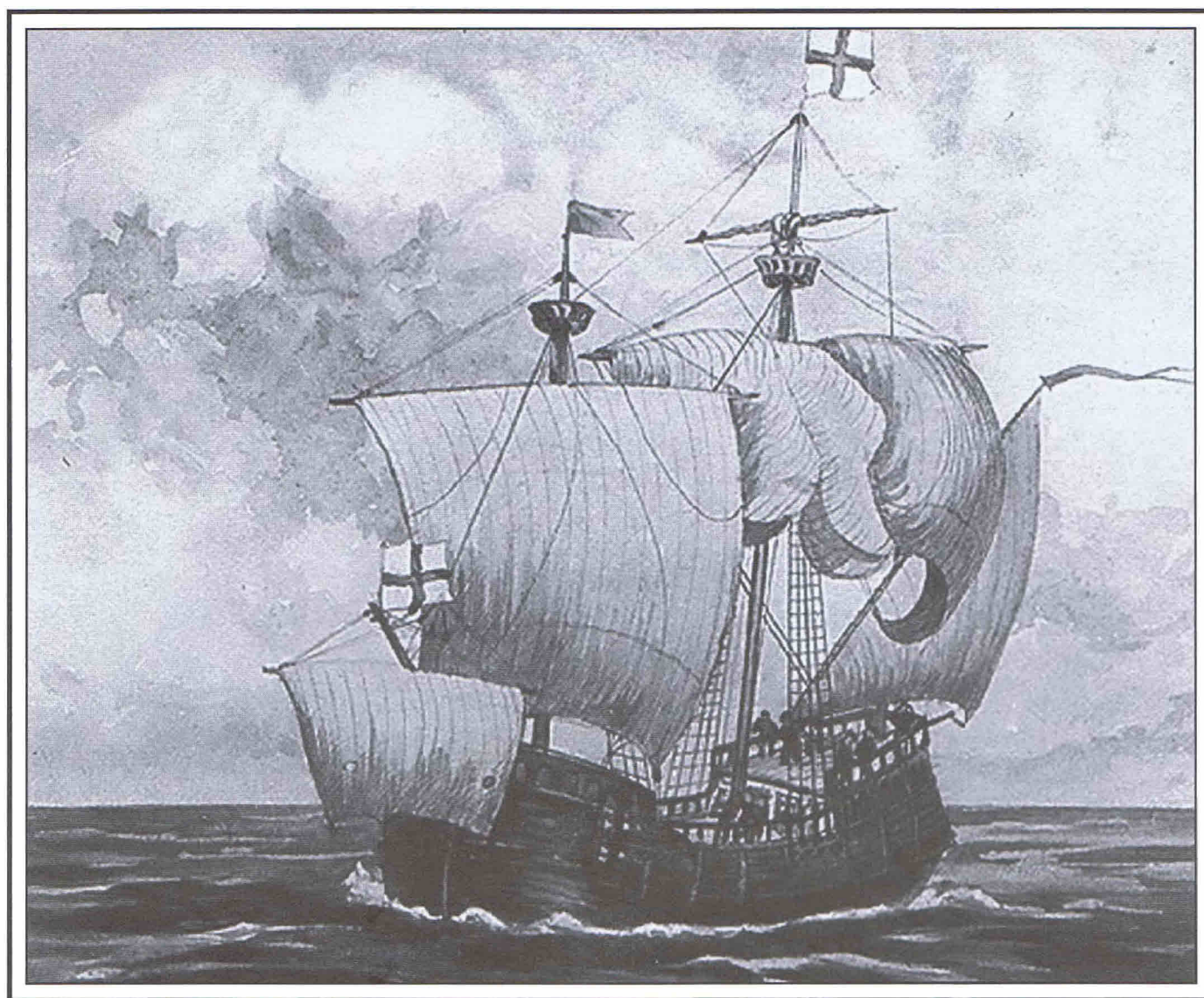


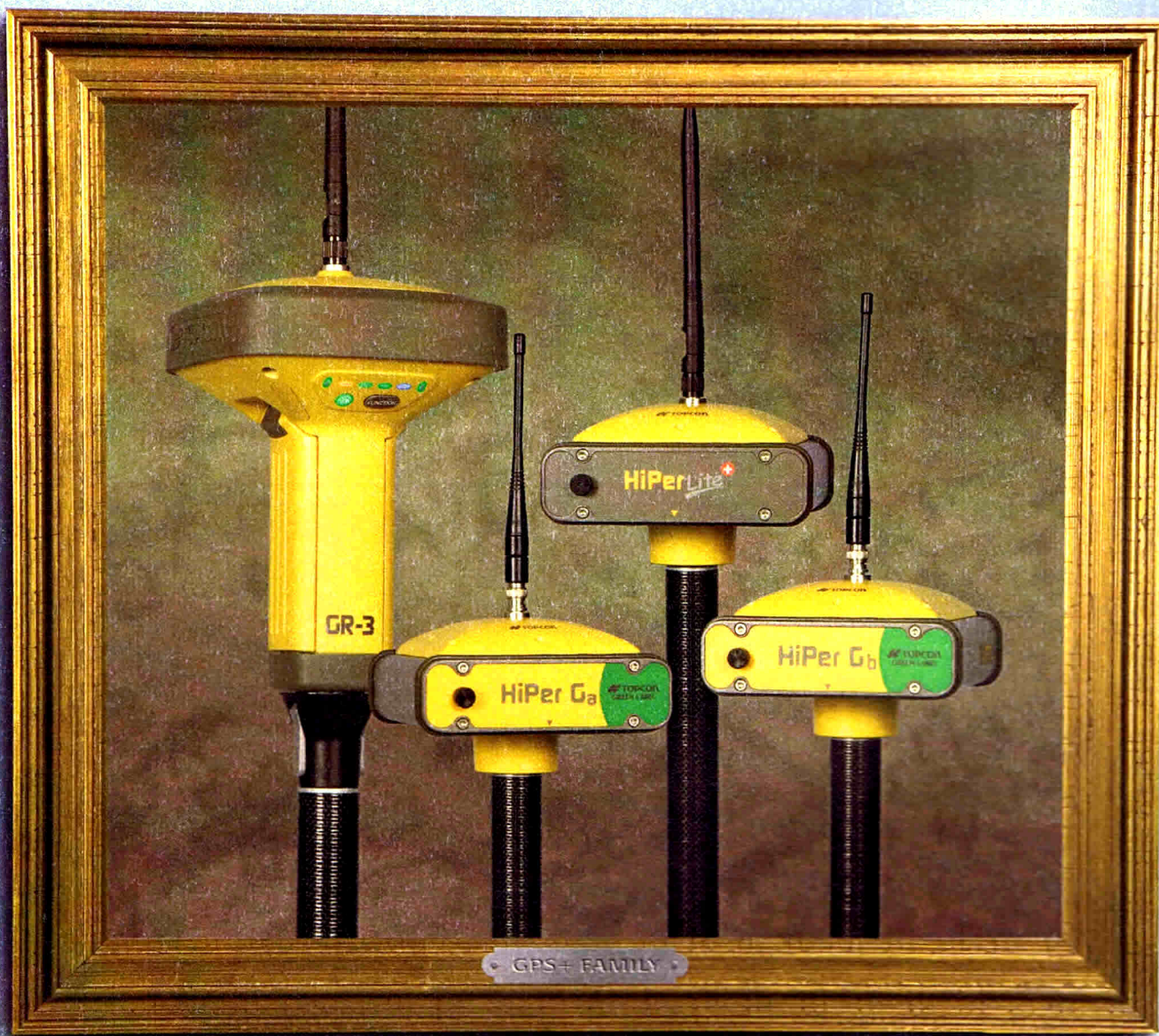
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Summer 2008

No. 183



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PRESIDENT'S REPORT

Russell MacKinnon, NSLS



It is an honor to provide our Association's 2nd President's Report in 2008. The past three months were busy for Council and committees. I will highlight many of the ongoing issues and events.

I am pleased to inform all members that the Organization and Administrative Review prepared by independent consultant, David Craig, has been completed. Copies have been circulated to all members of Council, Chair of the Administrative Review Committee, Chair of Strategic Planning Committee and its sub-committee chairs.

It is hoped this document will serve as a useful guide for our Association as we plan to define ourselves well into the 21st century. While recommendations of the report may not be unanimously endorsed, I do believe it provides focus and guidance, particularly to our strategic planning committees and Council.

I expect that your respective Council representatives will provide details of the consultant's report at your next Zone meet-

ing. Seeking your input is important! A final note – the cost of the consultant's report was under budget at approximately \$4,000. (Budgeted at \$5,000.) Money is coming from existing strategic planning and president's travel budgets.

The spring session of the Nova Scotia Legislative saw 2 pieces of legislation enacted that were of particular significance to our Association. The first were amendments to the Nova Scotia Land Surveyors Act, housekeeping in nature and as approved by Council and membership.

The second was an Act respecting amendments to the Land Registration Act. Our attempts to influence government on the design of the legislation met with very limited success. It must be noted that, despite a request to members to provide input on this legislation and its impact, only six members responded.

