to the person whose conduct is being investigated of the right of appeal within thirty days from the day upon which the order is served.

Record of hearing

- (15) A record shall be compiled for every hearing consisting of the complaint and the notice referred to in subsection (2), any intermediate rulings or orders made in the course of the proceedings, a transcript of the oral evidence, if a transcript has been prepared, such documentary evidence and things as were received in evidence and the decision and the reasons therefor, and documents and things received in evidence may be released to the persons tendering them when all appeals have been finally disposed of or the right to appeal has been terminated.

Service of documents

- (16) Any document required to be served under this Act upon a person whose conduct is being investigated shall be served personally upon him, but where it appears that service cannot be effected personally, the document may be served by mailing a copy thereof in a registered letter addressed to him at his residence or office address as shown by the records of the Association, which document shall be deemed to have been served on the second day after the day of mailing, and service shall be effected not less than ten days before the date of the hearing or event or thing required to be done, as the case may be, and proof by affidavit of the service is sufficient. 1977, c.13, s.25 (part); 1972, c.2, s.9; 1986, c.59, s.19.



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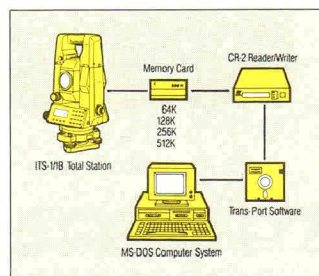
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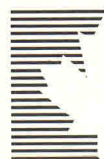
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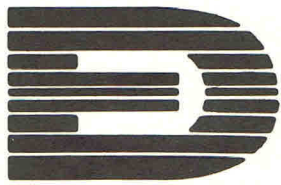
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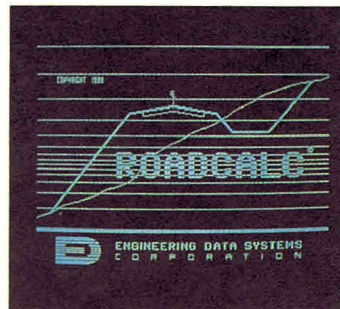
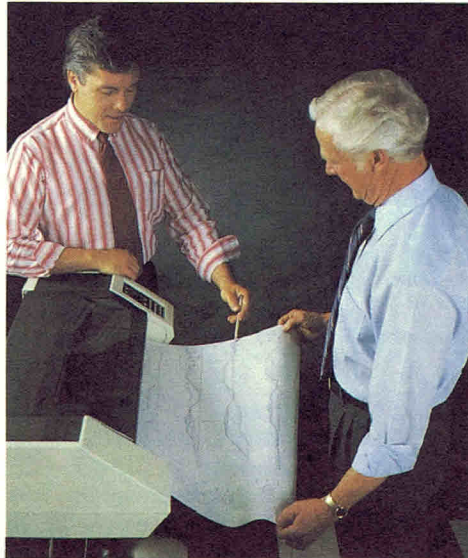
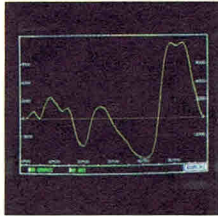
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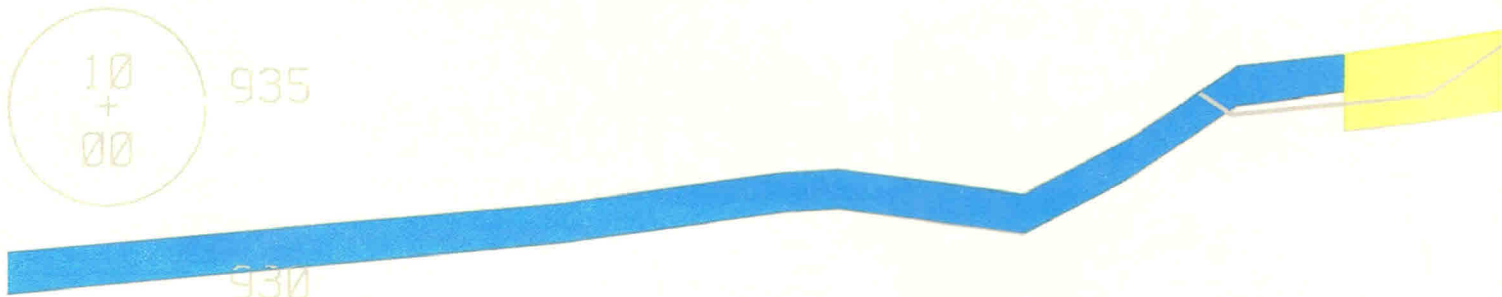
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"Letter to the Editor"

Dear Editor:

The "President's Message", by Syd Leoppky, A.L.S., in the March issue of the ALS News, aptly describes the dilemma presently faced by land surveyors in Canada in the assessment of fees for professional services performed.

Professional Associations are no longer permitted to publish, or even to consider, suggested fee schedules for the guidance of their members and the public. There can be no recommended scale of fees so that potential clients can estimate in advance the cost of receiving professional services.

Professional Land Surveyors' Associations across Canada are self-governing bodies created by Acts of the provincial Legislatures. Paramount amongst the objects of each Association is the responsibility for the public interest to be served and protected. This means that each Association is obligated to establish and maintain common standards for educational requirements, ethics and technical requirements for professional services. It can be argued then that these Associations should also be allowed to recommend fee guidelines so that members may assess and receive fair compensation from clients.

One or two provincial land surveying Associations do have the mandate from their respective governments to prescribe a schedule of suggested fees. Other Associations, however, are living in fear of a federal government department which has indicated that it will charge and prosecute any offender.

In theory, the federal policy is supposed to foster competition and thereby lower professional costs as a benefit to the public. But, is this policy really a benefit to the public? It may well foster competition and result in lower survey costs, but are clients consistently receiving the level of professional services that they deserve? Is there danger that too much competition is forcing inadequate research, technical shortcuts and substandard service?

A statistical survey of ANSLS members several years ago indicated that a significant number of land surveyors were charging less per hour for their services than one would expect to pay the neighbourhood mechanic or appliance repairman. Most yearly salaries were less than two-thirds of the average salary of surveyors in another province. Yet,

in Nova Scotia as in other provinces, it now takes nearly seven years to qualify for a Commission as a professional land surveyor.

Inadequate compensation is forcing many land surveyors to seek other careers. Less than half of ANSLS members now practise land surveying actively. Potential land surveying candidates in University are being driven into other fields of practice because there is little promise that the remuneration in land surveying will compensate them adequately for their years of training.

The Nova Scotia Government has passed Regulations in recent years requiring that all land surveying services provided to the public meet certain minimum standards of quality and accuracy. As land surveyors we must come to realize that we need to receive fair compensation for the complexity, the level of responsibility and the liability potential of the services we perform. We may be unable to set a common fee schedule but at least we should individually seek and receive compensation which reflects our level of qualification and professional responsibility.

I suggest that all land surveyors providing services for a fee should read the articles on pricing and business practices that are currently appearing in the Professional Surveyor and other American surveying journals.

In closing, I would quote excerpts from Mr. Loeppky's editorial: "...we must move positively to increase professional cooperation between members... increase public awareness... increase the business skills of our members... improve the quality of professional practice... all positive steps and we are all capable of working together to achieve them."

David C. Clark, NSLS
Truro, N.S.



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Left to Right:

Murray Banks, Dartmouth, N.S.; Eric Jordan, Dartmouth, N.S.; Reginald Lewis, Dartmouth, N.S.; Garnet Clarke, Anondale, Hants Co., N.S.; Jeremiah (Jerry) Maharai, Trinidad (deceased); Major Church, (deceased); Leslie Lunn, Nassau (deceased); Jim Doig, Wolfville, N.S.; David Goldenburg, Queenston Heights, Ontario; David Hamilton, Fredericton, N.B.

Missing:

David Jones, Newfoundland; Carl Norberg, Newfoundland; Bernard MacNeil, North Rustico, P.E.I.; Ellis Doucette, Marshalltown, Digby County; Dennis Theophilus, St. Lucia, West Indies; Gerald Sloat, New Brunswick.

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 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 following claim involves the posting of the corners of a residential property. Our insured was requested by an individual property owner to post the corners of a particular property in order that he may proceed with construction of a single family residence.

The insured's Party Chief completed the survey, however as he was unable to place three of the four corners at the actual corners, they were offset. Two of the corners offset were the front lot corners along the street. The Party Chief also neglected to mark them in a way to indicate that they were offset. It then appears that the file was inadvertently misplaced and no posting plan was issued to the owner. Some four months later the file turned up and our insured proceeds to prepare the posting plan, indicating the offsets, and invoice the property owner. The property owner paid his account and filed the posting plan, as he had already commenced construction of the house soon after the actual posting had been completed.

Nothing further happened until the property owner attempted to sell the house some eight months after the posting survey had been completed. The prospective purchaser, for the purpose of obtaining a mortgage, sought a surveyor's certificate, and the insured, by pure coincidence, was called upon to perform the survey. When the insured attended to do this survey they then found that the house was placed too close to the front property line, and thus was in contravention of the Municipalities zoning bylaw.

The prospective purchaser, on being told of this apparent problem, backed out of the purchase. The property owner then appealed to have the non-conformity ratified by the Municipality. This non-

conformity was approved, however when the house was relisted for sale, some five months latter, he received \$7,000.00 less than the earlier offer. A statement of claim was subsequently filed and claimed for the following:

1. reduction of the sale price
2. interest on the sale price
3. additional costs of hydro, taxes, water and insurance
4. inspection costs
5. cost of the action

The claim was ultimately settled out of court however the cost to the program was considerable.

What was the cause of this claim? It appears there were several contributing factors that led to this claim. First of all we run into the problem that has been seen in several claims and that is the offset line. While offset lines are a necessary evil of the industry, it is important that they be used cautiously. I would also suggest that another contributing factor in the claim was the delay in the submission of the posting plan to the client.

