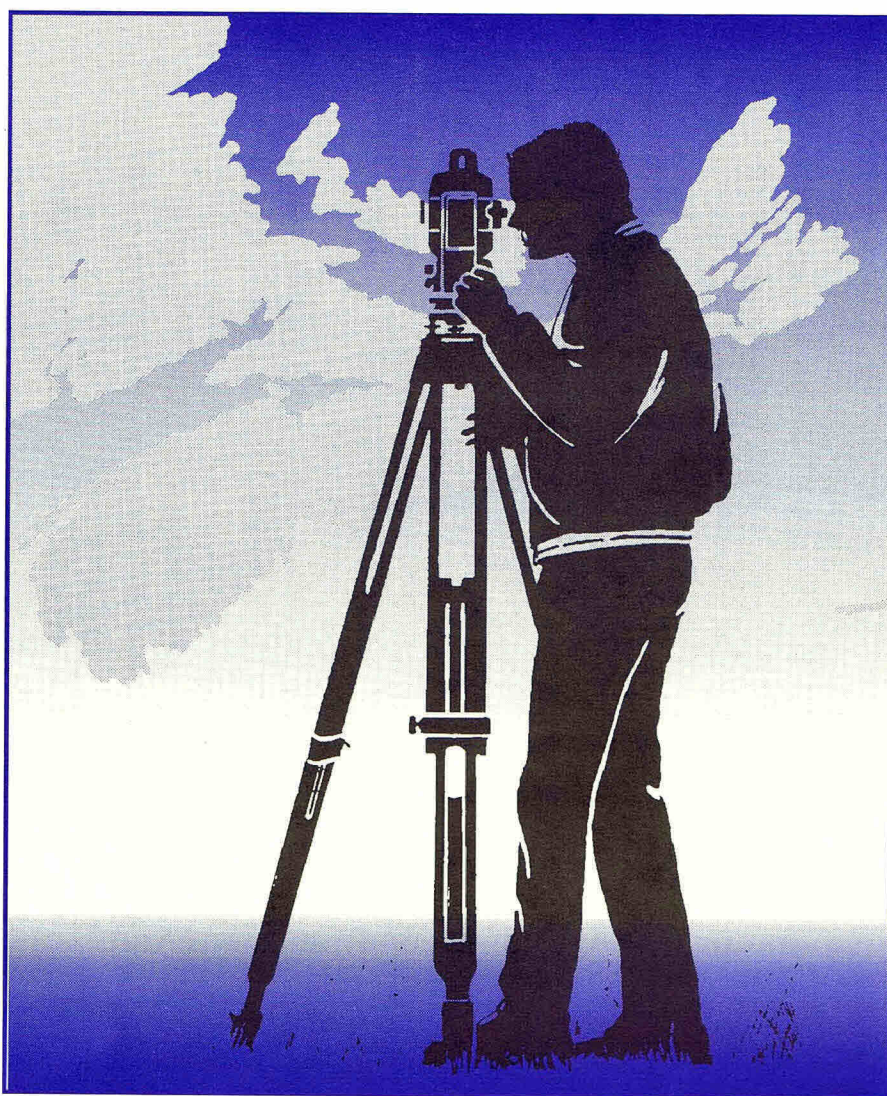


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Vol. 52

Spring 1992

No. 141



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1

Vol. 52

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No. 141

THE ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS

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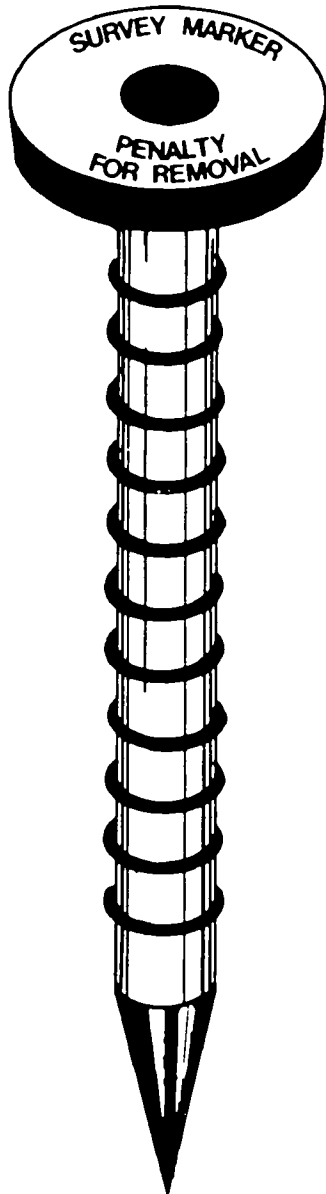
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PRESIDENT'S MESSAGE

SURVEYORS OVER-REGULATED ?



The requirement of any self-regulating organization is to create regulations which (1) give protection to those to whom services are provided by the organization, and (2) govern its members and establish ground rules under which the members can operate. Surely these fundamental principles are both reasonable and necessary.

Cadastral surveying in Canada has been described as being amongst the most over-regulated professions in an already over-regulated country. Surveyors are notorious for wanting to have a rule to fall back on for every occasion.

If a loop-hole is taken advantage of, plug it with a regulation; if a questionable practice arises, prohibit it by regulation.

Undoubtedly there is comfort in being able to turn to a rule to explain our actions. Unfortunately it seems that those who wish to short-cut the system will find a way of doing so, regardless of regulations, bylaws, guidelines or codes of ethics that may be in place.

Although it is not a novel idea perhaps education at all levels is the best way to minimize abuses to the system. Ideas of common sense, professionalism, and ethical action can be and should be, discussed regularly while a student is in school. It is imperative that the same message be delivered during the prospective surveyor's article period. Employers should continually demonstrate these same principles to employees on a day to day basis at work. Constant promotion of honest and ethical conduct, along with the legislated power (and will) to penalize those who ignore the rules, are essential to the success of our organization.

Our association is really unique in that it may have too many regulations in some areas, and more in others. It is fascinating that we actually have provincial law which prescribes how we must orient a north arrow, and how wide we must make the margins on a survey plan, while at the other extreme, absolutely no rules governing a major portion of our work-the provision of survey information to lending institutions.

I am pleased to see that we are finally addressing both situations. The proposed Manual of Good Practice will in all likelihood take much of the very specific, technical survey details out of the legislation, and present it to us as "good practice guidelines" - At the other end of the scale, when the Surveyors Real Property Report becomes legislation, we will benefit by having some standards in place, and statutory authority under which to carry out this significant part of our work.

Legislation should not be so specific as to tie our hands and leave nothing to judgement, nor so vague as to permit a dozen interpretations. It should merely be a broad set of rules under which we can effectively operate, and at the same time offer protection to the public. I think this is the direction that surveyors in Nova Scotia are moving.

Grant McBurney
President

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Notes from the Association



It's hard to believe that we are almost half way through our Association year. Plans are already being made for the 1992 Annual Meeting. It will be held November 12, 13 and 14 at the Old Orchard Inn in the Annapolis Valley.

The changes to the Land Surveyors Act approved by our membership (definition - 1990, complaints and discipline - 1991) are in the hands of the government, as are the changes to the regulations respecting monumentation and Surveyors Real Property Reports. At this point we are uncertain as to whether or not the changes to the Act will be considered at the current session of the legislature. It is, however, quite likely that the regulations (monumentation and SRPR's) will not be considered by Cabinet until the end of this sitting of the legislature. When approved by Cabinet, it is likely that the SRPR regulation will have a lead in period of several months before it becomes law.

The Association continues to feel the effects of the recession as reflected in lagging Survey Review Department sticker sales, although March and April have shown some improvement. The Department staff, Jim Gunn and Shelley Lane, are participating in a Workshare program.

Over the last two years land surveying associations, as well as other Associations, across the country have watched with interest the confrontation between the Association of Ontario Land Surveyors and the federal Bureau of

Competition Policy. At its 100th Annual Meeting, members of the AOLS were informed that the matter has been settled. All pending charges against the Association, its staff, former Executive, Council and Committee members and individual surveyors have been dropped. The Association did not make any concessions of substantive nature. The Association of Ontario Land Surveyors deserve's a considerable amount of credit for its handling of this difficult matter.

Your Council met at the end of February and will meet again in late May or early June. The Executive has met several times to deal with ongoing matters, reporting to Council by mail.

In April I made a presentation, along with Walter Rayworth and David Roberts, to the Cumberland County Council concerning Subdivision by Instrument. We urged the Council to reject Subdivision by Instrument and were encouraged that the Cumberland County Barristers Association expressed similar sentiments.

Please come in to see us if you are in the Dartmouth area.

Rosalind C. Penfound, Executive Director

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Survey Review Department Update



The end of March marks the mid point of our fiscal year in the Survey Review Department. It should come as no surprise to anyone that the number of plans submitted to our office during the first half of this year was down in comparison to past years. Similarly, the sale of stickers has been less than projected and we continue to be in a deficit position.

In an effort to offset this shortfall, the SRD has undertaken a number of initiatives. Firstly, we negotiated a four month work share agreement through Canada Manpower for myself and Shelley Lane, our technician. The effect of this agreement will address about two thirds of our current deficit. Secondly, we are preparing a seminar for presentation at the zone level. This is expected to generate a small amount of additional revenue. Thirdly, we are exploring the possibility of marketing some aspects of the survey review process to our neighbouring provinces.

While any or all of these efforts may tide us over, the ultimate solution lies with a recovery in the economy.

Of course, the introduction of the Surveyor's Real Property Report will put an entirely new complexion on our operation.

Despite the gloomy financial picture, we remain optimistic. The quality of plans and the cooperation of members is excellent. We have also developed a new billing procedure that will no longer require members to purchase stickers in advance.

Unfortunately, we cannot introduce this procedure during the current financial slump. Starting this fall, the SRD will introduce an award of excellence for those firms outstanding in quality and cooperation as determined by our department.

This year I decided to plan part of my vacation around the recent annual meeting of the Ontario Land Surveyors Association in Toronto and also the upcoming annual meetings of ACLS, CISM and CCLS in Whitehorse. The information and exposure we receive from these gatherings is very worthwhile. By treating these as vacation destinations, I have spared the Association any costs.

Not surprisingly, the Ontario SRD ended their year with an operating deficit as well. At their annual meeting they reported an overrun equal to about 16% of their budget and forecast a larger one for next year. This can be compared with our deficit of about 12%. Lucky for them, they have been operating long enough to accumulate a surplus to tide them over. Building a surplus will certainly be one of my goals when we pull out of this recession.

As your representative on the Land Resource Coordinating Council (LRCC), a sector of Volunteer Planning, I was instrumental in having a recommendation go to the Minister of Municipal Affairs urging him to review the continued use of Instrument of Subdivision in Nova Scotia.

I have delivered similar messages to the legal community through a lecture at the Law School and an article in the Law News. Hopefully, we will eventually influence a change in the legislation that provides for this procedure.

I am working with the Manual of Good Practice Committee to produce a draft document for distribution to the membership and discussion at the zones. The committee is planning a comprehensive manual to instruct, educate and assist members in all types of surveys in all parts of the province. Our goal is to ensure the regulations are substantially reflected in this manual and subsequently removed from their present statute form. Some day it may be sufficient to work to an industry standard without being in violation for the smallest infraction.

Often times we get calls looking for records from a deceased or former member of the Association. If you have someone else's files, or know where to find them, please let us know so we can add this information to our registry of survey records.

Any member who would like to have their plans returned to them when they are no longer needed by SRD can simply let us know. We will be happy to oblige. At the moment, we send all unnecessary plans to the recycler.