Earlier this year our Executive Director, Fred was authorized to send a questionnaire on whether we prefer joining CBEPS (Canadian Board of Examiners for Professional Land Surveyors) and move away from APBELS (Atlantic Provinces Board of Examiners for Professional Surveyors). I am pleased to report that our membership has voted 109-yes, 1-no; the Association will proceed with application to CBEPS.

In January 2007, the provincial government enacted the Environmental Sustainability and Prosperity Act. One key element of this Act is defining the limits of

a wetland, hence the question as to who is qualified to determine the limits of a wetland.

As of May 29, 2008, the Minister of Environment confirmed his Department has not yet determined the criteria for establishing the limits of a wetland. Further, my official request to the Minister for a list of all professionals within his Department, who are qualified to determine the limits of a wetland, continues to be unanswered. Indications are the Department is not able to effectively manage this legislation at this time. I am advised our Association's Wetlands Committee continues to work diligently on preparation of a wetlands course for surveyors.

I am pleased to report ANSLs continues to be well-represented on the national stage. Our CCLS (Canadian Council Land Surveyors) representative James Gunn and ACLS (Association of Canada Land Surveyors) representative Jeff Fee are active participants, giving of time and personal resources. Both were active participants at the ACLS Convention, held in Victoria, BC in May 2008. Advancing technologies in hydrographic surveys were highlighted at this conference. Zone 6 councillor, Glenn Myra, attended the Saskatchewan convention while I attended the Ontario, Alberta and Newfoundland conventions.