In order that we try and avoid claims of this type in the future, I would urge all insureds to beware of offset lines and to do all in their power to supply required plans in acceptable time period.



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SO SOMEONE LODGED A COMPLAINT AGAINST YOU...

In any occupation or profession, no matter how diligent and capable you are, it is a virtual certainty that at sometime someone will be unhappy with you or the service you have provided. If you do not confront this situation in the course of your career, consider yourself truly blessed. Sometimes these unhappy people complain to the Association. Finding yourself in the position of having to respond to such a complaint will be disconcerting at the least. The object of this article is to review the complaints process and what is expected of a member who is the subject of a complaint.

The Association regularly receives calls from the general public which can best be described as complaint inquiries. Typical questions asked by callers are:

Why did The Land Surveyor enter my property without my permission?

Why did The Land Surveyor give my property to someone else?

Why doesn't the survey match the deed?

Why didn't The Land Surveyor put my line in the right place, where I said it should be?

Why did The Land Surveyor tell me it would cost \$ X and then charge me \$Y?

Why did it cost so much when he was only on my property for such a short time?

Why did The Land Surveyor spend so much time on everyone's property but mine? I'm the one paying for the survey.

Many of these callers can be satisfied with a patient answer or explanation. In addition, they are encouraged to discuss their concerns directly with the land surveyor involved. If the caller wishes, the Association will contact the land surveyor to discuss the matter or arrange a meeting. Often, unfortunately, things have already deteriorated beyond the point where this sort of dialogue is possible.

Letters of inquiry are sometimes received which pose the same type of questions. They are handled similarly and every effort is made to alleviate concerns and resolve the situation through discussion.

If callers wish to lodge a complaint, a copy of General Information Concerning Complaints is forwarded to them. This information package explains the Association's mandate and procedures regarding complaints and provides excerpts from the Land Surveyors Act. It is clearly stated that the Association cannot arbitrate boundary disputes.

The Complaints Committee must investigate the conduct of any member, student member, or holder of a certificate of authorization when a written complaint is received. Any person may complain. They need not be a client or even an affected land owner. (Act:s.24(2) and (10)).

Members of the Complaints Committee are appointed by Council for a term of two years. They may be reappointed. At least two of the Committee members must be in full-time private practice and at least one must be employed in the public service. (Act:s.24(1), By-law:16.1). At present the Committee is composed of three full-time private practitioners, two public employees and one member employed in private industry.

The objects of the Complaints (and Discipline) Committee are to protect the public and preserve the reputation of the surveying profession. The use of the Committee for any other purpose is prohibited (Act:s.24(12) and (13)).

Interestingly, the public often feels that the role of the Complaints Committee is to protect surveyors. They think the Association is an "old boys network" and will do little to deal with an errant surveyor. Conversely, some land surveyors feel the Association is too receptive to complaints and too demanding of its members when they are the subject of a complaint.

Every effort is made by staff to avoid complaints by explaining the nature of boundary disputes and the surveying profession to potential complainants. Having said that, when a written complaint is received, the Complaints Committee is compelled by law to investigate it. The exact nature of a complaint cannot be determined without investigation. If it becomes apparent that the complaint is unfounded or involves a difference of opinion, it is dismissed.

Members of the public sometimes think the Association will arbitrate a boundary dispute or pick who's right when surveyors have provided differing opinions. It is indeed not a terribly unusual thing to have surveyors form differing opinions as to the location of a boundary. However, it must be remembered that it is possible that one, or for that matter both of them, may have arrived at his opinion improperly or without following the appropriate standards.

If a complaint is received, there is no way to determine its nature unless the Complaints Committee investigates.

When letters of complaint are received they are referred to the Complaints Committee for investigation (Act:s.24(2)). A copy of the complaint is sent to the Chairman of the Committee and receipt of the complaint is acknowledged by letter to the complainant. At the same time a copy of the complaint and any material or information which accompanied it is forwarded to the member who is the subject of the complaint. The member is asked to review the complaint and to forward to the Complaints Committee his file, or a copy, relating to the subject matter of the complaint along with any comments or response he would like to make. This request is made by way of registered letter and a response is required within ten days. (By-law:16.3).

Any member who receives such a letter is undoubtedly somewhat taken aback. There are several good reasons why the Complaints Committee proceeds in this manner.

The Complaints Committee must investigate written complaints referred to it (Act:s.24(3)(a) and (9)) and there is no way the Committee can understand the

surveyors involvement or the work he has carried out without reference to his file. In addition, one of the major criticisms levelled at the Association by the public is that of delay. Unfortunately members have demonstrated consistently that they will not respond in a full and timely manner unless the date of their receipt of correspondence can be verified and they have been notified that failure to respond in a timely manner is professional misconduct (By-law:16.3; regulation s.2(f)).

It is important to note that only material actually in the surveyor's file need be submitted (By-law:16.3) and that the member is not expected to expend excessive amounts of time "building a file". The contents of field notes and the supporting file required to be kept by members is set out in the regulations (Regulation:s.28, 31 and 32). Original material submitted will be returned.

The Complaints Committee meets as a whole one evening each month. Depending upon when a complaint is received, file material may already be on hand by the time of the next monthly meeting. At the meeting one member of the Complaints Committee takes responsibility for the complaint file. File assignment is done randomly on a rotating basis keeping in mind the need to balance the load of Committee members.

The Complaints Committee is ever mindful of the potential for conflict of interest. Whenever any member of the Committee has any connection to a complainant, surveyor or property which might possibly give rise to a conflict of interest, that member of the committee is not further involved with the complaint in any way.

The Complaints Committee member to whom a file is assigned will review the complaint and the response received from the surveyor and frequently meet separately with both the complainant and the surveyor. It may be that through this process the Committee member will disclose common ground upon which the conflict between the surveyor and the complainant may be resolved. If this opportunity presents itself it can offer the best possible solution for everyone. This type of cooperative resolution depends for the most part on the attitude of the parties involved.

Strictly speaking this type of mediation is not within the stated mandate of the Committee. The Committee, however, feels that where possible this approach may truly be the best reflection of its objectives: protecting the public and preserving the reputation of the profession.

Sometimes matters are resolved, complaints withdrawn and everyone goes away happy. Human nature being what it is, this doesn't happen frequently.

In the course of investigating a complaint it may be determined that field investigation or a site inspection is required to fully appreciate the matter. Committee members may conduct such an inspection. Occasionally the Complaints Committee will hire an independent land surveyor, from another area of the province, to carry out this task.

At each monthly meeting of the Committee, members report on their progress with files. When the investigation of a complaint is complete the Complaints Committee has only two choices. It can dismiss the complaint if it is of the opinion that the investigation did not reveal evidence which could support a finding of professional misconduct if sent for formal hearing to the Discipline Committee. (Act:s.24(3)(6)).

If, in the opinion of the Complaints Committee, the investigation reveals evidence which could support a finding of professional misconduct, the Complaints Committee must advise the complainant of this finding and ask whether the complainant wishes to swear a formal complaint for referral to the Discipline Committee for formal hearing or wishes the Association to do so. (Act:s.24(3)(c)). In almost every case the Association is requested to do so. Otherwise the complainant would be required to bear the costs of proceeding with the matter. (Act:s.24(6)).

Critical to the function of the Complaints Committee is the definition of professional misconduct. It is defined in the regulations as follows:

s.2 For the purpose of the Act and the regulations, "professional misconduct" means infamous, disgraceful or improper conduct on the part of a member, student member or holder of a certificate of authorization and, without restricting the generality of the foregoing, includes

- (a) gross negligence in the discharge of duties;
- (b) technical incompetence in the practice of professional land surveying;
- (c) a breach of the Code of Ethics (Part III of the regulations), the Act, the regulations or the by-laws;

- (d) a conviction for an indictable offence under the Criminal Code of Canada or under any other statute of the Parliament of Canada;
- (e) wilful and malicious conduct which causes the Association to be brought into disrepute;
or
- (f) failure to respond within a reasonable period of time to official correspondence from the Association.

In reaching a decision the Complaints Committee must apply this definition to the evidence disclosed by the investigation to determine if the evidence could support a finding of professional misconduct by the Discipline Committee at a formal hearing. The Committee must also keep in mind precedents: previous decisions of the Discipline Committee. Some recent decisions of the Discipline Committee are significant in that they indicate the Discipline Committee will not consider all breaches of the regulations as constituting professional misconduct.

It is important to realize that "the Complaints Committee" is made up of real people - individual members of the Association sit on this Committee. I attend all Committee meetings as well as almost all meetings between members of the Committee and surveyors or complainants and I act as Secretary to the Committee. I am continuously impressed by the diligence of these members and the seriousness with which they approach their responsibility. Protection of the public and preservation of the reputation of the profession are always the prime considerations. But of no less concern, is fairness to the member and a recognition of the emotional, time and sometimes financial costs involved.

Service on the Complaints Committee is for the most part a thankless job. When complaints are dismissed the complainant commonly cries "whitewash" and "what could you expect from other surveyors". One common matter of consternation on the part of complainants is the fact, mentioned above, that the Complaints Committee will not arbitrate boundary disputes or comment on the "correctness" of a boundary determination.

If a complaint is referred to the Discipline Committee for formal hearing the particular surveyor involved and perhaps some other members generally might

feel the Committee is being too harsh. As a member of the Complaints Committee, you become intimately familiar with the "damned if you do, damned if you don't" conundrum.

Should you find yourself the subject of a complaint here is what is expected of you: respond in a timely and forthright manner to the requests of the Committee; deal with the complainant and the Committee in as professional and unemotional way as possible. Complaints don't go away on their own. Remember that not only your personal reputation may be at stake but also that of the profession and the Association generally.