With the coming of spring I will soon be back to my site inspections. This year I will make every effort to drop in on members when I am in the area.

Please have your questions, comments and coffee ready if I happen by.



Jim Gunn

Nova Scotia



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Director of Professional Affairs

The Association of N.B. Land Surveyors, located in Fredericton, requires a dynamic individual with a minimum of five years experience in, and a thorough understanding of, geomatics, property law and public relations.

The Director of Professional Affairs will be responsible for public relations, government liaison and professional development, and will report directly to the Association Executive Council.

The applicant will possess:

- a degree in the Sciences, Engineering or Business Administration
OR
Professional registration in a related profession
- thorough understanding of Land Surveying and Property Law
- high degree of self motivation
- excellent oral and written communication skills
- public relations skills and experience
- knowledge of computers, operating systems and software
- competency in English is required, French is desirable

Salary will be commensurate with qualifications and experience.

Applicants should forward resumés prior to May 8, 1992 to:

Director of Professional Affairs
Association of N.B. Land Surveyors
P.O. Box 22
Fredericton, N.B.
E3B 4Y2

The Association of Nova Scotia Land Surveyors

Minutes of the 41st Annual Meeting

Held at the Halifax Hilton,
Halifax, N.S.

November 15-16, 1991

Friday, November 15, 1991

1. President David Steeves welcomed all present to the 41st Annual Meeting and introduced the Mayor of the City of Halifax, Her Worship Moira Ducharme. Mayor Ducharme welcomed everyone to Halifax and extended best wishes for a productive and enjoyable convention. David Steeves thanked Mayor Ducharme and presented her with a gift.

2. David Steeves introduced the following special guests:

Robin Davis - Association of Newfoundland Land Surveyors

Jamie Clow - Association of P.E.I. Land Surveyors

Thomas Williston - Association of New Brunswick Land Surveyors

Jim Nicholson - Association of Ontario Land Surveyors

Orest Recunyk - Association of Manitoba Land Surveyors; Past-President, Canadian Council of Land Surveyors

Ed Grenkie - Saskatchewan Land Surveyors Association

Bob Baker - Alberta Land Surveyors Association

Gordon Kilbride - Corporation of Land Surveyors of the Province of British Columbia

John Covert - representing the Surveyor General for Canada

James Doig - Canadian Institute of Surveying and Mapping

Bill Chapman - President, Canadian Council of Land Surveyors

Jim Simpson - Association of Canada Land Surveyors

Lorraine Petzold - Executive Director, Association of Ontario Land Surveyors

3. David Steeves introduced the following exhibitors:

Atlantic Drafting Products represented by David Page

Cornerstone Surveying represented by Bob Martin, Rob Bragsdale and Dean Bennet

Eastward Drafting Supplies represented by Len Kincaid

J.P. Morasse represented by Richard Morasse

Leica Canada Inc. represented by Paul Lyon, Jim Johnson and Martin Raymond

Liberty Enterprises Ltd. represented by John Kellegrew

Norman Wade Co. Ltd. represented by King Flood and Tom Marshall

Pentax Canada Inc. represented by Perry DeRossiere

Sokkisha Canada

4. David Steeves officially called the meeting to order and reviewed the procedures to be followed and the agenda. He noted that at this time we traditionally observe a moments silence in memory of members who have passed away during the year. Although none of our members died during the year, he noted the recent death of Archie MacLaughlin of Fredericton. A memorial fund is being established in his name and information will be supplied to the membership about this fund in due course.

5. The Secretary, Rosalind Penfound reported that a total of 186 persons had registered for the convention, 127 of which are members, well in excess of the required quorum.

6. The Secretary further reported that as of September 30, 1991 membership in the Association was as follows:

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

7. David Steeves drew attention to the minutes of the 40th Annual Meeting which were published in the Spring 1991 edition of the Nova Scotian Surveyor. Hearing no errors or omissions, a motion by John MacInnis, seconded by Errol Hebb, that the minutes of the 40th Annual Meeting be approved, was carried.

8. As Secretary to the Board of Examiners, Rosalind Penfound reported that no new members were sworn in during the past year. Major activities of the Board this year centered around the appointment of the Board's first monitors and the production of a new student handbook, which has been distributed to all members and student members. The report of the Chairman of the Board of Examiners, John MacInnis may be found in the Spring 1991 Nova Scotian Surveyor.

9. Rosalind Penfound reported that ballots had been received and counted and the Scrutineers report compiled. The 1991-92 Executive and Council will be:

President Grant McBurney
 Vice-President Robert Daniels
 Past President David Steeves
 Councillor Zone 1 Alex McDonald (returning)
 Councillor Zone 2 Shaun Stoddard
 Councillor Zone 3 Russell Atkinson
 Councillor Zone 4 Clive MacKeen (returning)
 Councillor Zone 5 Dennis Prendergast (returning)
 Councillor Zone 5 Horace Lovell
 Councillor Zone 6 Jim Banks (returning)
 Councillor Zone 6 Ed Jeffrey (returning)
 Councillor Zone 6 Allen Owen
 Councillor Zone 6 Jim McNeil

Appointee of the Minister of
 Natural Resources, Keith Aucoin

Rosalind Penfound noted that the election had resulted in a tie between Russell Atkinson and Donald Eldridge for Zone 3 Councillor.

Donald Eldridge declined to allow his name to stand for a vote on the floor of the Annual Meeting.

Thanks were extended to Paul Zinck and Lawrence Miller who acted as scrutineers.

10. A motion by Gerry Bourbonniere, seconded by Phil Milo, that the ballots be destroyed, was carried.

11. David Steeves expressed personal thanks and that of the Association to the following members leaving Council:

Past-President Ken Whalen
 Zone 2 David Wedlock
 Zone 3 Gordon Isaacs
 Zone 5 Geoff Verner
 Zone 6 Sandy Cameron
 Zone 6 Nick Dearman

12. David Steeves drew the attention of the membership to the Committee reports published in the Fall 1991 edition of the Nova Scotian Surveyor. The following additional reports were delivered:

Building Committee - David Steeves
 Political Liaison - David Steeves
 CCLS - David Steeves

Atlantic Provinces Board of Examiners
 for Land Surveyors - Rosalind Penfound for
 Harold Lively

SRPR Public Relations - Rosalind Penfound
 Manual of Good Practice - Marcellin Chiason

It was moved by Marcellin Chiason, seconded by Gordon Isaacs, that the report and recommendation of the Manual of Good Practice Committee be accepted and approved and that the Committee proceed to develop a draft Manual of Good Practice for presentation to the membership at a future Annual Meeting. The motion was carried unanimously.

Jim Gunn presented a detailed report of the activities of the Survey Review Department and answered questions. A summary of the report will be mailed to the membership in early December.

13. David Steeves reminded the members that last year we honored three of our own by making them Life Members. This year we have an opportunity to honor someone by making them one of our own. Lorraine Petzold has been nominated for Honorary Membership and her nomination was unanimously approved by Council. David Steeves called on Jim Gunn who reviewed the background of Honorary membership.

Jim Gunn, seconded by Murray Banks, moved that Lorraine Petzold be elected an Honorary Member of the Association of Nova Scotia Land Surveyors. Jim Gunn spoke to the motion making the following remarks:

" There is little doubt that Lorraine Petzold has made outstanding contributions to the advancement of surveying. For any of you who may not know her personally, I would offer this brief background:

She got her start in surveying in the all too familiar role of the Surveyor's wife at the zero end of the chain.

In 1965 she shook up the Association of Ontario Land Surveyors by presenting herself for articles. Four years later, she made history by becoming the first woman Land Surveyor in Canada. She was later to become the Executive Director of the Ontario Association, a position she holds today.

Her early training as a school teacher made her a natural for promoting education both within and beyond the profession. Surveyors, Lawyers, Realtors, Lenders, wherever the need existed, she was there to defend and further the surveying profession.

She has taught at George Brown Community College as well as at Erindale College. She participates regularly in the Bar admission course in Ontario, and she continues a busy schedule of seminars and presentations to Real Estate Boards, Lawyers and Lenders.

Her papers on surveying have gained her national and international attention. Her writings have even been referenced in court decisions.

Her speaking engagements have taken her to Australia, Trinidad, Barbados, the United States and of course to every part of Canada.

Her most outstanding quality in my opinion is her approachfulness. Because of this she has become a common link between Surveyors across the country. When she experiences success, she's quick to share it. Here in Nova Scotia, I can assure you, we have made frequent and extensive use of Lorraine's experience, her generosity and hospitality.

In having her name on our Honor Roll, the Honour will be all ours."

The motion was carried unanimously. David Steeves noted that Lorraine Petzold would be formally recognized with the presentation of a plaque at the Annual Luncheon on Saturday.

14. David Steeves asked Rosalind Penfound to give the report of the Secretary/Treasurer.

Rosalind Penfound reported that Council had met six times prior to the Annual Meeting. Meetings were held every other month with Executive meetings in the alternate months.

Rosalind Penfound reviewed the 1990-91 financial statements which indicate a total operating deficit of \$36, 674 which combined with the 1989-90 deficit results in an accumulated deficit of \$38, 119. This deficit is attributable to the following:

\$14,000 - decrease in general revenues, largely due to an inability to recover discipline costs.

\$16,000 - shortfall in predicted Survey Review sticker sales.

\$4,000 - depreciation of office furniture and equipment (non-cash item).

\$1,500 - 1989-90 deficit.

\$2,500 - other

\$38,000

Rosalind Penfound presented the proposed 1991-92 budget noting that it reflects the following cost cutting measures.

- 0% increase in salary for Association management staff
- a 50% reduction in expenses for Council meetings, which will result in a decrease in the number of meetings
- a reduction in expenses for zone meetings which will result in fewer meetings and/or decreased attendance by Executive and staff
- a reduction in Executive expenses which will result in reduced ANSLs representation at out-of-province meetings
- a reduction in Executive Director expenses which will likely result in little if any participation in out-of-province activities
- two editions only of the Nova Scotian Surveyor, spring and fall

There was considerable discussion and concern expressed about the Associations financial status and control. Special levies, dues increases and an increase in SRD sticker prices were debated. There was consensus that the SRD should be self-sufficient and that Council should consider an increase in sticker price to recover the 1990-91 SRD and avoid the projected 1991-92 SRD deficit.

It was moved by Ed Jeffrey, seconded by Alex McDonald, that the annual dues be increased by \$50 per year effective October 1, 1992, such amount to be applied toward retiring the deficit. The motion was defeated.

It was moved by Athol Grant, seconded by Fred Hutchinson that the Public Relations budgeted amount of \$5000 be deleted. After discussion and with the consent of Athol Grant and Fred Hutchinson it was moved by John MacInnis, seconded by David Roberts, that the Public Relations budget be reduced by \$3000, from \$5000 to \$2000. The motion as amended was carried with six members opposed.

It was moved by A.E. Wallace, seconded by Victor Wolchansky, that the budget as presented and amended be approved. The motion was carried with four members opposed.

15.Complaints and Discipline

David Steeves called upon John MacInnis, Chairman of the Complaints Committee and Walter Rayworth, Chairman of the Discipline Committee to join him on the platform. It was moved by John MacInnis, seconded by Walter Rayworth, that the proposed amendments to the Land Surveyors Act respecting Complaints and Discipline be approved by the membership.

John MacInnis and Walter Rayworth reviewed the background and purpose of these proposed amendments and responded to questions and comments from the floor.