In closing I extend a note of thanks to all members, staff and volunteers for their work on the Association's behalf. ❧

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EXECUTIVE DIRECTOR'S REPORT

F.C. Hutchinson, BA, NSLS, CLS



"So, what are you going to do now that you have won the lottery?" said one surveyor to the other. "Well, I guess that I will just keep surveying until the money runs out," was the reply.

During my teen years I mowed lawns, did gardening work and even cut line with average earnings of 50 cents per hour. The outdoor working environment also appealed to me. When I was in high school and read information stating that land surveyors could make up to \$50 per day I became interested or should I say hooked. I do appreciate that the cost of living has a tendency to rise over time and can recall my mother telling me that she made \$9 per week at one of her first jobs and considered herself lucky at that wage.

At nearly every survey meeting that I have attended during my

career I have heard woe-is-me comments like "times are tough", "I'm not paid enough", "I should have charged more" or "why did I ever pick surveying as a career". The situation with many land surveyors is that they truly love their work and are good at it. But there's a problem – they treat their work as a hobby and not as a business.

Land surveyors, like most individuals, have limited experience or knowledge about running a business. Many business plans of sole practitioners are nothing more than getting a listing in the yellow pages and waiting for the phone to ring. One can be the very best at what they do and still fail at business. I often use the example of the skilled tradesperson who is the best worker in the company and is often told that he should start his own business. So, when he does start his own business he soon finds out that he is answering the phone, quoting jobs, typing invoices, paying bills and arranging bank loans to pay staff. All of which he is not very good at.

Small wonder that Statistics Canada report that one quarter of all businesses fail in the first year, with two thirds of the remainder failing within five years.

One of the very first things that should be discussed with a client

is the cost of the job and the method of payment. A contract of some form is also of benefit to the both the client and business owner by setting out the job requirements, timeline, deliverables, cost and payment schedule. During my 22 years of self-employment I followed some of the forgoing advice but often found myself in the shoes of the tradesperson described above.

It has been my experience that the greatest weakness of most businesses, other than communication, is a failure to keep good accounting records. Computers and accounting software have certainly aided the entrepreneur in tracking information but it still takes time and requires someone to enter the data. Accounting is more than just maintaining a positive bank balance and writing cheques. It assists in creating a viable business plan, tracks accounts payable and receivable, assists with payroll records and provides the basis to determine charge-out rates for one's services.

Land surveyors generally maintain their survey records for all eternity but lose receipts within 24 hours. Not having a receipt to use as an expense is similar to not billing a client for work done. Good accounting practices are part of good business! ■



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SRD MANAGER'S REPORT

by Gerry Bourbonniere, NSLS

SRD Mandate Review

The presentations at Zone meetings were completed on May 8, 2008. While these generated discussion and questions, most points raised had been received with the responses to the November questionnaire, with the general direction being as reported in the Spring issue of *The Nova Scotian Surveyor*.

Based on the suggestions received, the SRD Advisory Committee will work to provide recommendations for implementing changes to the operating mandate of the Survey Review Department with a move to "practice review" rather than "plan checking".

It is the Committee's opinion that "Practice Review" includes a discussion of the surveyor's general procedures and the review of the project file for completeness as required by Regulation 32. Also, a review of the resultant plan, together with a field inspection, is necessary to perform a complete review of the project.

"Practice Review" (or comprehensive review) in other provincial survey Association programs appears to be very similar to the definition above. In other programs, it appears there is a set number of

years (cycle) over which each practitioner is subject to "practice review". The trend seems to be approximately 5 years.

A time cycle for completing the round of "practice reviews" has to be established. That is, how many reviews can be performed each year with SRD still providing reasonable service in all other aspects of the Department (administration, follow-up reviews, assistance to members)? A transition period from systematic review to full practice review may have to be considered.

Some thoughts on this transition period are to perform 25 practice reviews per year, and as many systematic reviews as possible for a two-year period (i.e. perform 50 practice reviews in the two years and with systematic reviews (some with site inspections) of the remaining 90 practitioners). After the two years, move to only "practice review", as defined above, with a four (?) -year cycle.

Budget / Revenue

Since the \$10 per lot surcharge for SRD plan fees was rescinded by Council after the budget was approved at the 2007 AGM, there

will be a loss in budgeted revenue of \$32,500. Therefore the expected revenue for 2008 is in the range of \$85,000. Billing to date indicates revenue is on track to reach this amount.

However, as expenses of \$105,800 are budgeted for 2008, there will be a deficit in the range of \$21,000 for 2008. This deficit should be reduced by \$3,500 ± as some budgeted benefits (CPP, Medical / Dental and Life Insurance for the manager) will not be paid. As there was a surplus in 2007 of approximately \$22,000, SRD should operate in a "cost recovery" aspect for the years 2007 and 2008.

It is desirable for SRD to operate with an annual balanced budget, therefore the concept of a surcharge per lot for plans of more than five lots may be considered by Council. Based on our research, it appears this will affect only 5% of all plans created. This concept was presented at all zone meetings and seemed to be generally acceptable to the members.

Please note that my tenure as SRD Manager will end on December 31, 2008 as per the terms of my employment.