Our Complaints process protects all members by ensuring public access and confidence in our diligence in regulating the quality of land surveying in Nova Scotia. Granting of a licence to practice and membership in a professional association is a privilege. Status as a self-governing profession carries with it the responsibility of ensuring that standards are met and the public is well served and protected. This includes both the collective and individual responsibility to respond appropriately to complaints, as required by law. It's not always easy, but how we carry out this responsibility is the very thing which sets apart professions and professionals from others.

Rosalind C. Penfound
Executive Director



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PROMOTING THE PROFESSION

by Harold S. Charlier, Chairman
NSPS Public Relations Committee

Image enhancement for the surveying profession is not a task to be left to a small Committee. It is not something that can be accomplished with a periodic "shot in the arm." Image enhancement and public relations in general are the continuing responsibility and obligation of the entire profession. The way the surveyor dresses; the appearance of his office; his manners on the telephone; the conduct and appearance of his field personnel - all are important elements in maintaining a favorable image. But there are also many image enhancement activities that surveyors can undertake as a group, be it a state association or a local chapter. Let's consider just one of those activities - sponsoring an informational booth at a convention, fair, or trade show.

Like anything else that's worthwhile, sponsoring a booth requires careful planning. That planning usually begins with a determination and commitment by your board of directors to allocate funds for public relations activities. PR deserves a slice of your budget, right up there with legislation and education.

Ideally, the purchase of an attractive portable display will get you off to a good start. However, don't be shocked at the cost of these displays. You might find something minimally adequate for \$500, but expect to pay \$1,000 or more for the type of displays the exhibitors use at your annual convention.

YOU NEED A THEME

An attractive display is nice, but it can't do the whole job. You must have a reason for being there; you must have a message to convey, and the message must catch the eye of the passerby. Obviously, you must know who your audience is. Is it a convention of county and town officials? Is it a home or realtors' show? A county fair? The general public at a shopping mall? Accordingly, your banner might read: "Purchasing Property? You Need a Survey!", or "Monumented Section Corners - The Responsibility of the County", or "Monumented Section Corners - The Basis For Reliable Legal Descriptions", or "Good Land Records Begin with Accurate Surveys."

Once you have a sign prominently displayed, that attracts the passerby, you need handouts, such as pamphlets elaborating on the theme or purpose of your booth. Other attention-getters include large aerial photographs of familiar local sites; an instrument set up and focused on a distant object in the convention hall; an antique instrument; old plats and maps; or a computer and plotter in action.

A sure way to draw people to your booth is to offer a prize. They merely fill out a short form and drop it in a box. A prize that seems to go over very well is a globe mounted on a stand or pedestal; it is well worth the \$40 or \$50 cost.

Once your booth is in place, don't over look or underestimate the most important ingredient in selling your profession - yourself! It behooves us to dress like professionals. This is not the time and place to show up in field garb. A suit and tie are definitely in order.

Prior to exhibiting for the first time, you may find it helpful to discuss strategies with veteran exhibitors - those people who regularly attend and participate at your annual convention. Their coaching and advice may help you avoid the lessons some of us had to learn the hard way. Many exhibit halls have strict requirements for setting up displays. Forgetting an extension cord or ordering another table at the last minute can be pretty expensive.

SHARE A DISPLAY

If your state association is typical, your members also belong to a local chapter. To minimize costs, your association might consider funding the cost of the display and allowing local chapters to use it when needed. Local chapters, in turn, might be responsible for purchasing the handout materials and the prize if one is to be given away.

As mentioned earlier, a display booth is a group activity - meaning that several surveyors participate. Remember, public relations and image enhancement are the obligation and responsibility of the entire profession!



ETHICAL ESSAYS

by James F. Doig, NSLS, CLS

CONFLICT OF INTEREST

Everyone knows that if you work for Kellogg you can't win the contest on the back of the cereal box!

Rosalind C. Penfound
1991

Confronted with a new rule or technique, we have all profited from examples. Whether learning how to write a resumé or how to do a least squares adjustment, sample exercises place fundamental principles within a simple and practical context. A particular sample may be overly simple to begin with, and all the samples may not cover every possible variation of the theme. The important thing about them is that they point one in the right direction, and may themselves be adapted to other circumstances as one becomes more familiar with techniques and how to handle changes in detail. Though examples can be only part of the larger picture, they are recognizable and useful beacons to light up an unfamiliar landscape.

Our Code of Ethics would be more helpful and more useful were it to offer some practical illustrations. As it now stands, the Code is not as clear as it could be. Statements of broad principle are made but they are not followed up with any specifics. A principle or rule stands by itself; there are no examples to act as a guide. A case in point is the part of the Code which deals with conflict of interest and some associated matters.

By Article V, when a conflict exists the surveyor is required to disclose it. The surveyor must also disclose any affiliation or prior involvement that could detract from the quality of service given a client. In Article VII, the surveyor is required to exercise "unbiased independent professional judgment" and to "disregard compromising interests and loyalties." No further details or explanations are offered. The principles of behaviour having been stated in broadest terms, the surveyor is left with no further guidance to identify the particular occasions when these principles have to be applied in practice. More to the point, perhaps, is that a conflict of interest has not been defined even in its most general terms:

Circumstances which might lead to an actual or perceived division of loyalty; circumstances which might tend to inhibit objectivity or to give that perception.

One cannot expect to find in an ethical code the range and precision of numerical examples found between the covers of a Schaum's Outline on differential equations. But the absence of anything approaching a sample (actual or imagined) of a conflict of interest, set in terms of a survey practice, makes compliance a rather tall order to fill. Some explanations or illustrations would certainly make the Code more realistic and more meaningful — and perhaps (if things had to come to that) more enforceable. Some conflicts may be pretty plain and easily recognized; others are hard for the individual who is directly involved to identify, even when fully alert and looking for them. Furthermore, perceptions of what may be proper and what may not vary with the individual, while a code of ethics is the expression of the standards of a group of people who are joined by a common bond.

Circumstances which in the group's opinion may give rise to difficulties ought to be cited in appropriate detail. This would enable the individual to adjust his or her standards to those of the group, if need be. Were actual cases referred to, the individual might more readily profit from the experience of others. Experience is a great teacher, but there are certainly occasions when it is preferable that the experience be someone else's.

Within the ambience of surveying there are situations that might give at least the appearance of a conflict of interest.

Suppose a surveyor holds a significant interest (or perhaps even a controlling interest) in a corporation that owns property beside a parcel that surveyor is engaged to retrace. Should the surveyor make a formal declaration of interest? If so, to whom, and could the Code usefully give this as an example of proper conduct in such circumstances?

Should disclosure be required where a close family tie links the surveyor and the owner of a parcel adjoining the lands to be surveyed? Under the rules of bornage in the Province of Quebec, the surveyor must make such family connections known to all parties before taking on the work. In turn, they may set any objections aside; but everyone is aware of the circumstances. There, the surveyor knows ahead of time what is expected; here we seem to leave it up to the individual to identify an occasion of this sort as a possible conflict and then decide what, if anything,

should be done about it. Should a surveyor be required to notify adjoining owners if engaged to retrace the boundaries of family-owned lands?

Consider the surveyor who is employed by a corporation, a government department or a municipality. Is there a conflict of interest when the surveyor, moonlighting, takes on work which requires the survey of lands abutting those of the surveyor's employer? And in the case of the moonlighting municipal surveyor, is there potential for conflict when she or he becomes involved with a subdivision that must eventually go for final approval before the planning board of that municipality?

What about the survey company that responds to a request for proposals or a request for tenders, when a related company has been involved in the preparation of the request and its accompanying specifications? How close would the companies have to be to be too close? How far apart ought they be in order to be seen as independent entities? Or could they ever be seen to be independent unless a disclosure drew attention to their linkages in the very beginning of things? Or would even such a disclosure clear the air? (See the "Kellogg rule" at the beginning of this article.)

Each of these situations would provoke a good deal of discussion in any group, were it placed on the agenda. But left to ourselves, individually, how many of us would recognize them as possible trouble spots, given no prompting in the run of a busy or even a hectic week? Could we find ourselves in an awkward position simply because we had not recognized beforehand what later, and by others, was so clearly perceived to be a conflict of interest?

The most important thing is to recognize a situation that might give rise to difficulty if not dealt with properly. The next thing is to do something about it. Probably the safest and surest approach is to declare or disclose what might be a conflict of interest. The other parties concerned may themselves see no conflict, having regard to all the circumstances; or they may be quite willing to proceed anyway, once all pertinent factors are known. The essential point is that everything be out in the open, and that no significant matter be left for someone to discover later.

A different but related aspect of matters crops up when one wonders at what point, or when, the conflicts of the surveyor's client become the surveyor's conflicts. (Is everyone still with me?)

A code of ethics ought to be more than a set of rules of behaviour or a list of do's and don't's. A code should contain some worked examples, or at least the ethical equivalents of them.

I think such an arrangement, particularly in respect to our own Code, would better help the individual recognize compromising situations so that they might be dealt with thoughtfully, promptly and objectively.

What do you think?

J.F. Doig
Wolfville, N.S.



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BASELINE UPDATE

by Jim Gunn

The 1991 Geodetic Survey calibration report on the Halifax Baseline and a revised report on the 1989 Port Hawkesbury baseline have been made available to the Association office. The end results are summarized here and shown in comparison to previous values. For the latest information on the Lawrencetown baseline as well as general instruction on using baselines, please refer to an article entitled "Baselines made user friendly" in the Fall, 1988 issue of the Nova Scotian Surveyor.

Excerpts from the 1991 calibration report for the Halifax baseline:

Baseline Site: The five-pier baseline is built on bedrock on the northwest side of Hwy #102, between Halifax and the International airport. It appears to be a good baseline site except for an intervisibility problem at pier 3.

This baseline should be used with caution since it has only four piers with adequate redundancy with which to test for pier stability. The following values represent slope distances between piers in metres for a normal baseline test configuration. They are compared with previous published values.