There was considerable discussion. It was moved by Robert Ashley, seconded by Jeff Fee, that the words "or adequate arrangements for payment being made" be inserted in section 26 (1) (f) and (g). The motion was carried unanimously.

It was moved by Arthur Backman, seconded by K.W. Robb, that the motion respecting Complaints and Discipline be tabled until the next Annual Meeting. The motion was defeated.

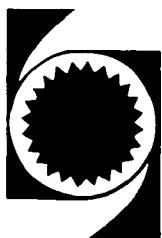
It was moved by Glenn Crews, seconded by Robert Ashley, that the motion be tabled until the following morning, Saturday, November 16, 1991. The motion was carried.

Saturday, November 16, 1991

David Steeves called the meeting to order at 9:30 a.m. noting that the motion proposing amendments to the Land Surveyors Act respecting Complaints and Discipline had been tabled the previous day. It was moved by David Roberts, seconded by Murray Banks, that the motion be brought to the floor. The motion was carried.

After brief discussion the question was called and the motion proposing amendments to the Land Surveyors Act respecting Complaints and Discipline as amended was carried, with one member opposed.

(The Complaints and Discipline amendments to the Land Surveyors Act approved by the membership are reproduced at the end of these minutes as Attachment #1).



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16. David Steeves thanked John MacInnis and Walter Rayworth for their efforts in bringing these amendments to the Complaints and Discipline process before the membership.

17. David Steeves asked Carl Hartlen, Chairman of the Regulations Committee to join him on the platform to assist with the proposed amendments to Part II of the Regulations and the proposed Surveyors Real Property Report regulation.

18. David Steeves indicated that the proposed amendments to Part II of the Regulations would be discussed in four sections: monumentation of curved boundaries, witness monuments, found evidence and blazing and brushing of boundaries. It was moved by Carl Hartlen, seconded by Neiff Joseph, that Part II of the regulations be amended respecting these four issues in the manner as circulated to the membership.

19. Monumentation of Curved Boundaries

Carl Hartlen reviewed the debate over the last two years surrounding the monumentation of curved boundaries, noting that it had been discussed along with all other proposed regulations changes at zone meetings, the 1990 Annual Meeting and at a special workshop in June of 1991.

Notice of the Proposed changes to Part II of the Regulations was forwarded to the membership on September 19, 1991.

Proposed changes to the requirements regarding monumentation of curved boundaries, contained in section 37 of the regulations, were reviewed. It was moved by Carl Hartlen, seconded by John MacInnis that all words after "...marks the boundary" in section 37(a) as proposed be deleted. The words to be deleted are repetitive and were inserted in error. The motion was carried.

It was moved by A.E. Wallace, seconded by Robert Ashley, that the proposed section 37 (b) be deleted and the section be re-lettered accordingly. A.E. Wallace and Robert Ashley spoke to this motion expressing the view that it is wrong to define boundaries by co-ordinates only and that this change to the regulations, if carried, in their view would represent a step backward.

Several members spoke in favour and several against the Wallace/Ashley motion and after considerable discussion the question was called and the motion to delete section 37(b) was defeated.

20. Blazing and Brushing of Boundaries

Carl Hartlen reviewed the proposed changes to section 24 of the regulations respecting blazing and brushing of boundaries.

It was moved by Athol Grant, seconded by Douglas K. MacDonald that "500" be changed to "100" in section 24(2). The motion was carried.

It was moved by Bill Thompson, seconded by Athol Grant, that the words "or part thereof" and "or portion thereof" be removed from section 24(2). The motion was carried.

It was moved by Bob Feetham, seconded by Stephen Howard, that the words "or other like instrument" be removed from section 24(2) (iv). The motion was carried.

21. Witness Monuments

There was some discussion of the proposed changes to section 44 regarding witness monuments, but no amendments to the proposed changes were moved.

22. Found Evidence

There was some discussion of the proposed changes to sections 27, 36, 39 and 40 regarding found evidence, but no amendments to the proposed changes were moved.

Hearing no further discussion on the proposed changes to the regulations regarding monumentation of curved boundaries, blazing and brushing, witness monuments and found evidence David Steeves called the question on the original motion by Carl Hartlen, seconded by Neiff Joseph, as amended on the floor. The motion was carried. (The amendments to Part II of the Regulations as approved by the membership are reproduced as Attachment #2 to the minutes).

23. Lorraine Petzold, newly elected Honorary Member, addressed the meeting. (Her paper entitled "Dancing" is available upon request from the Association offices).

24. Surveyors Real Property Reports

David Steeves indicated that the next item of business was the proposed regulation respecting Surveyors Real Property Reports and reviewed the

history of Surveyors Real Property Reports within our Association.

In 1988, because of concern expressed by lenders, the Canadian Council of Land Surveyors began promoting a standardized Surveyors Real Property Report across the country. The ANSLs agreed in principle with guidelines suggested by CCLS.

During 1989-90 our Regulations Committee drafted a proposed regulation and discussed it at zone meetings. Comments and suggestions from members were incorporated into the draft and it was considered by the membership on the floor of the 1990 Annual Meeting. After lively debate and discussion the regulation was approved by the membership by a slim margin. The matter was tabled until the 1991 Annual Meeting.

During 1991 the proposed regulation was amended discussed at zone meetings and considered at a June workshop attended by over ninety members.

Meanwhile, Bob Daniels, Rosalind Penfound and the Executive continued meeting and making presentations to the Canadian Bar Association, Real Property Subsection; the Continuing Legal Education Society of Nova Scotia's Real Property Conference; The Nova Scotia Barristers' Society Executive; the Barristers/Surveyors Liaison Committee and the Mortgage Lenders Association.

The proposed regulation was again amended to reflect concerns and comments from members and others.

As of this date almost all other provinces have standards in place which substantially meet the CCLS suggested guidelines.

David Steeves noted that Ed Grenkie, Chairman of the CCLS National Standards Committee was present.

The matter of a Surveyors Real Property Report regulation is brought to the floor of this meeting from the 1990 Annual Meeting.

In addition, notice that a proposed regulation respecting Surveyors Real Property Reports would be considered at this 1991 Annual Meeting was forwarded to the members on September 19, 1991.

It was moved by Carl Hartlen, seconded by John MacInnis that the membership approve the proposed Surveyors Real Property Reports regulations.

Carl Hartlen spoke to the motion, reviewing the types of requests received from lawyers and lenders and the variety of products being supplied by land surveyors. He reviewed the proposed regulation, noting in particular changes made to the proposal as a result of discussions and comments at the June Workshop and zone meetings. He reviewed sample Surveyors Real Property Reports.

It was moved by Carl Hartlen, seconded by Gerry Bourbonniere that section 136(3) of the proposed regulation be amended by removing the words "by a monument" and substituting the words "in accordance with section 37(a) of these regulations". The motion was carried.

It was moved by David Roberts, seconded by A.E. Wallace that section 140(3) be amended by removing all words after "or defined by ____". After some debate, the question was called and the motion was defeated.

It was moved by David Roberts, seconded by Alan Comfort that section 140(3) be amended by removing all words after "as defined by ____" and substituting "A survey of this property has not been performed and this certificate does not verify as to the exact location of the boundaries or their agreement with the quantitative data as quoted in said deed (plan, document). The motion was defeated.

It was moved by Fred Hutchinson, seconded by Allen Owen that section 136(3) be changed to read "All corners of the property need not be monumented." The motion was defeated.

It was moved by David Roberts, seconded by Douglas MacDonald that section 140(3) be amended by removing all words after "as defined by ____" and inserting in their place "No further certification is implied or to be inferred from this document". The motion was carried.

There were no further motions to amend the regulation as proposed and moved by Carl Hartlen. There was discussion of Surveyors Real Property Reports in general.

K.W. Robb expressed his firm opposition to Surveyors Real Property Reports, indicating that it was his view that only private practitioners should be permitted to vote and urging members to vote against the motion, get a new committee and

find a new direction on this issue.

Athol Grant expressed his thanks to the Committee for a job well done.

Hearing no further discussion, David Steeves call the question. The motion was carried with 61 in favour, 21 opposed and 11 abstentions. (The Surveyors Real Property Report regulation as approved by the membership is reproduced as Attachment #3 to the Minutes).

25. Newly elected President Grant McBurney assumed the chair.

26. Marcellin Chiasson suggested that Council consider requesting the Department of the Attorney General consider encouraging lawyers to register plans of survey, noting that it seems that there is sometimes a reluctance to do so because of cost.

27. Alex McDonald suggested that consideration be given to re-instituting the non-practicing category of membership.

28. It was moved by Rod MacInnis, seconded by Stewart MacPhee, that the Executive Director be instructed to prepare monthly reports of all budget items to be circulated to the Executive and to Council for discussion at zone meetings. The motion was carried with one member opposed.

29. Fred Hutchinson expressed the view that, even with our current financial position, we should not abandon the idea of owning our own building at sometime in the future. Accumulation of a building fund over a number of years would be the best approach.

30. Rod MacInnis expressed concern that the Manager of the Survey Review Department might be participating in activities beyond his mandate and suggested that this be monitored. Grant McBurney gave assurance that staff activities are monitored.

31. Grant McBurney announced that Council, at a meeting that morning, had increased the price of Survey Review Department stickers by \$3.50 to \$18.50 effective immediately. This decision is in keeping with the view of the membership as expressed the previous day that the Survey Review Department should be self-funded and should recoup any deficit accrued to date.

32. Glenn Crews commented on the fact that the new definition of professional land surveying approved at the 1990 Annual Meeting did not include the preparation of legal descriptions. It was moved by Glenn Crews, seconded by Robert Ashley that Council investigate the insertion of the preparation of legal descriptions in the definition of land surveying. After brief discussion the question was called and the motion defeated.

33. In response to a question by Robert Feetham, Grant McBurney indicated that we would be proceeding to move all statutory amendments and regulations forward to the legislative process, including the definition approved last year. It was noted that it is unlikely that APENS will change its position of opposing the definition.

34. Grant McBurney called forward and introduced the 1991-92 Council.

35. The following persons made brief remarks and thanked the Association and members for their hospitality.

Gordon Kilbride - British Columbia
 Bob Baker - Alberta
 Ed Grenkie - Saskatchewan
 Orest Recunyk - Manitoba
 Tom Williston - New Brunswick

Jamie Clow - Prince Edward Island
 Robin Davis - Newfoundland
 John Covert - on behalf of the Surveyor General for Canada

36. Jim Nicholson, President of the Association of Ontario Land Surveyors, in addition to expressing his thanks, invited everyone to attend the 100th Anniversary of the Association of Ontario Land Surveyors in March of 1992.

37. Bill Chapman, President of the Canadian Council of Land Surveyors, expressed thanks personally and on behalf of those attending the CCLS meetings for the hospitality extended to them. He reported on CCLS activities and commented on the value of CCLS to every land surveyor.

38. Grant McBurney thanked Convention Chairman, Brian MacIntyre, the Convention Committee, exhibitors and guests. He also thanked the members for attending.