Appreciative Inquiry

by Janice Henshaw, Executive Director, Association of BC Land Surveyors

As seen in *The Link*, Volume 31, Number 2, June 2008.

Appreciative Inquiry (“AI”) is an approach to management and organizational development that focuses on systems that are working well and tries to expand on their success. This involves asking questions and planning for the future by focusing on positive relationships and building on the best elements of a person, situation or organization. University of Michigan Professor Robert Quinn, in his acclaimed book *Change the World*, writes: “Appreciative Inquiry is currently revolutionizing the field of organizational development.”

AI focuses on what works, rather than on the things that don’t. It has been called the opposite of problem solving since it advocates focusing on expanding successes, rather than the minuscule number of things that go wrong. AI recognizes the important role of individuals in an organization’s success, working to increase trust and alignment as a team.

In one important success story for the increasingly popular AI approach, a team led by Dave Cooperrider, of Weatherhead School of Management, conducted and extended intervention at GTE Telecommunications beginning in 1995. Within two years, representatives from GTE were accepting an award for Culture Change from the American Society for Training and Development. Cooperrider and Whitney discuss the project in a paper available at (<http://appreciativeinquiry.case.edu/uploads/whatisai.pdf>).

President Tom White had this to say about Appreciative Inquiry: “AI get much better results than seeking out and solving problems. We concentrate enormous resources on correcting problems ... [but] when used continually over a long time, this approach leads to a negative culture ... [or to] a slip into a paralyzing sense of hopelessness ... Don’t get me wrong. I’m not advocating mindless happy talk. AI is a complex science designed to make things better. We can’t ignore problems – we just need to approach them from the other side.”

“AI seeks, fundamentally,” Cooperrider writes, “to build a constructive union between a whole people and the massive entirety of what people talk about as past and present capacities: achievements, assets, unexplored potentials, innovations, strengths, elevated thoughts, opportunities, benchmarks, high point moments, lived values, traditions, strategic competencies, stories, expressions of wisdom, insights into the deeper corporate spirit or soul – and visions of valued and possible futures. Taking all of these together as a gestalt, AI deliberately, in everything it does, seeks to work from accounts of this “positive change core” – and it assumes that every living system has many untapped and rich and inspiring accounts of the positive. Link the energy of this core directly to any change agenda and changes never thought possible are suddenly and democratically mobilized.” (<http://appreciativeinquiry.case.edu/intro/whatisai.cfm>)

Looking for what the company is doing well at and focusing on an

appreciation of your team members creates energy. This is vastly different from having your radar set on finding fault – in looking for things that are missing or not quite perfect. AI creates energy, while the search for what is wrong depletes energy – it becomes a familiar and tedious focus on seemingly important repetitious behaviours, behaviours that if you step away from and look at from a distance would make you forget all their rationalizations for existence.

The more you look for things to appreciate, the more opportunities you will find to express appreciation. Acknowledging the contributions of individuals can be the first step. Good appreciations are simple, truthful and from the heart. They are not flattery. An appreciation says something about qualities that you value in another person rather than commenting on how they look or what they wear.

Notice what happens to you when you say to someone that you appreciate their service, or actions, or kindness. Try it for a week.

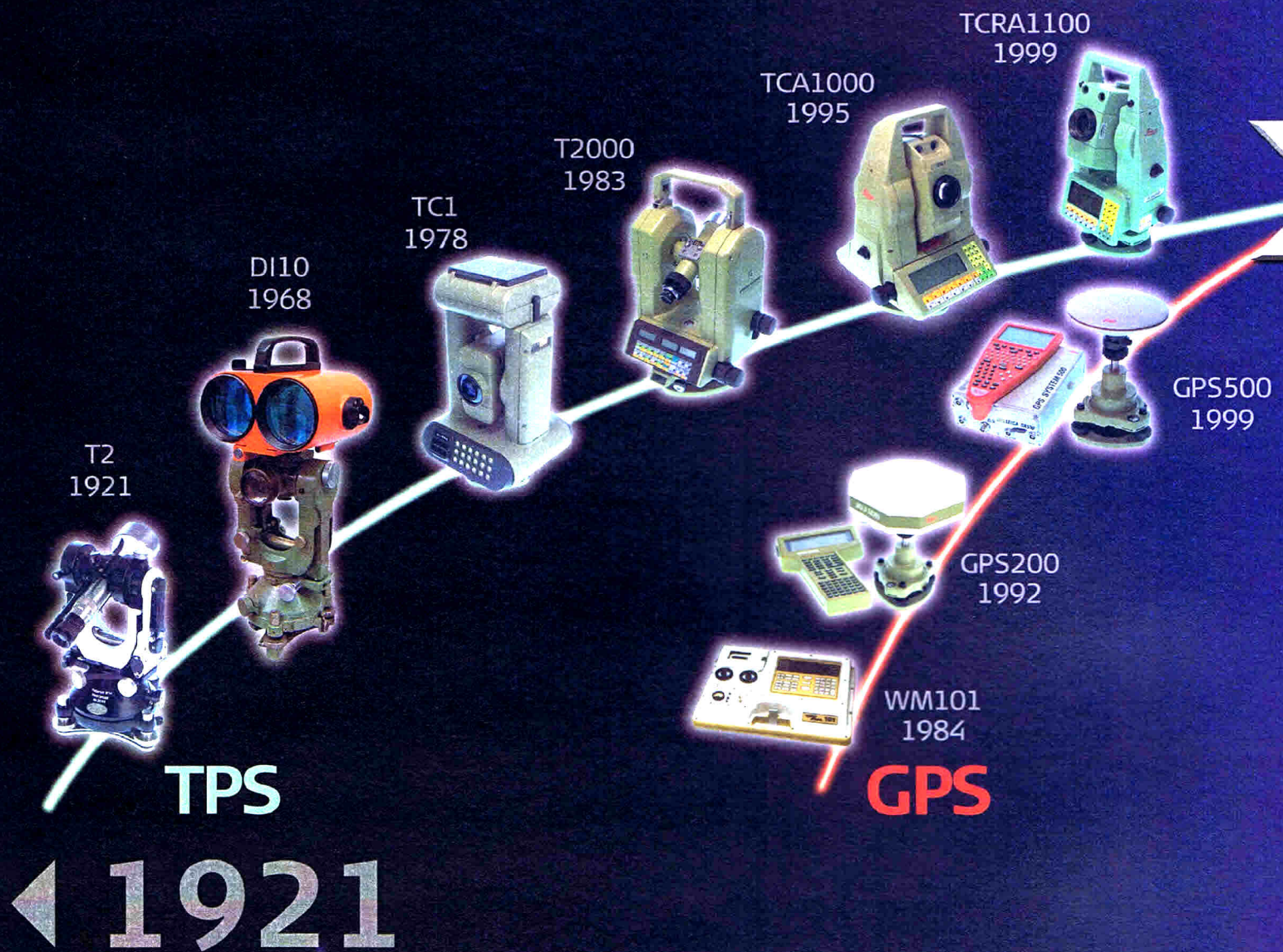
While it isn’t practical to ignore problems, AI provides an important insight: planning, understanding and day-to-day personal management can all benefit from an approach that celebrates and learns from success. What’s more, AI can be used in a way that includes and encourages employees and team members to give their best effort to make your organization a success.