Pier	previous values	new values
1-2	398.4443	398.4432
1-3	753.0223	753.0200
1-5	1658.6907	1658.6934
3-2	354.5813	354.5798
3-4	397.6922	397.6888
3-5	905.6708	905.6755
4-5	507.9941	508.0019

Revised Values for the Port Hawkesbury Baseline

In the 1990 Spring/Summer issue of the Surveyor we reported that the Geodetic Survey remeasure of this baseline concluded that pier 2 should not be used because of its weak configuration. We have since been reassured by the Control Surveys Section of LRIS that we can ignore the federal recommendation as the configuration of this baseline is sufficient for our purposes. The following revised slope distances are compared with previously published values.

pier	1981 values	1989 values	revised 1989 values
1-2	331.8392	331.8364	331.8382
1-3	646.2196	646.2169	646.2172
1-5	1277.1600	1277.1494	1277.1514
3-2	314.3894	314.3895	314.3913
3-4	298.8789	298.8747	298.8760
3-5	630.9414	630.9334	630.9360
4-5	332.0637	332.0599	332.0611



WANTED

A copy of the Nova Scotian Surveyor No. 37 Vol. 15 which, it is thought, was published in December 1963 as the only issue in that volume.

This is the only one among the early issues which is still unlocated. If you have a copy, please send it to the Association.

If so desired, it will be photographed and returned. A copy of this issue is needed to complete a binding of early issues to replace the one stolen from the Library at COGS a few years ago, and to complete the Association's set.

THE ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS: MEETING OUR OBJECTIVES

(Remarks given at the College of Geographic Sciences
Surveyors Forum, January 29, 1991)

Rosalind Penfound, B.P.E., LL.B.
Executive Director
Association of Nova Scotia Land Surveyors

In Canada there are some 2900 land surveyors. In Nova Scotia there are 300, 52% of whom offer their services to the public. By way of comparison it is interesting to note that in Nova Scotia there are approximately 1500 lawyers, 1500 real estate agents and 4900 engineers.

The land surveying profession in Nova Scotia is governed by the Land Surveyors Act, R.S.N.S. 1989 c. 249. It creates a monopolistic self-governing professional organization. This organization is the Association of Nova Scotia Land Surveyors. It is a monopoly because only its members have a right to practice land surveying in Nova Scotia. It is self-governing because it has the responsibility for admitting members and overseeing their conduct. The legislature has created other self-governing professions as well, e.g., law, dentistry, engineering, nursing.

The objects of the Association are as set out in section 3(4) of the Act:

s.3(4) The objects of the Association are to

- (a) establish and maintain standards of
 - (i) professional ethics among its members, student members and holders of a certificate of authorization, in order that the public interest be served and protected, and
 - (ii) knowledge and skill among its members, student members and holders of a certificate of authorization;
- (b) regulate the practice of professional land surveying and govern the profession in accordance with this Act, the regulations and the by-laws; and

- (c) communicate and cooperate with other professional organizations for the advancement of the best interests of the surveying profession.

The Association is responsible for ensuring that these objectives are met. If we are not vigilant in fulfilling this responsibility we risk losing the privilege to exist as a self-governing profession. Everything the Association does is tied to these objectives. Here is a brief overview of major association activities which highlight the commitment to serving and protecting the public by striving to constantly meet our legislated objectives.

The requirements for admission to membership are stringent and a candidate would be hard-pressed to meet them in less than six years. Only persons who have gained membership in the Association by meeting these requirements may use the designation, "N.S.L.S." Standards for admission to membership are key to fulfilling our objectives.

To become a Nova Scotia Land Surveyor there are specific requirements to be met. They are spelled out in detail in the Land Surveyors Act and regulations. To summarize, a candidate for admission must obtain a certificate from the Atlantic Board of Examiners for Land Surveyors. For the most part, this equates with education to the level of a Bachelor of Surveying Engineering. A candidate must also meet the requirements of the Nova Scotia Board of Examiners for Land Surveyors. These requirements include serving a twenty-four month period of articles with a licensed Nova Scotia Land Surveyor, writing the professional examinations of the Board and satisfactorily completing a survey retracement project assigned by the Board.

The Land Surveyors Act gives the Association the right to establish regulations to further carry out the intent of the Act. There are lengthy and detailed regulations in place regarding surveying standards. These are under constant review and scrutiny to ensure that they are appropriate. The public and the profession are best served and protected by an insistence on an adherence to the highest standards.

Other regulations designed to help members meet these standards have recently come into force. Of particular note, the Association established a Survey Review Department effective January 1, 1990. It is currently staffed by a full-time Nova Scotia Land

Surveyor and a part-time survey technician. Surveyors purchase Survey Review Department stickers which they affix to all plans they certify and a copy of that plan is forwarded to the Association.

The Survey Review Department tracks sticker sales and use. The Department conducts random checks of plans submitted by surveyors for compliance with regulated standards and may conduct comprehensive reviews of a surveyors work when warranted. This approach is viewed by many, both within the surveying profession and other professions, as a very progressive, pro-active approach which serves the public and our members well. The public is ensured of high standards and members are assisted in every way possible to meet those standards.

The Association is also required to ensure compliance to standards of practice reactively. When complaints from the public are received, the Association reacts through its Complaints and Discipline Committees.

Written complaints alledging professional misconduct are referred to the Complaints Committee for investigation. If there is no evidence of professional misconduct the matter is dismissed. In the alternative case, it may be referred to the Discipline Committee for a formal hearing if some evidence of professional misconduct as a consequence of a formal hearing the Discipline Committee may order that he be reprimanded, suspended, lose his licence to practice, pay the costs of the hearing, etc.

This Complaints and Discipline process is not a positive one for any one involved-staff, committee members or members about whom complaints have been received. However, it is necessary to respond to the concerns of the public, while at the same time being fair to our members.

In addition to the Complaints and Discipline Committees which are required by law, the Association has many other committees, the purpose of which is to address particular concerns or work toward specific goals, within the overall objectives as established by the Act. To name a few of these committees: COGS Liaison, Barristers Liaison, APENS Liaison, Regulations, By-laws, Public Relations, Municipal Affairs Liaison, Department of Transportation and Communciation Liaison, Survey Review Advisory and more.

All of these activities and initiatives have at their very root a desire to meet the Associations objectives. The Association has made some significant changes over

the past two years: full-time staff are now in place and new regulations regarding admission to membership, the Survey Review Department and mandatory liability insurance have come into force. As a profession, land surveyors in Nova Scotia are pregressive and are working hard to meet the objectives set down in our Act. We look forward to many of you one day becoming members.

Thank you.



WANTED

The Editorial Board of the Canadian Council of Land Surveyors is anxious to obtain the volunteer services of individuals willing to write articles relating to the land surveying profession. Articles suitable for public consumption or to disseminate items of interest to all Canadian land surveyors on a timely basis, are wanted.

In order to successfully carry out the objectives of the Canadian Council of Land Surveyors, a much greater emphasis is to be placed on the dissemination of information. To do this effectively the Editorial Board must create a pool of resource people who are willing to carry out specific writing assignments.

The Board will provide a list of suggested themes or specific topics, but will also be receptive to articles on a topic which is near and dear to the author's heart. So if you harbour a secret desire to write or to have something you have written included in a professional publication, we want you!

Please contact:

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REMUNERATION IN SURVEYING AND MAPPING

(Remarks given at the College of Geographic Sciences
Surveyors Forum, January 29, 1991)

Robert A. Daniels, N.S.L.S., C.L.S.

As each individual approaches the end of their secondary education, the search for future employment in their chosen field begins. Among the various factors which are considered are, where will I work? who will I work for? is the job compatible to the training I have received and, how much money will I make? The job, the location of the job and the employer are all subject to the amount of money which the individual will receive that is to say, that you may well decide to work under more difficult conditions or in other geographical areas if the money compensates for the hardships.

Once an individual has obtained his first job at a salary which he deems suitable for his position and efforts of the time, then he can consider that he has cleared the first major hurdle but, what lies ahead for that particular individual, with respect to future success is no longer regulated by educational requirements or physical stature. It now becomes up to the individual's own ambitions and motivation to become successful. When companies are looking for prospective employees, there are several key ingredients which they look for, the first being academic success. Was that individual successful and competent while receiving the necessary training for his chosen field? Did he have good marks? -did he complete all assigned projects in a competent manner? -did he relate well with other students, instructors? And did he participate in other activities at the institution of learning such as student government or sportsclubs. This record of the individual's immediate past may well tell the future employer how this particular person will relate to existing staff and be willing to participate in things which are beyond his job description.

An individual's personal appearance and presentation is taken into consideration by any prospective employer. A neat appearance with clothing style applicable to the styles of the day may well help to influence an employer's choice. The person's presentation to the prospective employer and relating to other individuals may well be an important part of obtaining employment. As communications, both written and spoken are an important factor of

everyday business, the individual should always remember that he will be the representative of the employer in the work force, on the job site and, in many cases, dealing with the clients, therefore, they should look professional and act professional and be professional in all their presentations.

The majority of employers, when seeking new employees, are going to look for people who are ambitious, self-motivated, confident, willing to learn, willing to ask and willing to give of themselves. An individual who goes beyond his normal job requirements with respect to trying to complete a task or resolve problems by demonstrating ingenuity and thoroughness, will more than likely impress his employer with his efforts and undoubtedly be rewarded financially or with opportunities to move up the corporate ladder.

One must be careful to know the difference between being stubborn, over aggressive and independent as compared with being ambitious, self-motivated, confident and keeping the well-being of the client, the company and himself of concern in that order. Generally all employers, once they meet middle age, start to think of retirement and search for the appropriate personnel to whom they can pass control of their business. All of the above referred to points will one way or another be transferred into dollars for the individual.

The attached chart is an indication of the salary or wages which can be expected in the work force at the present time. These figures are a general average obtained from private practice and municipal provincial governments and federal governments in the Halifax/Dartmouth, Nova Scotia area.