39. It was moved by John MacInnis, seconded by Robert Feetham and carried that the meeting be adjourned.

Rosalind Penfound
 Secretary

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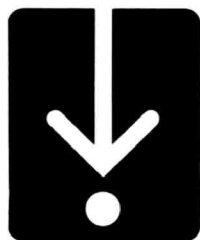
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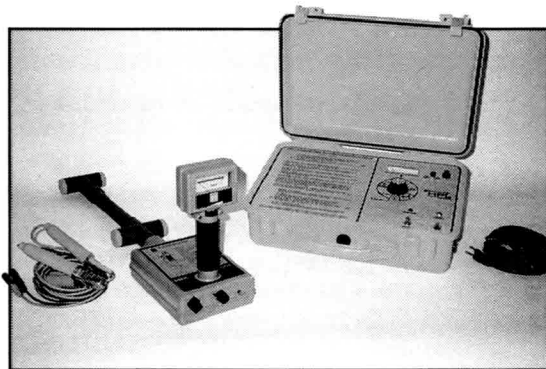


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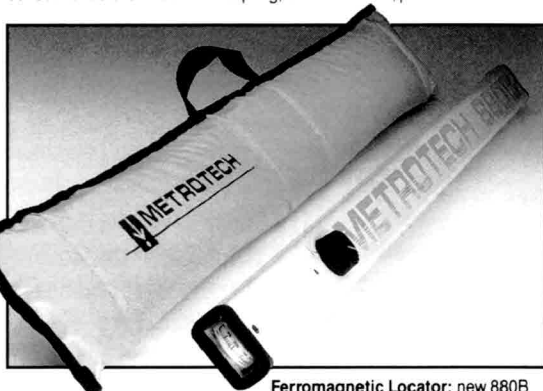
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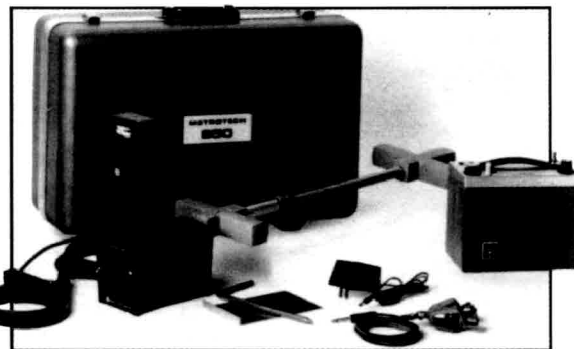
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Attachment #1 to the Minutes of the
41st Annual Meeting, November 1991

(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 an 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 (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

- (7) Where a complainant elects to proceed with a complaint pursuant to subclause (ii) of 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 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 (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 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 (3).

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 judgement rendered by a civil court;
 - (d) for any other purpose extraneous to the objects stated in subsection (14)., 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 or adequate arrangements for 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 or adequate arrangements for 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.

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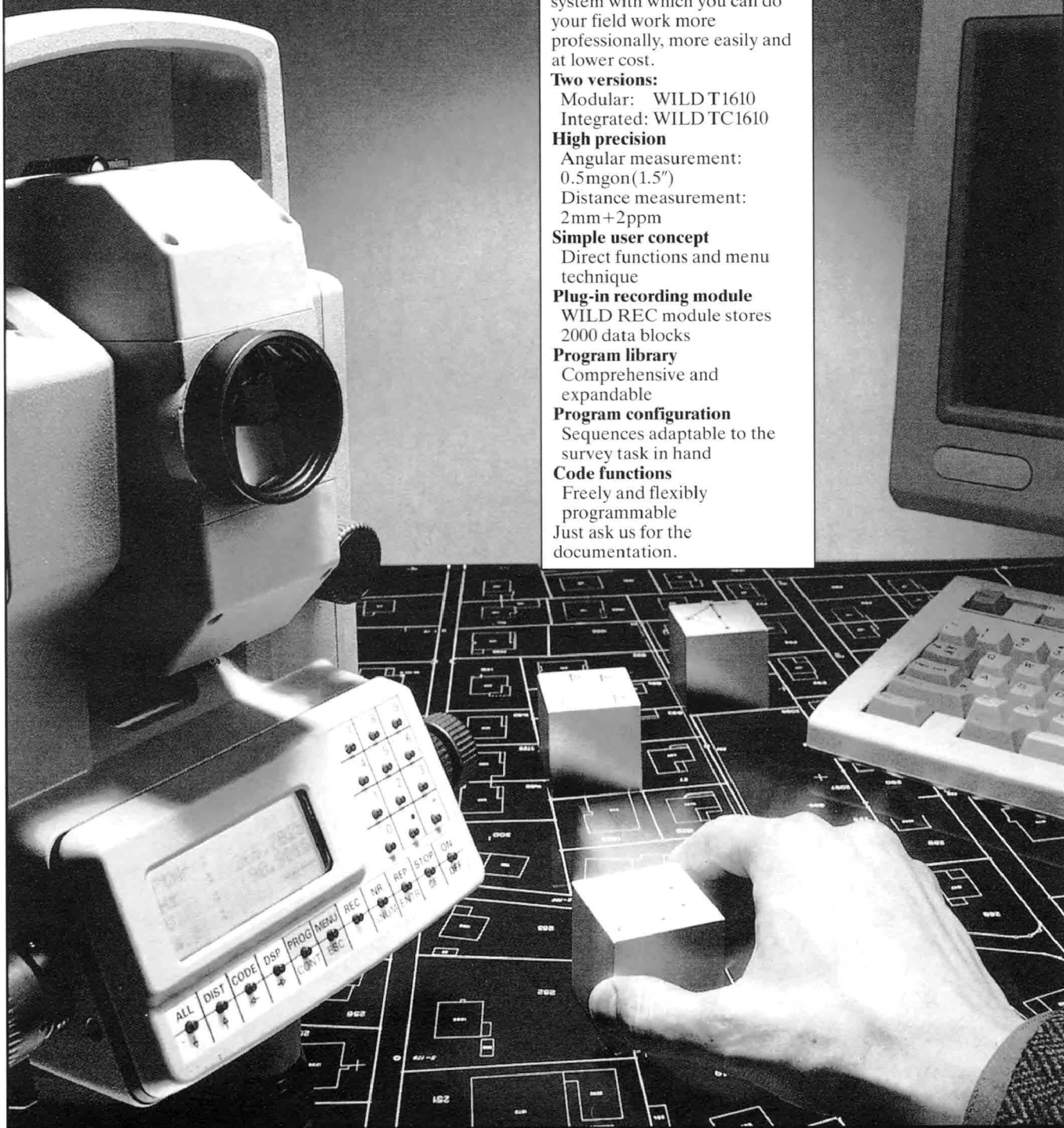
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Restrictions on Discipline Committee

- (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 (9).

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 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

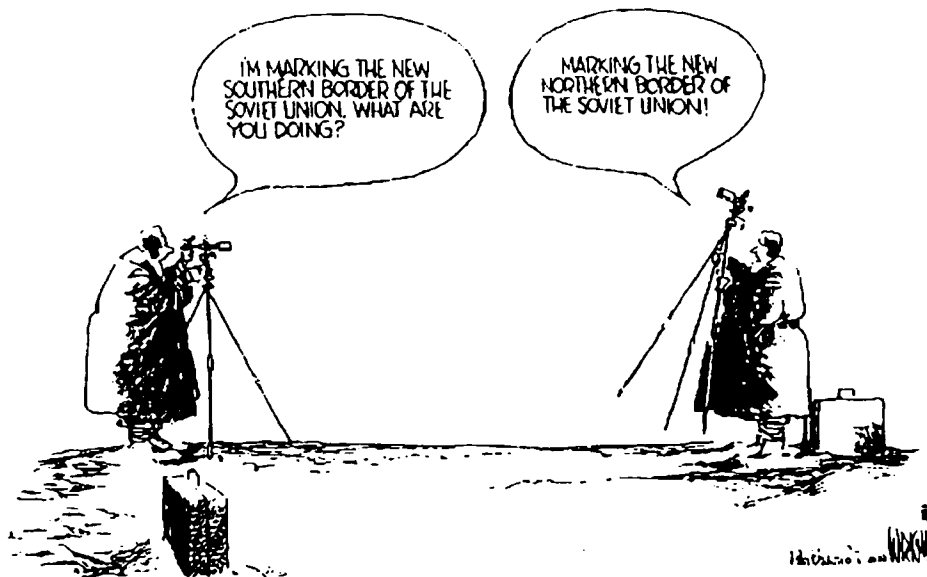
- (15) A record shall be compiled for every hearing consisting of the complaint and the notice referred to in subsection (2), any intermediate rulings or orders made in the course of the proceedings, a transcript of the oral evidence, if a transcript has been prepared, such documentary evidence and things 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.

**The way I see
it, if you want
the rainbow,
you gotta put
up with the
rain.**

Dolly Parton



REPRINTED FROM THE TEXAS SURVEYOR APRIL 1992

Attachment #2 to the Minutes of the
41st Annual Meeting, November 1991

(Note: Changes from existing regulations
are underlined.)

I Re: BLAZING OF BOUNDARIES

s.24 (1) (a) 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

(b) All boundary lines not brushed out shall be clearly indicated as such on the plan of survey

(2) In any instance here the distance between two monuments on a particular line exceeds 100 metres the line shall 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;

(3) When sufficient evidence exists along a boundary line, so as to render its location distinguishable, the boundary line need not be brushed or blazed as the case may be

(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, where applicable.

s.36 Placed monuments shall be classified as follows:

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

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;

(b) When a survey includes curved boundaries along an existing road, it is sufficient to monument the intersections of the road boundary and the property boundary and to show calculated points of curvature along the road boundary.

(c) Where the boundaries of an air space or of land covered with water are to be defined, their location shall be referenced to at least two related monuments or to the Nova Scotia Coordinate System.

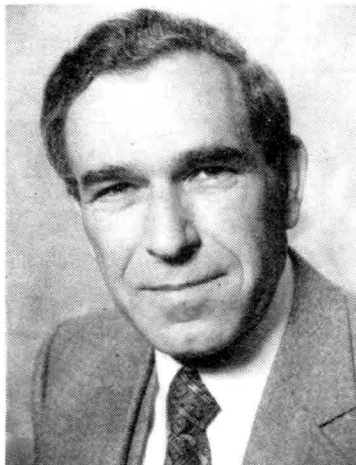
s.39 Where boundary evidence no longer exists, all available information concerning its original position shall be considered in the re-establishment thereof.

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".

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

Obituary

ROY ALLEN DUNBRACK, N.S.L.S., C.L.S.



Roy A. Dunbrack, died on May 11, 1992 in Hants Community Hospital at the age of 58, following a lengthy illness.

Mr. Dunbrack was born in Dartmouth, the son of the late Carl R. and Louise (Sidebottom) Dunbrack. He graduated from the Nova Scotia Land Survey Institute, Lawrencetown and received his commission as a Nova Scotia Land Surveyor on March 26, 1954. Until 1958 he worked with Topographic Surveys of Canada and with private survey firms in Ottawa and Halifax.

From 1958-1969 Roy Dunbrack was Chief Surveyor for the City of Halifax. While with the City he initiated the reorganization of street line information including the orderly preparation of street line sketches showing accurate offset ties to substantial corners. He was also instrumental in convincing the City of the need for an integrated coordinate control system and high quality base mapping. As Chief Surveyor he was responsible for the administration of the Survey Division and was involved in boundary surveys for City-owned properties, street and land acquisitions, topographic surveys for engineering and architectural design and construction related surveys for layout of all City works projects.

In 1969 he returned to private practice with the firm Servant, Dunbrack, McKenzie and MacDonald, where he was President from 1977 until retirement. He was also Chairman of the Board of the Eastcan Group of Survey Consultants Ltd.

Mr. Dunbrack was a member of the Canadian Institute of Surveying, Nova Scotia Historical Society and Avon Valley Golf and Country Club.