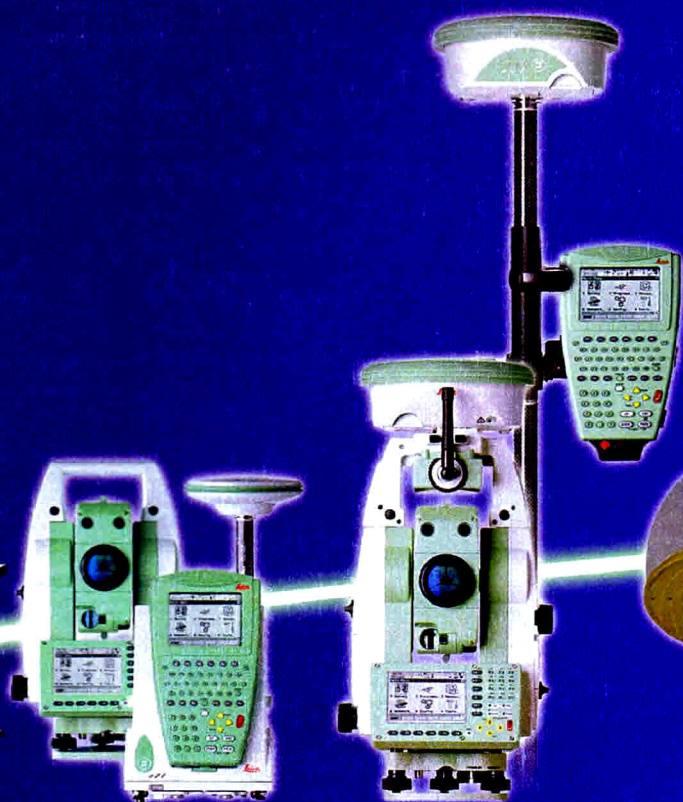
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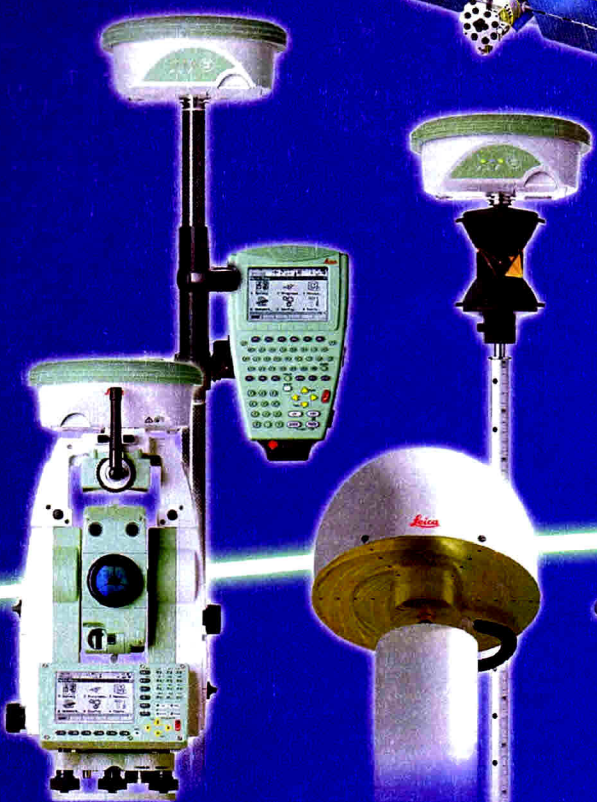
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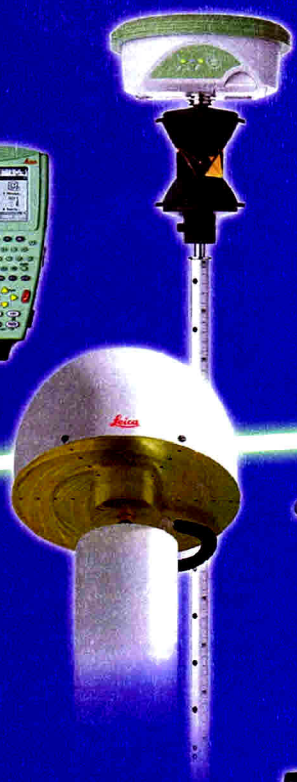