The figures shown relate to people who are just starting in the surveying and mapping industry and generally people who have been in the industry for up to ten years. When trying to consider what the future beyond ten years may hold, it becomes entirely dependent upon the individuals success with the company or organization for which they work. In general, it could be said that people who move into senior management positions or senior department heads can make in excess of \$50,000.00 as well as have such benefits as a car or an expense account.

POSITION	PRIVATE	MUNICIPAL	PROVINCIAL	FEDERAL
HOURS/WEEK	40	35	35	37.5
HOURS/YEAR	2080	1820	1820	1950

LAND SURVEYING

<i>Survey Assistant</i>				
Junior	\$9.00/Hr.	\$22K/Yr.	\$20K/Yr.	—
Senior	\$10.00	\$26K/Yr.	\$23K/Yr.	—
<i>Survey Technician</i>				
Junior	\$10.00/Hr.	\$25K/Yr.	\$27K/Yr.	—
Senior	\$14.00/Hr.	\$32K/Yr.	\$32K/Yr.	\$31K/Yr.
<i>Draftsperson</i>				
Junior	\$9.00/Hr.	\$24K/Yr.	\$26K/Hr.	—
Senior	\$14.00	\$32K/Yr.	\$31K/Yr.	\$31K/Yr.
<i>Researcher</i>				
Junior	\$9.00/Hr.	N.S.L.S.	\$30K/Yr.	N.S.L.S.
Senior	\$14.00/Hr.	N.S.L.S.	\$33K/Yr.	N.S.L.S.
<i>N.S.L.S.</i>				
Crew Chief	\$14.50/Hr.	\$33K/Yr.	—	\$39K/Yr.
Supervisor	\$19.00/Hr.	\$40K/Yr.	\$39K/Yr.	\$50K/Yr.
<i>Survey Engineer</i>				
Junior	\$15.50/Hr.	\$39K/Yr.	—	\$39K/Yr.
Senior	\$22.00/Hr.	\$44K/Yr.	\$43K/Yr.	\$50K/Yr.

PHOTOGRAMETRY

<i>Operator</i>				
Junior	\$9.00/Hr.	—	—	—
Senior	\$14.50/Hr.	—	\$33K/Yr.	—
<i>Supervisor</i>	\$16.50/Hr.	—	\$44K/Yr.	—
<i>Manager</i>	\$44K/Yr.	—	\$48K/Yr.	—

GEOGRAPHIC INFORMATION SYSTEMS

<i>Operator</i>				
Junior	\$8.00/Hr.	\$26K/Yr.	—	—
Senior	\$11.00/Hr.	\$35K/Yr.	\$32K/Yr.	—
<i>Supervisor</i>	\$30K/Yr.	\$40K/Yr.	\$44K/Yr.	—
<i>Manager</i>	\$40K/Yr.	\$45K/Yr.	\$48K/Yr.	—

CO-OP TRAINING FOR SURVEY ASSISTANTS

Co-op training - what is it? Since terms like this mean different things to different people, I will discuss the co-op portion of the Survey Assistant Program at the College of Geographic Sciences. Next question - what is a program? At C.O.G.S. a program is a defined area of study, made up of a number of courses. For example, one of the courses in the Survey Assistant Program is drafting, which is considerably different from the drafting course in the Survey Technician Program. To avoid further confusion, the following remarks will refer to only the Survey Assistant Program that was set up in 1975.

Some time before 1975 a number of survey types from government departments and private industry got together and listed the individual tasks that survey assistants, or crew members, should be able to do. It was felt that there was a need for trained crew members. Also, it would provide an opportunity for those with limited mathematical abilities to get a foot in the door of surveying, rather than get a kick in the posterior with a frozen boot, as Major Church used to say. (Now that I think of it, I'm not sure that he ever said "posterior".) This training was not intended to qualify students as instrumentpersons, but rather to train students to become members of a survey crew and also to be useful in survey offices, to some extent. The Program has had considerable success. Many past graduates have worked their way up to positions as instrumentpersons and party chiefs. It is unfortunate that the Maritime economy is such that it is necessary to advance beyond the position of crewmember in order to earn a reasonable living. Others found that they were sufficiently interested in surveying to upgrade their math and enroll in a more advanced program of studies. A considerable number of employers are finding it to their advantage to hire graduates of this Program. Some Metro surveyors, in particular, contact C.O.G.S. to see if any Survey Assistant graduates, or past graduates, are available whenever they have a vacancy.

Now, back to co-op training. This was started in the S.A. Program in 1987. Students are placed with survey crews in private industry during the months of March and April. They return to C.O.G.S. to graduate in mid-May. In effect, this portion of the Program is a co-operative effort between the College, private surveyors and students. C.O.G.S. benefits as more surveyors become aware of the program and hopefully more students find employment. The student benefits from actual job experience, rather

than simulated exercises and projects. As the co-op period comes at the end of formal training at C.O.G.S., the student should be of some value to the employer. March is not the ideal month to place students with survey firms in the Maritimes, but we feel that if graduation were delayed beyond May it could adversely affect the opportunity for summer or permanent employment.

At first we tried to place each student on a survey crew near his/her home at no cost to the employer. This was only moderately successful. Some students from rural areas lived too far from potential employers to commute, and boarding was necessary. In these cases the employer was asked to cover such expenses. This was not completely fair, as those staying at home had other expenses that were not covered. To correct this, we have, since 1988, been asking employers to pay a \$100 per week expense allowance to all students. A College insurance policy covers students during the co-op period, at no cost to the employer.

When co-op training was first begun, informational letters were sent to all practising Nova Scotia Land Surveyors and to many engineering and construction firms. Since then we have had excellent cooperation from firms and individuals in this province as well as some in New Brunswick and Prince Edward Island. From the student's point of view, this is a continuation of the training received at C.O.G.S. If, however, an employer is interested in hiring another crew member, it provides a good opportunity to "check him out", rather than hiring and firing if unsatisfactory.

Students are placed with three things in mind: 1) the location preference of the student; 2) adequate training in a variety of duties; and 3) the opportunity for a job following the training period.

Each student is asked to list a first and a second choice of location for training. As the opportunity for employment is the main reason for taking the S.A. Program in the first place, we want the student to be exposed to a firm in the area where he/she is likely to seek employment. If this is not possible, the student is placed wherever there is an opening.

The quality of training has not been and is not expected to be a problem. If, however, the training covers a very narrow field, we might try to have two students exchange locations so that the variety of work might be increased.

Although, as previously mentioned, all Nova Scotia Land Surveyors in private practise were initially contacted in 1987, this is not done on a yearly basis.

A maximum of 15 students are accepted into the S.A. Program. This means that only a limited number are from any one area. If there is no one from Cape Breton, for instance, we do not notify employers from that area. No student has been employed by any instructor from C.O.G.S.

We would frown on any employer using the co-op program strictly as a source of cheap labour. This has not been a problem to date. Participating employers have done their best to ensure that the student was exposed to a variety of duties. In fact, I know that a number of individuals have taken on students when none were needed. Although this was definitely not expected, it was much appreciated.

Both students and employers are asked to fill in evaluation forms at the end of the co-op period. This information is very useful and a number of changes have been made in the S.A. Program because of this input. I wish to express my thanks to all having participated in the past. Please contact C.O.G.S. if you are interested in taking on a co-op student in the future or if you have any suggestions.

J.A.C. Kaulback



ADVISING CLIENTS IF FEE ESTIMATE CHANGES

The following case summary appeared in Volume 17, No. 5, August, 1991 of the Nova Scotia Law News.

Atlantic Nurseries Ltd. v. McInnes Cooper & Robertson, S.H. 75926, Roscoe, T., 23 April 1991 S311/1

This was an appeal from a Taxing Master's decision. The respondent gave the appellant a fee estimate of \$10,000 for a rezoning application. It billed \$29,000 and then reduced the bill to \$25,000. The appellant objected and a Taxing Master taxed the account at \$25,000. Held, for the appellant, that the Taxing Master erred in concluding the fees charged were reasonable in light of the estimate. Lawyers have a duty to keep their clients advised when circumstances change the basis of their fee estimates. The account was taxed at \$15,000.

Quaere: Is there any reason to think that this duty would not equally apply to other professionals, including land surveyors?



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BOOK REVIEW

Early Land Surveyors of British Columbia, Whittaker, John A., ed., Corporation of Land Surveyors of the Province of British Columbia, 306 - 895 Fort Street, Victoria, B.C. V8W 1H7, 19909, ISBN 1-55056-090-5. pp. 169, illus., paperback, \$14.95 + \$1.05 GST for a total of \$16.00, postage included.

Published to Commemorate the 100th anniversary of the passing of the Land Surveyors Act of 1891, here are biographical sketches of 85 land surveyors who, individually and collectively, contributed a great deal to the development of the province.

The book, however, is far more than it seems to be at first glance. It is material witness of the efforts of the Corporation to acknowledge the work of its earlier members, to enrich the written history of the province, and to provide a comprehensive account of how it was all accomplished.

Between 1891 and 1905 those responsible for making boundary surveys were known as "Provincial Land Surveyors." The members of this group are the individual subjects of the book. Aside from being land surveyors, the other characteristic they (or almost all of them) shared was a place of birth elsewhere than British Columbia. Many came from other Canadian provinces, and of course a high proportion came from the United Kingdom. Many were mining or civil engineers; most, if not all, had a far better than average education for their day.

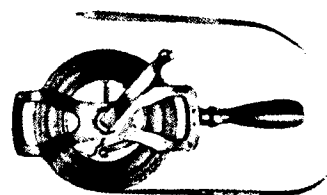
The accounts of all these individuals are obviously going to be of greatest interest to those who live in British Columbia or who have connections there. But some were figures on the national as well as the provincial scene: Cautley, Swannell, and Wheeler, for example.