Roy Dunbrack served as President of the Association of Nova Scotia Land Surveyors in 1968-69 as well as making a significant contribution as a member of the Board of Examiners and numerous committees over the years.

Those who knew Roy personally, can attest that his chief characteristics included being thorough, painstaking, meticulous and totally professional in his attitude towards his work and his colleagues. He commanded the greatest respect from all who knew him. He will be sorely missed.

Roy Dunbrack is survived by his wife, Eleanor (Spence); a daughter, Diane (Mrs. Brian Hawkins), Bridgetown, Annapolis County; a granddaughter; four brothers, Neil, Parksville, B.C.; Donald, Oyster Pond; Stewart, New Minas; Richard, Pictou; many nieces and nephews.

A memorial service was held on May 14, 1992 at the Windsor United Church.

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3. EGA, VGA colour graphics with other systems supported, eg. Verticom, NEC Powergraphics, or Hercules monochrome graphics
4. Suggested 40Mb storage
5. 2 serial ports
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Attachment #3 to the Minutes of the
41st Annual Meeting, November 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 140.

- 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 angle point in the boundaries of the parcel, excluding points of curvature, is marked in accordance with section 37 (a) of these regulations.

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 and plan reference or current document reference;
- (g) the name of the owner(s) or the identifier(s) of all adjoining properties;
- (h) the location and dimensions of easements and rights-of-way 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) evidence found or monuments 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 Notwithstanding the provisions of subsections (h), (k), (m), (o), (p), & (q) of section 137 a surveyor may prepare a Surveyors Real Property Report to certify the location of specific buildings or improvements relative to specific boundaries of a parcel of land provided it contains a note in the following form:

"Note: Other improvements and or buildings may exist on the subject parcel; no field survey has been undertaken to determine their location or verify the existence of encroachments. The only boundaries which have been surveyed are those as shown."

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

- (a) 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. _____;

- (b) a Survey Review Department Sticker in accordance with Section 94(2) of the regulations;
- (c) the date or dates on which the field survey was conducted;

- 140 (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 subsection (c) of Section 139 shall apply to such Limited Property Report;

- (3) A Limited Property Report prepared pursuant to this section shall bear the title "Limited Property Report" and 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 _____. No further certification is implied or to be inferred from this document"

- (4) No sketch, drawing or plan shall accompany a Limited Property Report.

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

ETHICAL ESSAYS

by James F. Doig, NSLS, CLS

Tell It Like It Is

In our code of ethics we say, "the surveyor shall...serve a client or an employer to the best of the surveyor's knowledge and ability."

Does this statement mean what it says? Or to put things a bit differently, does this statement tell the whole story?

If the person who reads the statement is not a surveyor. I don't think it does.

As it stands, the non-surveyor could easily infer from what is said in our code that the surveyor whom they hire will be an advocate on their behalf to the same extent as they would expect of an accountant, an engineer, a lawyer, or any other person possessed of special knowledge who normally acts in this capacity.

Perhaps we should be clear, before going further, about what an advocate does. An advocate speaks in favour of some person or of some concept; things that can be said that are not in the person's or the concept's favour are left by the advocate for the other side. In essence, an advocate must tell the truth but is not required necessarily to tell the whole of any story.

The position of the land surveyor is rather different. In retracing the boundaries of a client, it is incumbent upon the surveyor to respect the rights and interests of all who share those boundaries with the client.

Surveyors know this, but many clients are not aware of the fact.

Should we not try to make clients, and others, more mindful of this aspect of the surveyor's role.?

This is not to suggest that the code of ethics is the place to which one refers in order to determine the role of the surveyor, nor that our (or anyone else's) code of ethics is popular reading. It is simply to say that our code ought to reflect the realities of the surveyor's role.

We would thus be telling the full story, however briefly, whether or not we expected others to see it in that particular context.

And this may be a good thing too, from another point of view. When things are going well it is very unlikely that anyone would have occasion to consult our code of ethics. But given a relationship in which something had gone sour, there would be no grounds for anyone to suggest we had not fully stated the surveyor's responsibilities in the matter of advocacy.

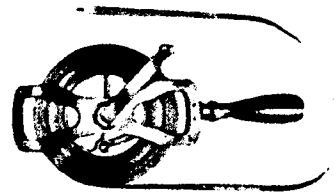
I think it's time for a change here; do you?

=====

"Every man owes a part of his time and money to the business or industry in which he is engaged.

No man has a moral right to withhold his support from an organization that is striving to improve conditions within his sphere."

Theodore Roosevelt



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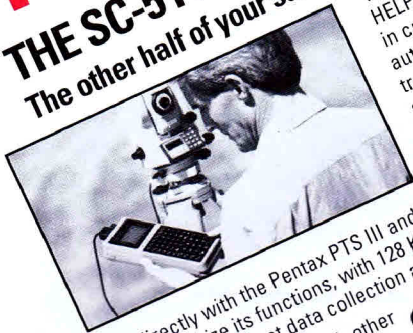
Distance Measuring Range	3,000 m (3 prisms)*
Accuracy	± (5 mm + 3 ppm) m.s.e
Measuring Time	Fine mode: 4 seconds Tracking mode: 0.8 sec. (1 mm) 0.6 sec. (1 cm)
Angle Minimum Count	1"/5" (switch selectable)
Angle Measurement Accuracy	3" standard deviation
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Note: *Under good conditions.

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COMMITTEE REPORTS

BUILDING COMMITTEE

Members: David Steeves, Chairman
 Rosalind Penfound
 Jim Gunn

This committee met during the year to discuss the concept of this Association purchasing a building. Members may recall that this was part of the long range plan.

The committee's position is that this won't be pursued at this time. We are happy with our present accomodations and are paying an excellent price there. Our lease will be up for renewal in April/92 and the landlord has offered us the same space with a very modest increase in each of the next three years.

If we were to pursue seriously the purchase of a building, we would have to start accumulating money for this purpose. This would probably be acquired in the form of a levy. We do not feel that this is the proper time to suggest additional costs for this purpose to the membership.

The committee will continue to monitor the commercial real estate possibilities in the coming year.

I would like to thank the members of the committee for their input throughout the year.

David A. Steeves
 Chairman

POLITICAL LIAISON COMMITTEE

During the past year, this committee initiated the concept of an MLA night as a means of improving communication and awareness with the provincial politicians. The Association would invite all members of the legislature to a dinner where they would meet and talk with members of our Association. A short presentation would also be made by our President.

Jim Gillis agreed to initiate discussions with the government, get agreement on the idea and determine a date. He made contact with the appropriate authorities and presented the concept. It is my understanding they are willing to move forward with it.

We originally were trying to set up a time during the fall sitting of the legislature, but this has been deferred because there is no fall sitting.

We will continue to pursue this meeting and finalize plans at the earliest possible time. Since Jim Gillis is no longer in the country, we will be looking for another member to take over his duties.

The MLA night concept was copied directly from the Association of Alberta Land Surveyors. Syd Leoppy, their President at the time, supplied me with valuable information and I thank him for it.

David A. Steeves
 Chairman

MARK YOUR CALENDAR

Geomatics Atlantic '92 will be held at the World Trade and Convention Center in Halifax
 Pre-conference Workshops October 19, 1992
 Conference: October 20-21, 1992
 For information contact:

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Phone: 902-424-8577
 Fax: 902-424-0976

ATLANTIC PROVINCES BOARD OF EXAMINERS FOR
CANADA LAND SURVEYORS

Report on the Activities of the Board for the year
1 July 1990 - 30 June 1991

The Board met on June 15, 1991, in Charlottetown in
conjunction with the APEILS Annual Meeting.

During the year fifteen examinations were written,
twelve of which yielded passing grades.

Ten new candidates registered with the Board (two
from Newfoundland, four from New Brunswick, four
from Nova Scotia) bringing the total to 176.

Thirteen candidates received their certificates,
namely:

Wayne Hodges (#74) from Perth-Andover, N.B.
Shane Flanagan (#75) from Moncton, N.B.
Gaetan Soucy (#76) from St. Leonard, N.B.
Stephen Parsons (#77) from Lr. Ship Harbour, N.S.
David Morris (#78) from Beresford, N.B.
Serge Bernard (#79) from Balmoral, N.B.
Aubrey Burt (#80) from Holyrood, NF
Nathan Clark (#81) from Little Bras D'Or, N.S.
Lyndon Crowe (#82) from Southampton, N.S.
Lovett Lewis (#83) from Lower Five Islands, N.S.
Scott Murphy (#84) from Holyrood, NF
Jerry Quinlan (#85) from Brigus, NF
and David Pittman (#86) from Winterland, NF

Seven candidates received and confirmed
notification that their files have been closed due
to inactivity. Letters to two other candidates
could not be delivered, therefore their files will
be kept open for another three years.

In addition to routine items, the Board dealt with
the following issues:

-The Syllabus Review Panel, chaired by John
McLaughlin, will commence deliberations once the
national study on human resources requirements in
geomatics is completed.

-The Mandatory Continuing Education Panel, chaired
by Harold Lively reported on the present situation
in Atlantic Canada and will monitor the ANBLS
initiatives in this area.

-Articling times were discussed and found to be
reasonably common within the Atlantic region.

-Impact on the Board from the proposed economic
union in Atlantic Canada was discussed.

During the professional Affairs session at the 84th
Annual Meeting of the Canadian Institute of
Surveying and Mapping, our Board's Registrar,
Wolfgang Faig, presented a paper entitled "The
Effects of Changing Trends in Surveying on Canadian
Boards of Examiners".

The financial situation of the Board is stable,
even though the year ended in a deficit position.

The next meeting is proposed for May, 1992 in
conjunction with the ANLS meeting.

The Nova Scotia members of the Board for the past
year were Grant McBurney, John MacInnis and Harold
Lively.

Respectfully submitted,

Harold S. Lively

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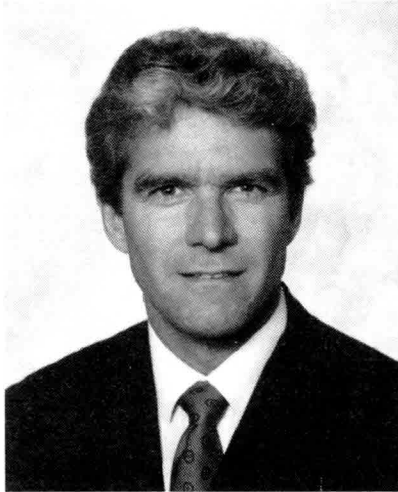
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PRESIDENT'S ADDRESS
TO THE FORTY-FIRST ANNUAL MEETING
NOVEMBER 1991



It is a pleasure for me to speak with you at this time and share some thoughts about my term as President and about our Association.

Numerous people have asked me during the course of the year, "How are you enjoying your term as President?" My answer to this has been reasonably consistent - It is arduous, difficult, stressful, time consuming and challenging, but I am enjoying it!

When I think back on what has happened over the past year, I do so with mixed feelings.

On the negative side, APENS has decided they don't want to talk to us anymore and the Department of Transportation doesn't want land surveyors to determine the boundaries of their highways. On the positive side, we received the lowest number of complaints from the general public, we are being heard on the issue of Instrument of Subdivision and we are moving forward in the administration of complaints and discipline. We are continuing to review the way we practice land surveying and make positive changes as required. Examples of this are the revisions to the regulations made at this and the previous AGM and the work initiated on the Manual of Good Practice.

I feel bad about the negative things and wonder if I could have had a more positive impact on them.