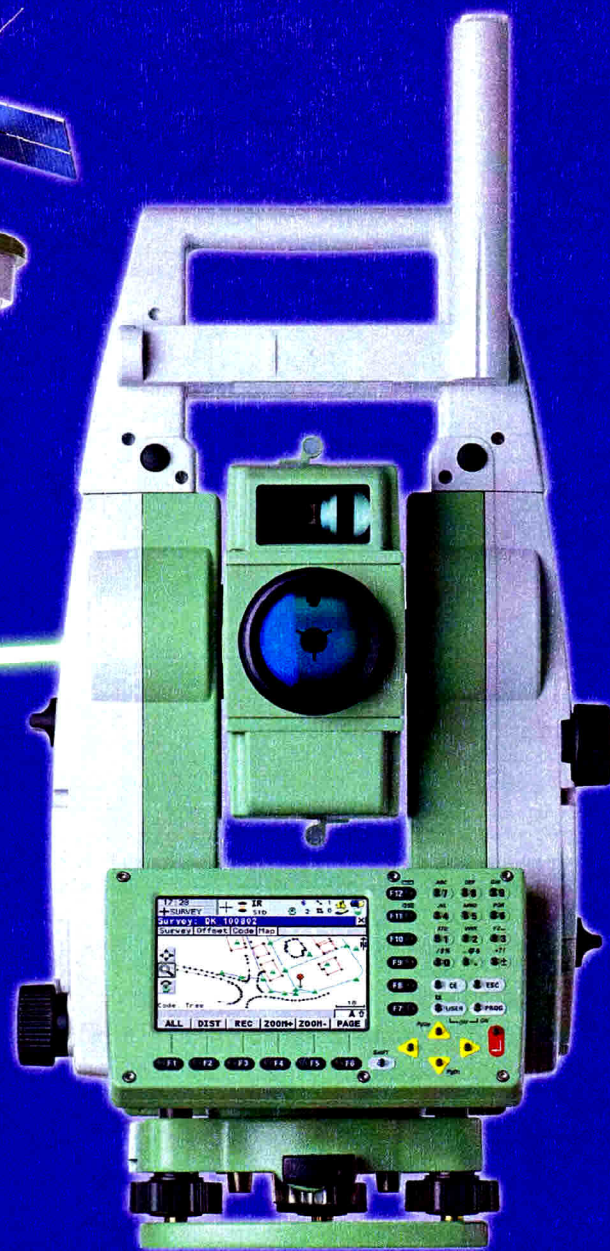
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2008 ➤

Adanac Warriors win Bronze in Prague

by Natasha Burgess

As seen in The Nova Scotia Lacrosse Times, Volume 1, Issue 1, May 2008. Reprinted with permission.



Adanac Warriors in Prague

Rod Humphreys, NSLS, is in the first row, far left

Photo credit: Brian Leightizer

The Adanac Warriors Senior Lacrosse Team returned home from Prague, Czech Republic this week after claiming the bronze medal at the Ales Hrebesky Memorial Lacrosse Tournament. The tournament is considered the most prestigious box-lacrosse event in Europe with teams from eight countries participating and sixteen (16) teams competing in the 2008 event. The Adanac Warriors team included players from lacrosse clubs all over Nova Scotia and they were the only team from Canada in this year's tournament.

The Warriors were defeated 8-1 in the semi final by the Megamen Boston (USA) who later went on to win the tournament against the 2006 winners, LC Jizni Mesto (CZE). The Warriors beat out the Czech team, LCC Radotin, 4-3 in the bronze medal game allowing

them to travel all the way home to Nova Scotia with the bronze cup. They played six (6) games during the tournament that ran from April 24th until April 27th, 2008 and finished with a 4-2 record.

This was the first time for the team from Nova Scotia to travel to the tournament. Last year, a team from Ontario travelled to the tournament and took home the gold trophy, the first Canadian team to compete in the tournaments history (since 1993). It was an exciting trip for the seventeen (17) NS players that traveled over, as many of the players they were against in the tournament were current professional lacrosse players as well as many ex-pro players. They were able to meet and play the top players from a variety of countries including the USA, Germany, Czech Republic, England, Ireland, Austria, and Slovakia.