At the end of the book, its editor has provided a four-page "Explanation of the Project and Acknowledgements," which is a thorough account of the planning, persistence and ingenuity, on the part of a good many people, which went into the task. The number of individuals who contributed in one way or another is a truly impressive expression of interest in historical matters of this kind. Equally impressive was the interest and dedication of the editor over a long period of time.

It is to be hoped that other associations will follow the lead given here. Certainly there can be no excuse by way of not knowing how to go about such a venture; Mr. Whittaker has left a well-blazed trail.

Early Land Surveyors is attractively printed and bound; and its photographs seem good reproductions of the originals. The paperback cover displays a crayon and pastel sketch, in colour, of a survey camp by J.D. Kelly (c.1914), the original of which belongs to the Corporation. The back cover holds a color reproduction of a memorial window in Christ Church Cathedral, Victoria, which pays tribute to the work of early surveyors and engineers in British Columbia.

J.F. Doig



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Descriptions Made to Measure

by James Gunn

The practice of using a written deed to transfer property seems to have originated in England during the middle ages. Prior to this, a property transaction followed a simple ceremony wherein the grantor performed a "deed" in that he presented the grantee with some physical object such as a tree branch or the like. It was just as well, because very few people could read or write anyway. In some jurisdictions, a group of small boys would be lined up in the field adjacent to the ceremony, each would be given a good clout on the head with a club to ensure that they did not soon forget the day's event.

Some early written deeds were called "indentures" if there was more than one grantee. Each person would get a torn portion of the parchment so that all the pieces would fit together perfectly to form the complete document. Nowadays, as we know, no transfer of property is complete unless it is in writing and no deed is complete unless it contains all the necessary ingredients. One of the more important ingredients, as one might expect, is the property description. This is the part that sets out exactly what is to be transferred. For some reason, despite their seemingly obvious importance, early descriptions contained very little technical detail with respect to size and shape.

Not surprisingly, Surveyors soon began to apply bearings and distances to deed descriptions. At first, this was harmless enough. After all, no one took magnetic north seriously, and the chain seemed to be any convenient length that suited the Surveyor. This was a time when people didn't worry very much about boundary problems, but instead, turned their attention to simpler matters such as feeding themselves and keeping warm in winter.

But life was never intended to be this simple. People became more and more possessive of their land and Surveyors responded with more sophisticated ways of measuring and monumenting it. To say that a property was bounded by its adjoiner was no longer sufficient. What if the neighbour moved his fence in the middle of the night? We are told there are people who do this just to drive the other neighbours insane. Sometimes, even Lawyers and Surveyors have been named in such dark conspiracies.

Monumentation was definitely the answer, and there could be no higher authority than the Bible itself - Deuteronomy 27:17 "Cursed be he that removeth his neighbour's landmark. And all the people shall say Amen"; Deuteronomy 19:14 "Thou shalt not remove thy neighbour's landmark which thee of old times has set.."; Proverbs 22:28 "Remove not the ancient landmark, which thy fathers have set". Robert Frost even offered a suggestion with "good fences make good neighbours".

But alas, there seemed to be no way to deal with this squabbling short of hiring Surveyors to set more and more monuments and to document their exact location. Surveyors, of course, were equal to the task, and became highly proficient at carrying out the exercise. So much so, that they could now disagree with each other with pin point accuracy.

Now somewhere along the way, despite the bible and the courts and Justice Cooley himself, Surveyors began to rely more and more on measurements and less and less on monuments in their work. Property descriptions would take their start from control monuments (which are too big to move in the middle of the night) and follow a precise distance along a bearing referenced to a grid, to a place of beginning. This point could be easily re-established by anyone at any time, providing, all the stars are in the exact same position and the same configuration of numbers are fed into the computer. The boundaries for the property are likewise described and the description becomes a perfect mathematical figure.

From now on, the property wears this description like a made to measure suit, never able to gain or loose a pound without showing. In some cases, as in large subdivisions, the lots have regular shapes and wear suits right off the rack. This is very convenient for Surveyors because it lends itself so well to the use of coordinate geometry.

Now this approach may seem reasonable, but for one thing; we now have two ways of describing a boundary and sometimes, for reasons unknown to man, they often disagree with each other. Do we use the carefully detailed measurements or do we use the physical monuments? The decision, we are told, is not up to the Surveyor at all. The courts have already decided that the monuments govern.

Some Surveyors reconcile this dichotomy by assuming that the monuments are either not original or were disturbed. This may be so, but even if the monument is not original, should we not assume that it has been placed in the same location? Furthermore, if there is evidence that a monument has been disturbed, it

should be reset and if it does not meet current specifications, it should be replaced. Otherwise, should it not be accepted?

Paramount to this dilemma is the fact that written descriptions will ultimately describe the extent of title. It is imperative then, that the description be worded in such a manner that it can accommodate any discrepancy between actual location and theoretical location. In writing a description then, the Surveyor should call for the physical monuments as well as the adjoiners, and offer the mathematics as an aid in locating them. This will help keep the title and occupation together as one. You might call it the "spandex" solution to ensuring a proper fit.

Real Property Law, Sinclair, Butterworths, Toronto, 1969

Black's Law Dictionary, 4th edition, West Publishing Co., St. Paul, Minn., 1968

Holy Bible, King James Version, Red Letter Edition, Thomas Nelson Publishers, Nashville, 1977

The Mending Wall, A Poem by Robert Frost

The Judicial Functions of Surveyors, by Justice Cooley, Appendix A, Theory and Practice of Surveying, 16th edition, by J.B. Johnson, C.E., John Wiley & Sons, London 1903



Mending Wall

Something there is that doesn't love a wall,
That sends the frozen-ground-swell under it,
And spills the upper boulders in the sun;
And makes gaps even two can pass abreast.
The work of hunters is another thing:
I have come after them and made repair
Where they have left not one stone on a stone,
But they would have the rabbit out of hiding,
To please the yelping dogs. The gaps I mean
No one has seen them made or heard them made,
But at spring mending-time we find them there.
I let my neighbour know beyond the hill;
And on a day we meet to walk the line
And set the wall between us once again.
We keep the wall between us as we go.
To each the boulders that have fallen to each.

And some are loaves and some so nearly balls
We have to use a spell to make them balance:
Stay where you are until our backs are turned!
We wear our fingers rough with handling them.
Oh, just another kind of out-door game,
One on a side. It comes to little more:

There where it is we do not need a wall:
He is all pine and I am apple orchard
My apple trees will never get across
And eat the cones under his pines, I tell him.
He only says, "Good fences make good neighbours."
Spring is the mischief in me, and I wonder
If I could put a notion in his head:
"Why do they make good neighbours? Isn't it
Where there are cows? But here there are no cows.
Before I built a wall I'd ask to know
What I was walling in or walling out,
And to whom I was like to give offence.
Something there is that doesn't love a wall,
That wants it down.' I could say "Elves" to him,
But it's not elves exactly, and I'd rather
He said it for himself. I see him there
Bringing a stone grasped firmly by the top
In each hand, like an old-stone savage armed.
He moves in darkness as it seems to me,
Not of woods only and the shade of trees.
He will not go behind his father's saying,
And he likes having thought of it so well
He says again, "Good fences make good neighbours."

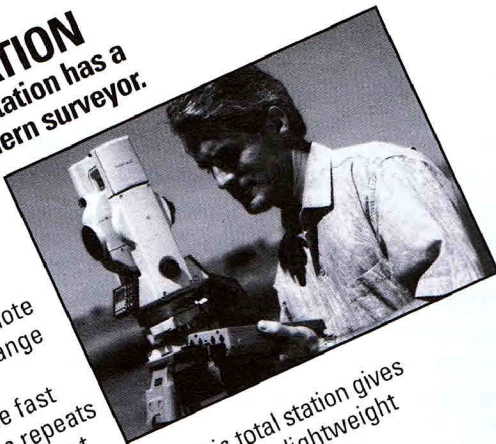
Robert Frost



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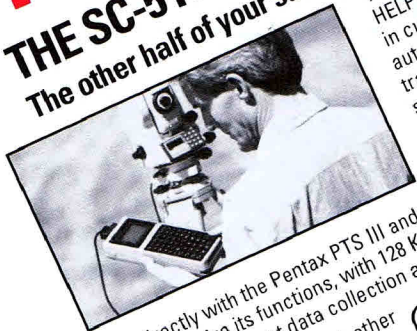
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IN THE PROVINCIAL COURT

HER MAJESTY THE QUEEN,
on the information of
Stephen Verrette, a member of the
Royal Canadian Mounted Police,

Informant

- and -

GARY STEVENSON

Defendant

DECISION

BEFORE: His Honour Judge John R. Nichols, A
Judge of the Provincial Court.

CHARGE: Section 442 of the Criminal Code.

COUNSEL: David E. Acker, Esquire, Crown Attorney
Robert L. Barnes, Esquire, for the
Defendant

DATE: April 2nd, 1991.

The Defendant, Gary Stevenson, is charged that:

"...at or near Lawrencetown in the County of Annapolis, Nova Scotia on or about the 8th day of April 1990 did wilfully remove survey stakes placed as a boundary line contrary to Section 442 of the Criminal Code."

The Defendant, Gary Stevenson entered a 'not guilty' plea on August 21st, 1990 and trial was held on November 5th, 1990, and continued to this date for decision on a Defence Morabito motion, the Defence reserving the right to call evidence.

FACTS

Basically the facts are not in dispute.

The two Crown witnesses, Grant McBurney, a Provincial Land Surveyor and Douglas Archibald MacLean, Chairman of the Village Commissioners of Lawrencetown, Annapolis County, Nova Scotia indicate the Village of Lawrencetown had arranged with Grant McBurney to survey a portion of the lands of the Defendant Stevenson for a proposed sewage treatment plant for the Village.

In the preparation of Plan C-2 dated April 7th, 1990, the surveyor McBurney placed metal and wooden posts on the lands of the Defendant Stevenson.