I feel good about the positive things and wonder if there wasn't more I could have done. I can assure you that on all issues, we have and will continue to work ethically and professionally with the public interest our foremost consideration.

I have welcomed the opportunity to represent you at other Association meetings and work on your behalf with land surveyors across the country. Janice and I attended meetings in Manitoba, Ontario, New Brunswick and Newfoundland. We also attended the CISM meeting in Calgary. Mary and Grant McBurney attended meetings in British Columbia, Prince Edward Island and Massachusetts.

Helen and Doug MacDonald attended the meeting in Saskatchewan.

We established a consistent schedule for council meetings this year, meeting every two months. The executive committee attempted to meet during the "off month". At this time, I thank all councillors for their input, support and serious dedication to their job. It has been a pleasure to work with all of you.

During the past year, I have found myself doing a lot of thinking - thinking about the Association, thinking about land surveying and its place in society, thinking about how it is viewed by other professionals and groups (many of these examples based on personal experience), thinking about what we should be doing and how we should be moving into the future - how we can "survive the nineties".

When I was a student in University, I read an article that stated students would have a difficult time finding jobs for the summer. Things were not as prosperous and economic growth was slowing down. The year was 1971. Ever since then, throughout my whole career, I have heard statements which include the words and phrases "restraint", "these economic times", "we just don't have any money". Since I have spent my whole career working under these conditions, it is difficult for me to envision that they will eventually disappear. They are as serious now as ever. Difficult economic times will not change significantly. The result is that, in order to survive, we as individuals and as an association, may have to change.

The 1990's will be a time when "courageous decisions" are made concerning our individual practices and our place in society.

There is a plaque on a wall in a house that I visit frequently. It was given to a professional man by his peers for the things that he accomplished during his career. It does not state that he was a good engineer or a good lawyer or a good doctor or a good architect or a good land surveyor. It states that he made a significant contribution to the quality of life of his fellow citizens.

Every day, as individuals and as a group, we make decisions that affect issues that are important to land surveyors and their future.

Decisions that affect the respect we get from the public, respect from other associations, our self-respect, our standards of service, our regulatory process. We will survive and thrive if, in making these decisions, we never forget that every day we must be totally honest, possess unquestionable integrity, always do our best, and base every decision on the underlying principle that it will result in a significant contribution to the quality of life of our fellow citizens.

I have many people to thank for their assistance and guidance over the past year. I thank the office staff - Rosalind, Janice, Jim and Shelley for their support. I can assure you that our office staff is highly competent and efficient in the execution of their duties.

I have a very special thanks to my wife, Janice, who has worked diligently and conscientiously over the past year. She has worked hard during our travels and in the preparation of this meeting.

In conclusion, I thank all members of this fine professional association for allowing me to serve as your president.

David A. Steeves
President

ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS

DISCIPLINE COMMITTEE

ORDER

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

AND IN THE MATTER of a formal complaint against Gerald B. Boylan, N.S.L.S. of the City of Halifax, Halifax County, Nova Scotia

WHEREAS the Discipline Committee of the Association of Nova Scotia Land Surveyors, conducted a hearing on September 5, 1991, with respect to a formal complaint sworn on April 19, 1991, by Rosalind C. Penfound, on behalf of the Association of Nova Scotia Land Surveyors against Gerald B. Boylan, N.S.L.S.

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

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

Upon hearing Harry M. Paton, Q.C. plead "guilty to all charges" on behalf of Gerald B. Boylan, N.S.L.S.; and

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

1. That with respect to a survey and plan prepared under the supervision of Gerald B. Boylan, which plan is dated and described as follows:

Amended Plan of Survey of Lots 6 and 7, A Subdivision of Lands of James Moore and W.M. Knowles Et Ux (Lakewood Acres Subdivision) Old Cobequid Road, Fall River, Halifax County, Nova Scotia dated June 13, 1988,

Gerald B. Boylan, N.S.L.S. is found guilty of Professional Misconduct as defined in Section 2 of Nova Scotia Regulation 42/79

2. That the Professional Misconduct is comprised of failing to adhere to the following Regulations (as charged):

Regulation Numbers

17,18,21(1)(b),23,26,29,32,33,34,35,36,53,55,64(c),67(e),67(f),67(g),67(h),67(i),67(j),67(k),67(l),67(n),69(e) and 71;

3. That Gerald B. Boylan, N.S.L.S., is reprimanded, such reprimand to be recorded on the Roll.

4. That Gerald B. Boylan, N.S.L.S. pay to the Discipline Committee its costs and disbursements on the investigation, or the sum of two thousand dollars, whichever amount is the least.

5. That the above amount shall be calculated by the Secretary of the Association and said amount shall be due and payable 60 days after the posting of a notice of this amount to him Gerald B. Boylan, by registered mail. Further to this, Gerald B. Boylan shall take notice that in accordance with the Land Surveyors Act 1989, C.249, S. 26(1)(g) he shall not carry on the practice of professional land surveying, after the said due date, until he has made payment of such costs.

6. That Gerald B. Boylan, N.S.L.S. be "Suspended for a 90 day Period", upon receipt of notice from the Discipline Committee, unless he complies with the following penalty:

(a) That within 6 months of the date of this order, Gerald Boylan shall prepare an Amended Plan of Subdivision of Lands of James Moore and W.M. Knowles (et ux) with corrected values for the boundaries of all the approved lots of the subdivision, corrected values for the exterior boundary of the subdivision and showing current ownership and deed references for all the properties and adjoining properties involved, which plan must first meet the approval of the Survey Review Department of the Association of Nova Scotia Land Surveyors, and which plan must be submitted within the stated 6 months time, to the Municipality of the County of Halifax for approval;

(b) Gerald B. Boylan, in advance of taking such measurements as are deemed necessary to prepare the amended plan in (a) above, and/or in advance of submitting such plan to the Municipality of the County of Halifax, shall notify all the owners of

property in Lakewood Acres Subdivision of the re-measuring of their boundaries and the proposed submission of the amended plan

(c) Gerald B. Boylan shall, as of the 1st of December, 1991, submit to the Association of Nova Scotia Land Surveyors for inspection the next ten plans of survey/subdivision that he prepares together with his field notes for same and that he shall do so before delivery of those plans to his clients.

(d) Gerald B. Boylan shall, within six months of the date of this order, request in writing that the Survey Review Department of the Association of Nova Scotia Land Surveyors conduct, in accordance with Sec. 97 of the Nova Scotia Regulations 145/90, a "Comprehensive Plan Review" for a plan prepared by Gerald B. Boylan to be chosen at random by the Survey Review Department.

7. That this Order shall be published in full in the Nova Scotia Surveyor.

Walter C. Rayworth
Chairman, Discipline Committee

November 4, 1991

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OBITUARY

LAWRENCE SYDNEY (SHORTY) LONG

Lawrence Sydney (Shorty) Long, 82, 41 Old Kings Road, Sydney, died Monday, February 3, 1992 in the Sydney City Hospital. Born in Whitney Pier, he was the son of the late James and Minetta May MacFadgen Long. He was an adherent of St. Andrew's United Church. He was a life member of the Association of Nova Scotia Land Surveyors, registration number 294. Mr. Long began his career in 1927 as a surveyor's helper in the coal mines of Cape Breton.

He worked for Devco and its predecessors for 51 years before retiring. He worked on the Princess Tunnels and the development of the Lingan and Prince Mines.

Mr. Long is survived by his wife the former Beatrice Rudderham; two daughters, Verva (Mrs. Rodolfo Losoya), McAllen, Texas and Helen (Mrs. Steve Day), Wellington, N.S.; a sister, Edna DeSanctis, Sydney; four grandchildren and one great grandchild. He was predeceased by a brother, Percy Angus and a sister Minetta. Memorials to the Cape Breton Regional Hospital or the N.S. Heart and Stroke Foundation. Shorty is fondly remembered for his tireless efforts to assist his fellow Surveyors.

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A paper presented to the Association of Nova Scotia Land Surveyors Annual Meeting, November 14, 1991 by Marshall Burgess, Solicitor, Nova Scotia Department of Attorney General, may be obtained by contacting the Association office.



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**Notice to Surveyors Working on Lands
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Sections 3(2) and 24 of the Canada Lands Surveys Act are defined as follows:

- 3(2) -** The Surveyor General, subject to the direction of the Minister, has the management of surveys under this Act and the custody of all the original plans, journals, field notes, and other papers connected with those surveys.
- 24 - (1)** In this Part, "Canada Lands" means:
- a) any lands belonging to Her Majesty in right of Canada or of which the Government of Canada has power to dispose that are situated in the Yukon Territory, the Northwest Territories, or in any National Park of Canada and any lands that are:
 - (i) surrendered lands or a reserve, as defined in the *Indian Act*,
 - (ii) Category 1A land or Category IA-N land, as defined in the *Cree-Naskapi (of Quebec) Act*, Chapter 18 of the Statutes of Canada, 1984; and
 - (iii) Sechelt lands, as defined in the *Sechelt Indian Band Self-Government Act*, Chapter 27 of the Statutes of Canada, 1986; and,
 - b) any lands under water belong to Her Majesty in Right of Canada or in respect of any rights in which the Government of Canada has power to dispose.
- (2) Surveys of Canada Lands shall be made in accordance with the instructions of the Surveyor General.

The Surveyor General of Canada Lands exercises certain statutory or administrative functions on other lands that are not Canada Lands as defined by the CLS Act, but which are owned by the Government of Canada or are lands with respect to which Canada has certain responsibilities. These lands include, inter alia:

- (i) lands in the Yukon and the Northwest Territories that are held under private ownership,
- (ii) Ordnance and Admiralty Lands,
- (iv) Heritage Lands,
- (v) Migratory Bird Sanctuaries, and
- (vi) National Wildlife areas.

When surveys of these lands are being made, the surveyor should contact the regional surveyor in their particular region for survey instructions and related survey information.

It is the responsibility of the Surveyor General to conduct and/or regulate all surveys of Canada Lands which are requested by a government department which has jurisdiction over Canada Lands.

The Surveyor General encourages the practice of federal departments which administer Canada Lands to obtain survey services directly from the private survey industry.

Every provincial or Canada Lands surveyor being engaged to perform surveys on Canada Lands must obtain specific instructions from the Surveyor General before proceeding in order to ensure that standards are adhered to for surveys executed under the Canada Lands Surveys Act.

The services of the Surveyor General may be obtained through his representative, the Regional Surveyor, located in most provinces and in the Northwest and Yukon Territories.

We would advise provincial land surveyors when surveying boundaries common with Canada Lands boundaries, to consult the regional surveyor in their respective region for information thereon.

Legal Surveys Division of E.M.R. and the Association of Canada Lands Surveyors are presently discussing the eventual transfer of some functions related to surveys under the CLS Act. Canada Lands Surveyors would be exclusively engaged in the field of surveying and mapping on Canada Lands similar to the way provincial land surveyors exercise the right to practice professional land surveying in their own province. A provincial land surveyor who wishes to enlarge his field of activity and become a member of the Association of Canada Lands Surveyors may obtain information from the EMR Legal Surveys Division's regional office in their area.