With the average player age of 22-23 years old on the Warriors team, Coach Brian Leightizer said other teams were impressed to see such a strong, young, Canadian team. The tournament is a Senior level tournament (over 21 years old) with many of the players having played pro all over Europe. Adanac Warriors goaltender, Mitch Hannigan, was chosen as the top goaltender of the tournament. The Dartmouth goaltender was also named to the All-Star team for the tournament along with four of his fellow Nova Scotia teammates. There were 24 players in total named to the All-Star team including the five (5) from Nova Scotia. Nova Scotian coach, Brian Leightizer was named the Head Coach for the all-star team and fellow NS coach **Rod Humphreys**, was named as one of the two other coaches. This all-star team played the Under 21 Czech National Team, dominating them 18-10. The Adanac Warriors traveled to Czech with the support of three coaches; Brian Leightizer, **Rod Humphreys**, and Jim Chisholm, trainer Bill Marr, Equipment Manager Steve Leightizer, Team Manager Amy Bragg, and Fundraising Coordinator Louis Gorman. Coach Brian Leightizer has confirmed that the team will "definitely be back (to Prague) next year".



RESPECT

by Jennifer Setiawan

Reprinted from *ALS News*, March 2008. As seen in *SLSA Corner Post*, Summer 2008.

We recently had a field safety broadcast the other day which had a little statement regarding respect. This message made me think about the whole concept of respect. I thought about everything and everyone that I respected and how it had been earned. I then thought about ways that the Association can earn its respect for the land surveying profession through us as its members. Associations earn my respect when I can understand what they are and what their objectives are. Other people earn my respect when I watch that they are respectful and morally considerate to one another and my leaders earn my respect on how they lead by example.

In our land surveying field, I have noticed that one of the recurring issues concerns respect and landowners. Most recently, I have come across angry landowners whose anger can erupt over anything, whether it is because we are on their land doing a residence tie, or because they are unhappy with the whole oil and gas industry. In all these instances, I have noticed that, in most of the cases, anger was caused as a result of misunderstanding. The problem is that not everyone understands the concept of land surveying or what land surveyors really do. Of course now, if I saw a surveyor looking for evidence in my backyard, I would know exactly what they were doing and have no problem with it. I believe I would be quite friendly to them since I would be able to relate and I would

understand what they are doing. However, if I didn't have this understanding and I noticed someone randomly digging holes in my land, I think I would be furious. The key is to calm down the aggression and try to explain the facts of who we are and what we do. Most of the time, once the landowner learns about our intentions, the anger fizzles away. To prevent that initial anger, we could earn their respect initially by bringing awareness to the public. Our code of ethics outlines our moral obligation to serve and to protect the public. By initially contacting the landowners and letting them be aware that we will be in the area, some of the misunderstanding can be prevented. The Commitment to Property Damage Mitigation prepared by the Association lists courtesy guidelines to instruct the field crews and could be used as a type of oath that a party chief takes before working out in the field.

With all that we have going on in our daily lives with deadlines and issues outside of work to deal with, it is hard to always be cordial. I struggle sometimes to keep my smile sincere with my crew mates after I have spent so many long hours with them. I have, however, discovered that taking our job seriously and enjoying it by being civil to one another is indeed contagious. The way we react with other people reflects upon our identity. I know that when I see someone treating another person badly, I cannot help but feel intimidated

by this person, regardless of how kind he or she is treating me. Wouldn't it be great if we as surveyors spread joy to the public by showing the dignity of our profession?

As an articling student, I know that I try to absorb as much as possible from my principal and the more experienced land surveyors. I really appreciate the fact that those above me lead by example. Our code of ethics reminds us of our moral obligation to serve and protect the public. I particularly enjoy listening to stories from the field from other landowners and about their massive searches for evidence or even about how things out in the field were different when they did not have the technology that I get to work with today. It makes me think that I should never have a reason to complain with all that we have to help us in the field nowadays. We should think about what we are doing and ask ourselves if we would be proud to talk about what we are doing to lead someone else to do. When I see other land surveyors follow the code of ethics, it makes me feel proud to follow in their footsteps with the hope to one day pass it along.

The bottom line is that respect should be something earned and not demanded. Our Association must continue to earn its respect by creating awareness about what we do and simply passing along those smiles to serve the public and our colleagues.