The lands needed for the sewage treatment plant and the right of way to the plant were to come from a larger plot of hay land owned by the Defendant Stevenson.

The metal Stakes were placed flush with the ground with the Wooden Stakes adjacent to identify the location of the metal stakes.

On the evening of April 8th, 1990 the Defendant Stevenson attended at the home of MacLean and dramatically deposited four metal survey markers and four wooden stakes on MacLean's floor stating "no right to enter on my land" and "he was returning objects of the Village."

A statement C-1, admitted as voluntary by Defence Counsel was admitted in evidence and sets out the facts according to the Defendant.

Q. (Constable Verrette) Can you explain how this started and what lead it to these actions?

A. Fall of 1988 Mr. Albert Smith approached me on buying some of my property for the Commission of Lawrencetown. I wasn't really interested in selling but I told him that for 40-50 thousand I could probably sell. I never heard anything more about it till February of this year where the Lawrencetown Commission offered me 35,000.00 for approximately 15 acres of my land to build a sewer plant. I didn't want to sell it for this price at this time. Approximately two weeks later they offered 37,500 for my property. Then I said that I would think about it. About three or four days after, he called (Doug MacLean) and said that they were going to buy it for \$23,000. and buy the road. At this time I was told by MacLean that the town commission was going to expropriate the land and put the road wherever they wanted to. This is why I couldn't make a decision on if I was going to sell or not because I couldn't find out any information on what was taking place. I also asked to see the appraisal but MacLean told me it was confidential. I then told him that I didn't want anyone down here without the right paperwork."

It is established from the evidence that the plan prepared by the survey was from a 'proposed expropriation'. MacLean indicates any power to expropriate by the incorporated Village would come under the authority of the Village Services Act, a Provincial Statute, and apparently the preparatory steps for any legal expropriation had not been taken.

DECISION

The Court is required to determine in this factual situation whether the survey stakes removed by the Defendant Stevanson constituted a "boundary line" or "part of the boundary line of land". The survey stakes in question, from the evidence of the surveyor MacBurney, marked out a proposed right of way, formed part of a proposed boundary line.

A 'boundary' is defined in the Random House Dictionary of the English Language New York Second Edition 1987 as:

1. something that indicates bounds or limits; a limiting or boundary line.

Halsbury's Laws of England 4th Ed., Lord Hailsham of St. Marylibone (London, Butterworth's, 1973) Vol IV at p.356 writes, it is "an imaginary line which marks the confines or line of division of two contiguous parcels of land". The Dictionary of English Law Jowett 1959 defines "boundary, bound" as "the imaginary line which divides two pieces of land from one another".

In the chapter on Boundaries in Survey Law in Canada 1989 Carswell, Toronto, boundary is defined:

"4:01 A boundary is the line of division between two parcels of land. It is a limiting line; by it is ascertained the extent of parcels in separate ownership or subject to different rights."

Section 442 of the Criminal Code states:

"Every one who wilfully pulls down, defaces, alters or removes anything planted or set up as the boundary line or part of the boundary line of land is guilty of an offence punishable on summary conviction."

The Court holds that the Crown has not established that a boundary line or part of a boundary line was in existence at the time of the Defendant's actions. The survey stakes marked an inchoate line relating to a proposed expropriation.

The Court grants the motion of Defence Counsel and dismisses the charges against the Defendant.

DATED at Annapolis Royal, in the County of Annapolis and Province of Nova Scotia this 2nd day of April, A.D., 1991.

John R. Nichols
 Judge of the Provincial Court



**CANADA
PROVINCE OF NOVA SCOTIA**

S.H. No. 76529

IN THE SUPREME COURT OF NOVA SCOTIA

TRIAL DIVISION

**IN THE MATTER OF: the Land Surveyors Act,
R.S.N.S. 1989, c. 249**

BETWEEN:

ARTHUR C. BACKMAN

Appellant

- and -

ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS

Respondent

HEARD: at Halifax, Nova Scotia on April 17, 1991,
before the Honourable Mr. Justice J. M.
Davison, Trial Division, in Chambers

DECISION: July 3, 1991

COUNSEL: John Kulik, Esq., for the Appellant
Thomas J. Burchell, Q.C., for the
Respondent

DAVISON J.:

This is an appeal from the decision of Arthur E. Hare, Q.C., Taxing Master, dated February 12, 1991.

On March 26, 1990, a formal complaint against the appellant was sworn by Rosalind C. Penfound, secretary of the respondent. The complaint was heard before the Discipline Committee of the respondent on June 8, 1990, which Committee subsequently filed a decision and order dated August 13, 1990, wherein it found the appellant guilty of professional misconduct and ordered him to "... pay to the Discipline Committee its costs and disbursements on the investigation as taxed by the Taxing Master."

A hearing before the Taxing Master took place on January 30, 1991, at which time representations were made to the Taxing Master as to the effect of the order of the respondent. The Taxing Master filed a decision on February 12, 1991, wherein he found that the appellant was required to pay the solicitor and client costs incurred by the respondent in the prosecution of the complaint against the appellant in addition to any expenses of the Discipline Committee. The bill of costs presented to the Taxing Master included court reporting services and the expenses of the members of the Discipline Committee, including traveling and hotel expenses, the total of which was less than \$1,000.00.

The substantial portion of the bill of costs related to legal fees and disbursements of the lawyer who conducted the prosecution in front of the Discipline Committee and the amount sought for these items is approximately \$5,500.00.

During the hearing before me, the solicitor for the respondent advised, and the solicitor for the appellant accepted, the fact that it was the practice for members of the Discipline Committee to receive expenses but that they donated their time for the benefit of the Association.

The governing legislation is the Land Surveyors Act, R.S.N.S. 1989, c. 249 which provides for a continuation of the Association of Nova Scotia Land Surveyors and sets out the objects of maintaining ethical and professional standards for the members of the Association.

All authority under the Act rests with the Association or its Council. The Council consists of the President and Vice-President, the Minister of Lands and Forests or his appointee and councillors elected from six zones across the province. The Council makes and passes by-laws, subject to the approval of the

members of the Association at an annual meeting, which deals with the professional, governmental and financial aspects of the Association.

For the achievement of the Association's objects, the legislation directs the establishment of a Board of Examiners with respect to qualifications, a Complaints Committee and a Discipline Committee. The scheme of the Act as it related to misconduct of its members was to maintain separation between functions of the Complaints Committee and the Discipline Committee. Provisions which relate to the Complaints Committee are under the general heading of "Offenses". The procedure with respect to the operation of the Discipline Committee is under the heading of "Discipline".

For the purpose of this proceeding, the relevant sections of the Act are:

Complaints Committee established

24 (1) There shall be a Complaints Committee appointed by Council, whose composition and function shall be provided for by Council in the by-laws.

Conduct may be investigated

(2) The conduct of any member, holder of a certificate of authorization or student member, may be investigated by the Complaints Committee upon the receipt by the Secretary from any complainant of a written statement alleging, on the part of the person being complained of, conduct which may constitute professional misconduct or misrepresentation.

Duties of the Complaints Committee

(3) Upon the Secretary receiving a complaint as described in subsection (2), the Complaints Committee shall

(a) investigate the complaint; and

(b) where it is satisfied that the evidence disclosed by the investigation, which might reasonably be believed, could not support a finding of professional misconduct or misrepresentation, order the dismissal of such complaint and accordingly notify the complainant and the person whose conduct is being investigated; or

(c) where it is satisfied that there is some evidence disclosed by the investigation, which might reasonably be believed, which could support a finding of professional misconduct or misrepresentation, advise the complainant that the complainant may either

(i) request the Association to appoint a person to swear a complaint under oath of and on behalf of the Association and in the name of the Association in which case the Association shall have the responsibility of carrying the expenses and costs of proceeding with the complaint, or

(ii) swear a complaint under oath in which case the complainant and not the Association shall have the responsibility of carrying the expenses and costs of proceeding with the complaint.

Election by complainant

(4) Where a complainant has been advised by the Complaints Committee of the provisions available to the complainant pursuant to clause (c) of subsection (3), the complainant may elect to proceed with the complaint either pursuant to subclause (i) or subclause (ii) of clause (c) of subsection (3).

Association to bear costs

(5) Where a complainant elects to proceed with the complaint pursuant to subclause (1) of clause (c) of subsection (3) and so notifies the Complaints Committee, the Chairman of the Complaints Committee shall notify the Secretary and the Association shall have the responsibility of carrying its own costs and expenses of proceeding with the complaint.

Complainant to bear costs

(6) Where a complainant elects to proceed with a complaint pursuant to subclause (ii) of the clause (c) of subsection (3), the complainant may swear a complaint under oath and file the complaint with the Secretary and the complainant shall have the responsibility for the complainant's costs and expenses of proceeding with the complaint.

Council to appoint person to swear complaint

(7) Upon the Secretary being notified by the Chairman of the Complaints Committee of a request made by a complainant pursuant to subsection (5), the Secretary shall notify Council and Council shall appoint a person to swear a complaint under oath of and on behalf of the Association and to file such complaint with the Secretary.

Secretary to deliver complaint

(8) Upon a complaint under oath being filed with the Secretary, whether or not sworn by a person appointed by the Association, the Secretary shall deliver the complaint to the Discipline Committee to be heard on the questions of professional misconduct or misrepresentation and discipline.

Complaints Committee to investigate

(9) No complaint with respect to professional misconduct or misrepresentation shall be referred to the Discipline Committee unless the complaint has been investigated by the Complaints Committee, pursuant to subsection (3).

Discipline Committee appointed

25 There shall be a Discipline Committee appointed by the Council, and the composition and function of the Discipline Committee shall be provided for by the Council in the by-laws.