The Regional Surveyor - Atlantic is the Surveyor General's representative for the Provinces of Newfoundland, Nova Scotia, New Brunswick, and Prince Edward Island. For more information, please contact:

Gordon Isaacs
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RECOGNIZED SURVEY STANDARDS SETTLED IN ADVANCE

by

James F. Doig
and
Rosalind C. Penfound

Abstract

Surveyors' location certificates are not now regulated as to form or substance. Users must themselves decide whether a proffered certificate is adequate for their purposes. A recent Nova Scotia decision on survey practice and an earlier Supreme Court of Canada decision on legal practice makes it clear that surveyors' certificates must meet the general standards of liability. The fact that a professional has followed the practice of his or her peers may be strong evidence of diligent conduct, but it is not determinative. The Association of NS Land Surveyors is proposing regulations to the Governor in Council that will offer lawyers, lenders and the public three levels of choice when the assurance of a surveyor is sought regarding the extent of title.

Facts

In January 1990, at the request of the real estate agent acting for the vendors, a land surveyor furnished a certificate of location to intending purchasers. Copies of the certificate were sent to the vendors with the statement of account. In preparing the certificate, the land surveyor assumed that it was required by the purchasers in order to obtain mortgage.

Visiting the parcel in late January after a snow storm, the surveyor located four corners of the parcel with the aid of a metal detector. The corners conformed to the distances and configuration of the parcel as called for by its description. From an examination of property maps produced by the Land Registration and Information Service, Council of Maritime Premiers, the surveyor was aware of the existence of old roads in the vicinity of the parcel. He inspected the property sufficiently to satisfy himself that the old road to the north of the lot was not an adjoiner. The LRIS map confirmed this assessment.

The certificate stated the foundation of the dwelling was wholly within the bounds of the lot and "the existence of any apparent easements, rights of way, and/or encroachments is noted on the attached sketch." None was noted thereon. The drawing attached to the certificate bore the following caution: "This sketch is intended for mortgage certificate purposes. It is not a plan of survey, and must not be used for other than its intended purpose."

The parcel fronted on an existing highway for about 175 feet; its east line had a depth of 150 feet and the west line was about 130 feet long according to its description and marked corners. The subsequent survey showed that the old road took up a triangular portion about 80 feet in length along the rear line, and 45 feet or so along the west line. The marker which had been presumed to indicate the NW corner of the parcel, was located on the centre-line of the old road.

Surveyors' Concerns

It is clear from Campbell v. Fulton ("The Nova Scotian Surveyor," Spring 1991) and Dorion, v. Roberge, Beaupré and Bolduc¹ that:

1. A single standard of care applies to the land surveyor's work where the extent of or limitation to title is involved;
2. There is increasing need for written communication between the land surveyor and the client, so that both parties understand what is wanted and what is to be done; and
3. Caveats or exceptions to the general rule must be explained and accepted before work is undertaken.

It follows from 1. above that if location certificates (or their equivalent) are the land surveyor's exclusive responsibility, they must meet land surveying standards.

A Single Standard

The idea that there is but a single standard of care for the land surveyor is contrary to the accepted practice of many surveyors in Nova Scotia and other jurisdictions. Surveyors have been accustomed for many years now to having two standards.

The boundary survey, or full survey, produces a complete analysis of the extent of title for a parcel and shows any limitations to that title for whatever reason. The location (mortgage, surveyor's etc.) certificate states whether improvements on a lot are within its boundaries and indicates the presence of rights of way or easements, without necessarily saying precisely where the boundaries of the lot are to be found.

Both these approaches deal with the extent of and limitations to title. The Land Surveyors Act² provides that matters of this kind are the province of the land surveyor:

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

The regulations under the Act state the standards that must be met by way of field and office procedures in making surveys. No exceptions are made for different approaches to be taken insofar as certificates of any kind are concerned. Indeed, certificates of location are not mentioned at all. The logic of the Act and of its regulations, thus requires all the land surveyor's work in connection with boundaries to conform to a single standard irrespective of the ultimate purpose of the work at hand.

The plaintiff purchasers brought suit to recover from the defendant land surveyor costs incurred in purchasing a portion of the old highway that "overlapped" the parcel they had purchased which boundaries had been incorrectly verified by the surveyor by way of a location certificate.

The adjudicator of the small claims court found for the surveyor and subsequently, in a written Stated Case, outlined the reasons for his decision. Fundamentally, the adjudicator distinguished between a location certificate and a full survey, took into account a disclaimer on the certificate, and noted there were no easements, rights of way or encroachments on the parcel being purchased. In essence, the adjudicator differentiated between locating the boundary common to the private parcel and the old road (title to which was in Her Majesty

in right of the Province) and certifying that the dwelling was wholly within the boundaries of the private parcel. The dwelling on the private parcel was wholly within the bounds of the parcel; that was what the surveyor had been asked to confirm and the surveyor had done just that.

On appeal from this decision to the County Court, the court ruled:

Despite the notation that the existence of any apparent easements, right-of-ways and/or encroachments is noted on the attached sketch, [the surveyor] did not show or make any mention of the abandoned road....Thus, the sketch was clearly in error, as a portion of the land which he indicated in this sketch as being owned by the vendors and being purchased by the Campbells, was actually owned by Her Majesty....There is no question whatsoever that Fulton was negligent in not disclosing on his sketch and certificate that the abandoned road ran across the corner of the lot being purchased....The boundary of the road plainly encroached on the property being purchased...and even though the survey requested was for the purposes of determining the location of the dwelling house on the lot being purchased, this encroachment should have been shown by Fulton. This was a minimal requirement for such a sketch and certificate prepared by a professional surveyor. Fulton was in breach of the standard of care required of him as a professional surveyor in such a situation.

On reading this judgment, a surveyor's first reaction might be to think that the court did not fully appreciate the distinction between a boundary survey and a certificate of location. The surveyor might take the view that had the court had the benefit of additional testimony on this point, the decision would have been different. This is very unlikely, witness a recent decision of the Supreme Court of Canada.

The Dorion case concerned a notary in Quebec City who had advised his clients that property they had undertaken to purchase had a defect in title. As a result, the purchasers refused to proceed with the transaction. The vendors brought suit for damages.

The notary's defence was that he had followed the common notarial practices. Witnesses testified that the notary's opinion had conformed to the norms of practice of a prudent and cautious notary in the same circumstances. The judge at trial admitted the expert testimony as far as notarial practice was concerned, but he did not accept the inference that one who followed the normal practice was acting lawfully. In commenting on this aspect of the trial judge's decision, the Supreme Court said: "The principle that usual professional practice may not necessarily be prudent and diligent has also been accepted by the courts." The Court then went on to say:

One would hope that if a certain practice has developed amongst professionals in regard to a particular professional act, such practice is in accordance with a prudent course of action. The fact that a professional has followed the practice of his or her peers may be strong evidence of reasonable and diligent conduct, but it is not determinative. If the practice is not in accordance with the general standards of liability, i.e. that one must act in a reasonable manner, then the professional who adheres to such practice can be found liable, depending on the facts of each case.

Communicating with Clients

In the circumstances of Campbell v. Fulton, the land surveyor undertook to provide certain services without having had any communication with his clients. Thus the surveyor assessed the wishes and expectations of the clients at second-hand through the reports of others; the clients did not have the benefit of hearing directly from the surveyor what it was that he was prepared to do for them, and what this entailed. In addition, there was no written record of what had been said by the surveyor to any of the parties involved.

That this is an undesirable set of circumstances goes virtually without saying, but it is not a situation peculiar to Campbell v. Fulton. It is not uncommon for a land surveyor to take instruction with respect to the need for certification of a dwelling, from a lawyer acting on behalf of a client. Nor, it may be said, is it uncommon for the surveyor to furnish the requested certification without having had any personal contact or other communication with the lawyer's client, the person for whom the work has been done

and the one who ultimately will pay for that work either directly (to the surveyor) or indirectly (to the lawyer).

This may be adequate where the land parcel is a well-defined one, where the dwelling is well clear of the sidelines, and where all the normal assumptions turn out to be valid. The weakness, however, is that the surveyor is not directly aware of the expectations of the client and is thus not in a position to assess his or her responsibilities against those expectations. This arrangement also leaves some question about the identity of the surveyor's client: is it the lawyer who asks for the certification or the purchaser who needs it to get a mortgage?

In most instances purchasers of a property agree to pay for a surveyor's certification on the advice of their solicitor. In the Nova Scotia Supreme Court, Appeal Division case, Marwood v. Charter Credit Corporation (1971), 2 N.S.R. (2d) 743, Coffin, J.A., commented on a solicitor's responsibility to advise purchasers about the prudence of retaining the services of a surveyor:

It may well be that purchasers do not always wish to go to the expense of making a survey, but as a matter of practice it is my view that solicitors should always advise them in advance on this matter and make it clear that the certificate of title which will be issued is at all times subject to a survey. If this is done ahead of time and a purchaser still insists on going forward without retaining an surveyor, then the responsibilities are obvious.

In a more recent case, Leblanc v. DeWitt (1984), 57 N.B.R. (2d) 141 (Q.B.), Meldrum, J., confirmed that purchasers who can not be expected to know the difference between quality and extent of title look to lawyers for assurance that "everything is O.K." He said at p. 168:

Circumstances may govern the result but generally speaking the client wants simply to know that the title to his land is good. That title involves "paper title" to a certain description and actual title to a house if built in a particular spot.

In Campbell v. Fulton the purchasers were not financing the acquisition of the property by way of a mortgage, as the surveyor assumed. In the vast majority of cases the purchaser is taking out a mortgage. As a result, the solicitor advises the purchaser that a surveyor is required not just because of Marwood and Leblanc, but because the lender requires certification from a surveyor. The solicitor acts not only for the purchaser but also for the lender. The possibility of inherent conflict in these circumstances we must leave for another day.

What the purchaser expects from the surveyor, what the lawyer asks for and what the lender expects may be different things. Lenders want many and varied assurances, but common to all is the need for assurance that the security, largely being the house, is situate within the lot and is not significantly impaired by encroachments. The purchaser may be more interested in exact boundary definition, eg., where can I build a fence?

The point is, the lawyer is the intermediary between the surveyor and the purchaser or lender who will rely on the product. Both the purchaser and the lender will rely upon the lawyer for advice about the meaning and efficacy of the survey product.

The practice of land surveying has changed a great deal over the last three decades, and so has the practice of law. One only has to look at the most common real estate transaction (the purchase of a house) to see many of the differences that have come about. But while in surveying the greatest changes have had to do with the equipment used and the services provided to clients, in the practice of law the greatest changes have been those which relate to communicating with clients. A little over 30 years ago (JFD--1958) a house was often purchased on the basis of oral instructions and the oral commitment of the solicitor to look after his or her end of things. Today (JFD--1987), intending purchasers will receive from their solicitor something approaching a nine-page brief. This describes what the solicitor will be doing with respect to the transaction, what the solicitor will not be doing, what the purchaser can and should look after independently, and what the solicitor will do for the purchaser if additional instructions be given to that effect.

By and large such a document is a form letter in the sense that it represents what is done, and how, in the ordinary or usual case; modifications can be made to suit particular or abnormal circumstances. But more importantly, it sets out clearly what the client can expect from the solicitor, what the solicitor will be providing the client, and what the client will be paying for. It is obviously not a letter that has been dictated the morning of the day it was put in the mail; it is the result of considerable work by the solicitor (probably in consultation with partners) to state things plainly and to take into account a solicitor's responsibilities under the law.

Land surveyors today must give heed to an increasing range of professional liabilities and responsibilities. One responsibility, if only out of courtesy, is to communicate plainly to the client what can and will be done in given circumstances and according to the client's wishes. Such communications should be in writing so that all concerned have a record of what was said and undertaken. Furthermore, in drafting these communications in the first instance to cover at least the normal and common tasks taken on, surveyors have the opportunity to take fully into account their responsibilities, address them properly, and not leave things to an oral explanation or a letter dictated in between attending to other things. Indeed, section 32 of the regulations governing surveys stipulates that one of the items in the supporting file be "the survey contract or client's instructions."³

Advance Warnings or Caveats

Winter was the season when the surveyor in Campbell v. Fulton undertook to provide a certificate of location for the purchasers of the property. The ground was covered with snow and although the appeal court noted that "snow ... is of no relevance," if conditions are such that the surveyor cannot make a proper examination of the property, he or she should decline to do the job, or at least clearly indicate in advance that any opinion expressed will be limited, and that such limitation will be on any certificate issued. Surely the Marwood v. Charter Credit Corporation logic would apply to surveyors as well as lawyers. A stone patio, for instance, is incapable of signalling its presence to a metal detector. But the patio, which can be completely hidden by a light fall of snow, may be an encroachment either

from or onto the parcel under survey.⁴ The surveyor is the only one who normally goes on the ground to examine the property and report upon features that may involve limitations to title. The surveyor provides information to others that they cannot get from any other source.

Harries Hall & Kruse v. South Sarnia Properties Ltd. (1928), 63 O.L.R. 597 (S.C.) concerned the layout of a subdivision where there was considerable urgency in getting the work done. The surveyor, in defence of certain mistakes which later became apparent, argued among other things that the area was covered with brush and other obstructions and the owners were in a hurry to get the lots on the market. The court observed:

One of the objections raised by counsel for the surveyor was that the lands were covered with brush and other obstructions. If so, and the surveyor could not proceed with safety and obtain accurate information, it was his duty to have notified his employer or to have stated in his report to the architects that there might be discrepancies.

Location Certificates and Extent of Title

In the excerpt above from the Supreme Court of Canada Dorion case, there is a sentence which says a great deal that is relevant to land surveyors and location certificates: "One would hope that if a certain practice has developed amongst professionals in regard to a particular professional act, such practice is in accordance with a prudent course of action."

Furnishing location certificates is a practice that has developed extensively over the last 30 years. But more thought has been given to their form than to their substance. There have been many discussions and debates about how the certificates should be worded and what information should be shown on the sketch (not the plan), but there has never been any great amount of debate, until recently, about whether location certificates (as distinct from full surveys) should be given out at all. There has been little attention paid until recently as to whether issuing location certificates is the "prudent course of action" which the Supreme Court requires it to be.

Things have progressed (perhaps not quite the right word, under the circumstances) to the point where the surveyor's defence in situations like Campbell v. Fulton, is that the certificate in question is valid even though the parcel being dealt with has five sides rather than four, and one more adjoiner than stated.

The statute that defines the N.S. Land Surveyor's role and establishes for the surveyor an exclusive area of practice⁵, says that land surveying among other things means "to control, establish, locate, define or describe the extent or limitations of title."

The regulations developed by the Association of Nova Scotia Land Surveyors, and approved by the Governor in Council,⁶ go into considerable detail about how surveys are to be conducted and the technical standards that are to be met. One is entitled to believe, therefore, that work involving the extent or limitation to title meets these standards, though location certificates are not once mentioned.

Along the same lines and touching further on the matter of location certificates, survey regulations do not distinguish between a plan and a sketch. Why not? Surveyors certainly do! But were one to step back a bit and try to assess the matter objectively, things might take on a different hue. It might be very difficult to argue convincingly before a group who were not land surveyors that something everyone (including judges) can recognize as a plot plan, and that bears the signature of a land surveyor, is not a plan of survey.

At present land surveyors in Nova Scotia do not prepare location certificates to a single standard. Each surveyor, or survey firm, has a favourite practice and form. Each time a lawyer receives one she takes the responsibility of advising purchasers and lenders. Given the many and varied forms and styles, this surely must be less than desirable for both the lawyer and the surveyor.

The precept that the Land Surveyors Act requires that location certificates be done to the same standard as other survey work is one that cannot be denied, and Campbell v. Fulton is confirmation. Further, the Doiron case shows there is nothing in the statute or common law to relieve land surveyors of their obligation to meet the regulated standards for the conduct of surveys, merely because they are asked to do something less or because the practice has been to do less.

The Association of Nova Scotia Land Surveyors recently approved a regulation setting standards for the certification of the location of improvements relative to boundaries. It allows three alternatives:

1. The preparation of a Surveyors Real Property Report. Appropriate research and field investigation is required, boundaries are definitely located and improvements, encroachments identified. Ties to the N. S. Control Monument system are not required and the land surveyor need not monument corners of the property if at least one monument is present. If none are present only one need be set.
2. A Surveyors Real Property Report may be prepared, after appropriate research and field investigation, certifying to the location of a particular boundary and improvements relative to it. This provides relief in situations where surveying the entire property would be unnecessary, and onerous.
3. If a landowner, lawyer or lender wants only to know whether a building is on a property, the land surveyor may provide a written Limited Property Report, to that effect, again after appropriate research and field investigation.

This regulation, when given effect by the Governor in Council, should be greeted with relief by surveyors, lawyers and the public. The surveyor will then legitimately be able to produce less than a full survey when requested and lawyers and their clients will be able to receive certifications from surveyors in the knowledge that they must prepare them to a recognized standard.

ENDNOTES

1. C.A. Quebec, No. 200-46-000029-883, March 11, 1988.
2. c.249, R.S.N.S. 1989.
3. Regulations made pursuant to the Land Surveyors Act S.8, R.S.N.S. 1989, c. 249.
4. In Neilson v. Watson (1981), 33 O.R. (21) 515 (H.C.J.), the only access to the street was across the lot adjoining on the east, along that public way. Though the court found no fault in the surveyor's boundary survey, reviewers have suggested the surveyor ought to have been alerted to say something to someone about these circumstances. The ground had been covered by snow on the only occasion on which the purchaser had inspected the property.
5. Land Surveyors Act. See Note 2.
6. See Note 2.

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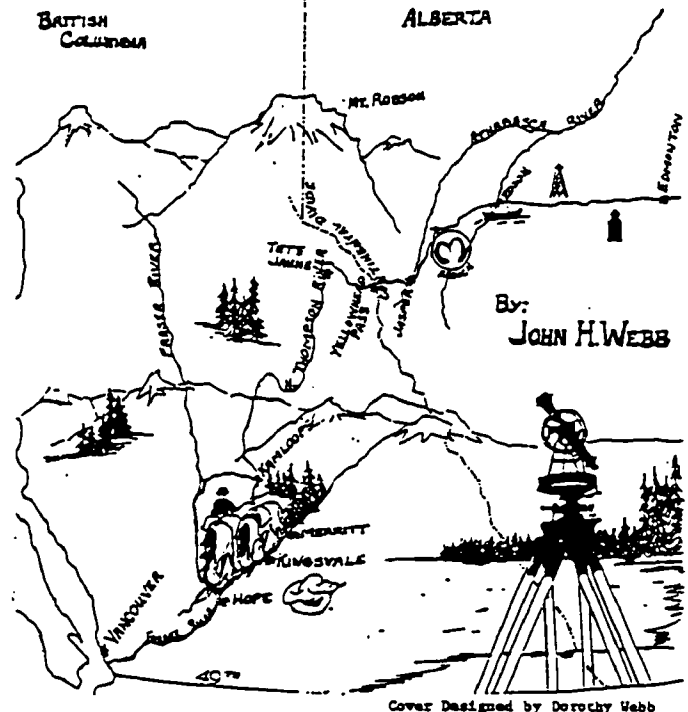
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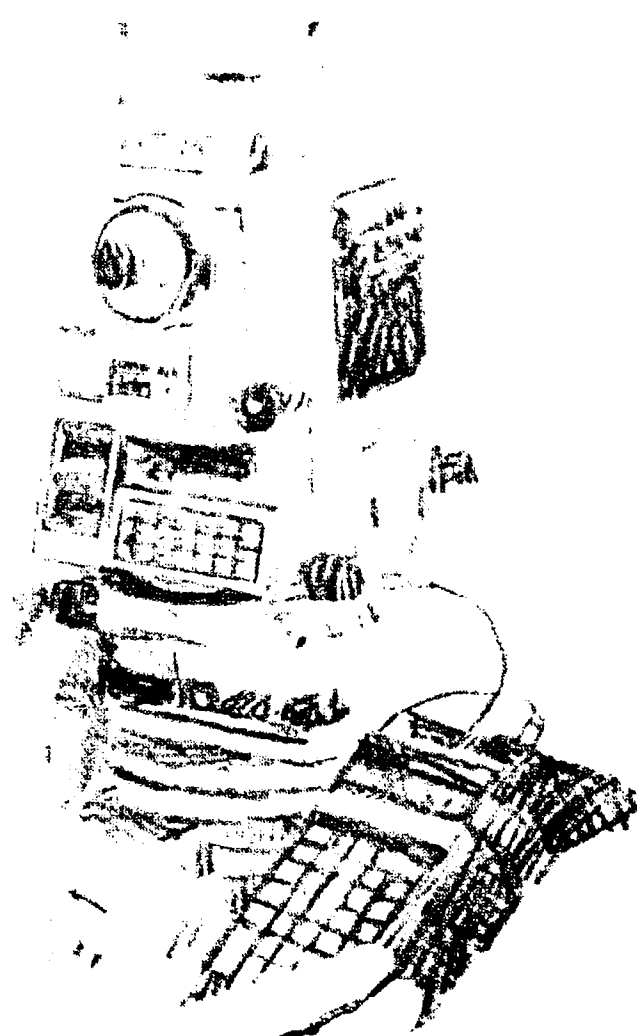
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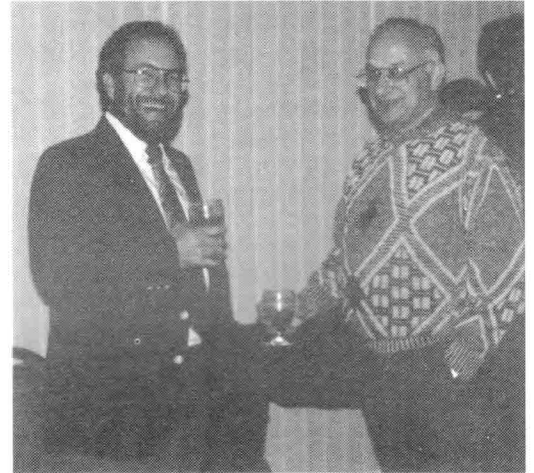
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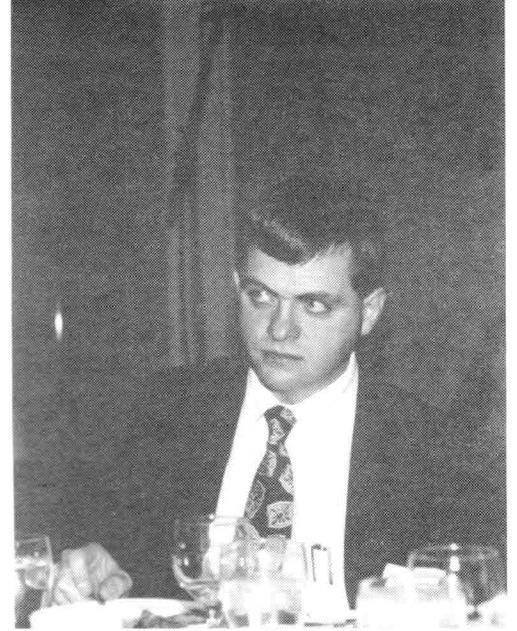
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