Powers of Discipline Committee

26 (l) (f) direct that, where it appears that the proceedings were unwarranted, such costs as to the Council seem just be paid by the Association to the member whose conduct was the subject of such proceedings;

(g) direct such person to pay to the Discipline Committee its costs and disbursements on the investigation wherein he has been found guilty to an amount to be taxed by the taxing master or fixed by the Discipline Committee and, when fixed by the Discipline Committee, shall not exceed two thousand dollars and such person shall not carry on the practice of professional land surveying until he has made payment of such costs.

The terms of the order of the Discipline Committee in this proceeding was an incorporation of the terms of s. 26(i)(g) when it required the appellant to "pay to the Discipline Committee its costs and disbursements on the investigation". I find these words vague and ambiguous. There is nothing in the Act to suggest the Discipline Committee per se would be required to pay any expenses or costs. Only the Association has power by statute to receive funds or incur debts. Furthermore, the word "investigation" is a term more pertinent to the Complaints Committee in the scheme of the legislation.

It is common ground that the monies respondent now seeks to recover from the appellant were monies spent by the respondent Association for legal fees and disbursement. If it was the intention of the legislators that the Association was to recover its costs and expenses, why did the statute not so stipulate as it did in s. 24(5) where it is provided that the Association shall carry its own costs of proceedings with the complaint?

By virtue of s. 26(l)(f), the Association must bear the costs of the member if the Discipline Committee deems the proceedings against a member to be unwarranted. Yet, if the member is found guilty, the member must pay to the Discipline Committee "its" costs and disbursements.

Can I assume that because the legislation includes the word "costs" that this means legal costs? I posed to counsel the question that if it meant legal costs could I assume that the only legal costs would be the account submitted by the solicitor who "prosecuted" the complaint. The solicitor for the respondent, very fairly, pointed out the possibility of a lawyer being retained solely to advise the Discipline Committee during its deliberations.

I pose these questions to illustrate the difficulties encountered in attempting to interpret the legislation. The legislation is the statute which created the respondent. Why is the language not more precise? For example, a similar discipline scheme can be found in the Barristers and Solicitors Act. R.S., c.30, s.1 and the legislation leaves no doubt about what can be recovered by the Society from a member following a discipline hearing. I refer to s. 32(9) which reads:

Reimbursement order

(9) The subcommittee may by resolution order a barrister, who has been found guilty of professional misconduct or conduct unbecoming a barrister, to reimburse the Society for (in addition to any moneys which he may be liable to pay

under subsection (8) of Section (40) all or some of the costs of the proceedings and preceding investigation, including the reasonable fees and disbursements of any counsel and auditor engaged by the Society for the purpose and, except as the subcommittee may otherwise order, the payment thereof by the barrister shall be a condition precedent to his continuing to practice.

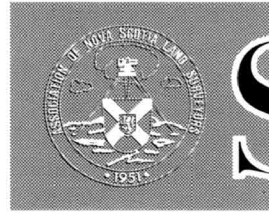
The appellant should receive the benefit of any ambiguity. It is probable the respondent had input or the opportunity to have input in the drafting of the statute but, furthermore, the provision, although compensatory in nature, has penal overtones. In *Royal College of Dental Surgeons of Ontario v. Rival* (1976), 2 C.P.C. 293, the Ontario High Court in reviewing provisions relating to costs in disciplinary proceedings stated at p. 294:

It is in effect similar to a penalty section and if it was the intention of the Legislature to render the member responsible for the fees and expenses of the members of the committee, that is to say, the tribunal, then clearer language should have been used.

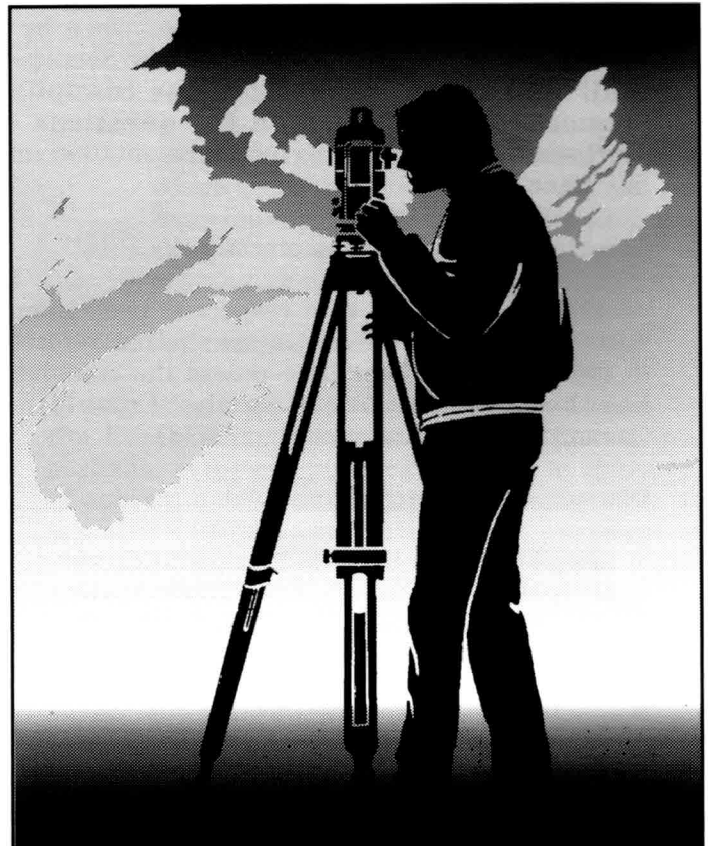
It is my view, in this case, that if the legislature had intended that a member of the Association, who was the subject of discipline, should be required to indemnify the Association for legal fees on a solicitor-client basis, that intention should have been clearly stated and the doubt should be resolved in favour of the appellant.

The appeal from the decision of the Taxing Master is allowed. The appellant is not required to reimburse the respondent the account of Burchell, MacAdam and Hayman. The appellant shall recover from the Respondent its costs of this appeal in the amount of \$500.00.

Halifax, Nova Scotia
July 3, 1991



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Easements - Should they be Monumented

The Survey Review Department fields all sorts of questions regarding easements. Should they be monumented? Should the plan be certified? Does it require a SRD sticker? Unfortunately, our regulations make no direct references to easements. The regulations, as we all know, deal mainly with boundaries so it seems to us that everything hinges on the question: is an easement defined by boundaries?

To answer this question, we look for a definition of "boundary" to see if it would apply to easements. If you use Black's Law Dictionary, West Publishing Co., revised fourth edition 1968, you may be inclined to think so because a boundary is defined as "every separation, natural or artificial, which marks the confines or line of division of two contiguous estates" furthermore, it defines an estate as "The interest which anyone has in lands...". this would naturally include an easement.

However, you will note in a recent decision (in this issue of the Surveyor) by Nichols J. of the Provincial court of Nova Scotia in The Queen v. Gary Stevenson April 2, 1991, P.C. 150221, reference is made to four different definitions of boundaries:

a) Random House Dictionary of the English Language, New York, 2nd edition, 1987 as follows: "Something that indicates bounds or limits; a limiting or boundary line".

b) Halsbury's Laws of England, 4th edition, Lord Halsbury of St. Marylibone (London, Butterworth's, 1973) Vol IV at p.356 writes, it is "an imaginary line which marks the confines or line of division of two contiguous parcels of land".

c) The Dictionary of English Law, Jowett, 1959 defines boundary, (or) bound as follows: "the imaginary line which divides two pieces of land from one another".

d) Survey Law in Canada, 1989, Carswell, Toronto, boundary is defined: "4:01 A boundary is the line of division between two parcels of land. It is a limiting line; by it is ascertained the extent of parcels in separate ownership or subject to different rights." (How nice to see our new survey law book being used in the court room already.)

If the above definitions are any indication, there may be a difference of opinion as to what a boundary is. On the one hand, some definitions include all interests in land, which would naturally include easements, while others refer only to parcels of land.

Perhaps we should include a definition of boundaries in our regulations. We could also stop beating around the bush and simply bring in a regulation dealing with monumenting easements. If they were to be monumented, then it follows that the plans should be certified and have SRD stickers. In the meantime, we must all carry on and the Survey Review Department will continue to offer a sympathetic ear if not advice.

J. Gunn 09/91



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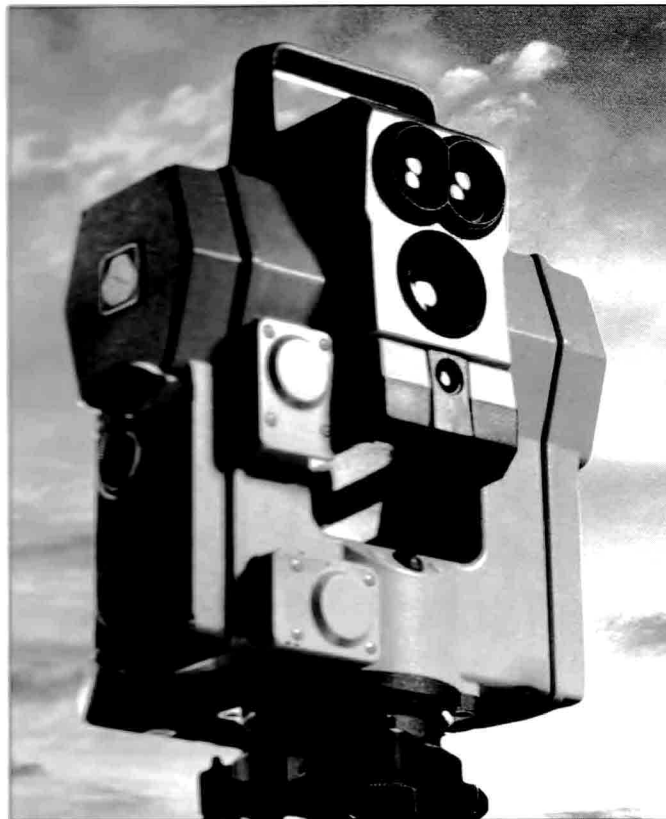
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