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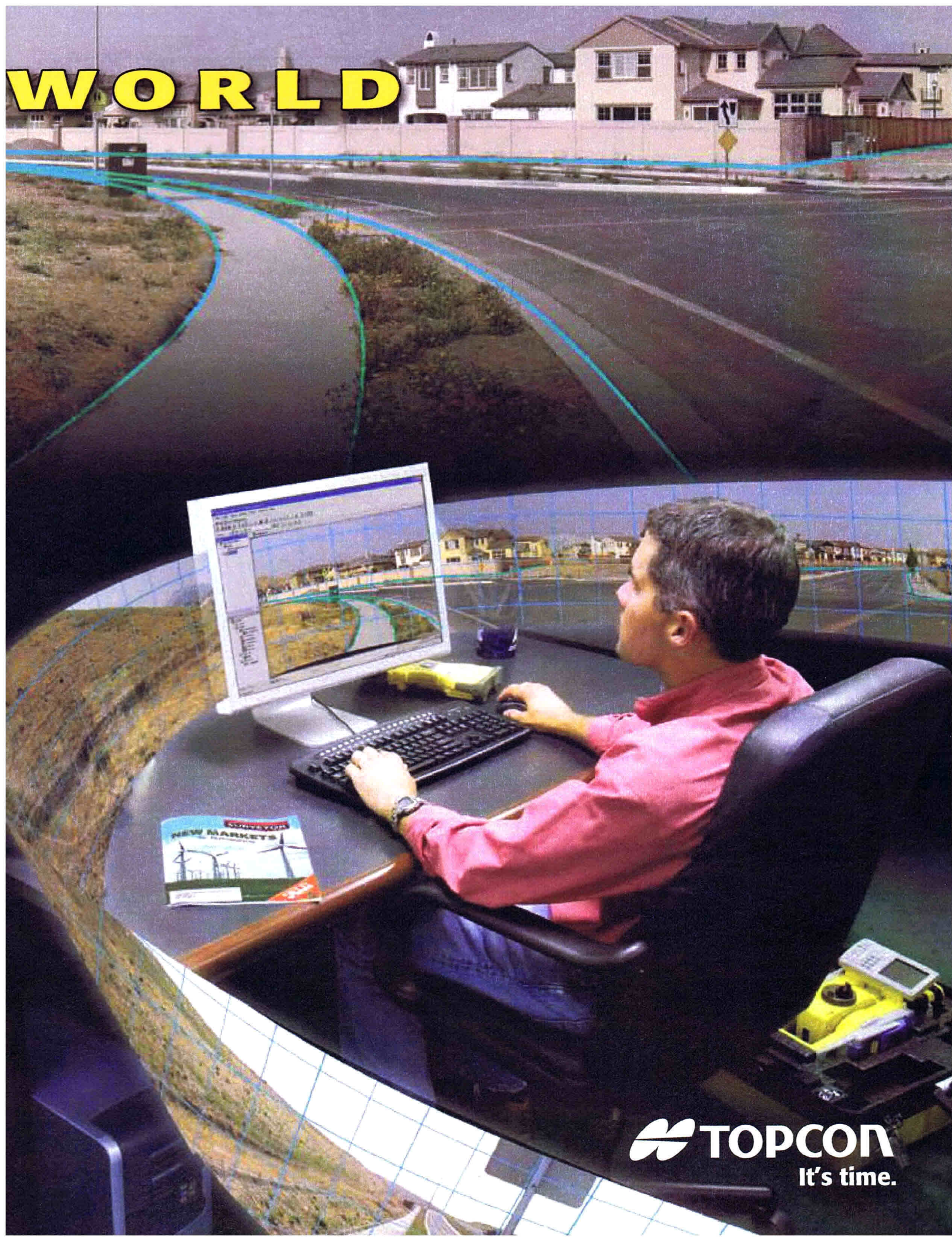
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WORLD



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Book Review

by Ken Allred

The Curious Life of Robert Hooke – The Man Who Measured London

by Lisa Jardine

As seen in ALS News, December 2007

By Hook or by Crook

The great fire in London, England, in 1666 destroyed not only the ancient land marks but all evidence of their former location. The only evidence of their former location was the memory of men still living and the measurements from objects whose location was known. A man by the name of Crooke had been surveying so long in the city that he was supposed to know every corner in it. After the fire, the city council appointed as city surveyor a man by the name of Robert Hooke who was esteemed the most profound mathematician and philosophical mechanic of his time. It is said that the wonderful sagacity, almost intuition, he showed in deducing correct conclusions from meager premises has never before nor since been equalled.

It was generally conceded that the location of any old corner could be correctly located by the memory of Crooke or the reasoning of Hooke. That is, "either by Hooke or by Crooke", hence the expression we hear today. But in no case did they attempt to locate a corner without good evidence that it was where the old corner stood before the fire.

The Canadian Surveyor, Volume 32, No. 2, P.269

Ever since I read the above article in *The Canadian Surveyor*, I have been curious about Dr. Hooke and the survey of London after the great fire of 1666. Having researched whatever information was available, I have found considerable information about Robert Hooke as the surveyor of London after the great fire but have never seen a reference to anyone name Crook or Crooke. Hence I began to doubt the authenticity of the story in *The Canadian Surveyor*. Lisa Jardine's book on Dr. Hooke puts my suspicions to rest – Crooke is a myth.

Robert Hooke, however, is far from a myth. He was indeed the man who measured London after the great fire of 1666, and a man who created a very successful survey practice as a result of the fire. His practice also extended into architecture as the managing partner with Sir Christopher Wren – the architect of St. Paul's Cathedral in London as well as many other famous buildings. Hooke is credited with designing the dome of St. Paul's Cathedral. Hooke also designed a number of famous structures including the

Bedlam Hospital and the Royal College of Physicians. The only surviving structure of significance is the Willen Church in Lutton although he is credited with doing some work on the Greenwich Observatory.

Dr. Robert Hooke was not primarily a surveyor but rather was a teacher of mathematics and a brilliant physicist at Gresham College in London. He was an avid inventor and was one of the founders and a lifetime curator of the Royal Society, a society of notable philosophers, inventors and other 15th century notables including Sir Isaac Newton, Sir Christopher Wren and Edmund Halley.

Hooke was a bit of a cantankerous old bachelor who seems to have been on the leading edge of many new inventions and mathematical discoveries that were perfected by others for which Hooke received little or no credit, which added to his eccentricity. As a

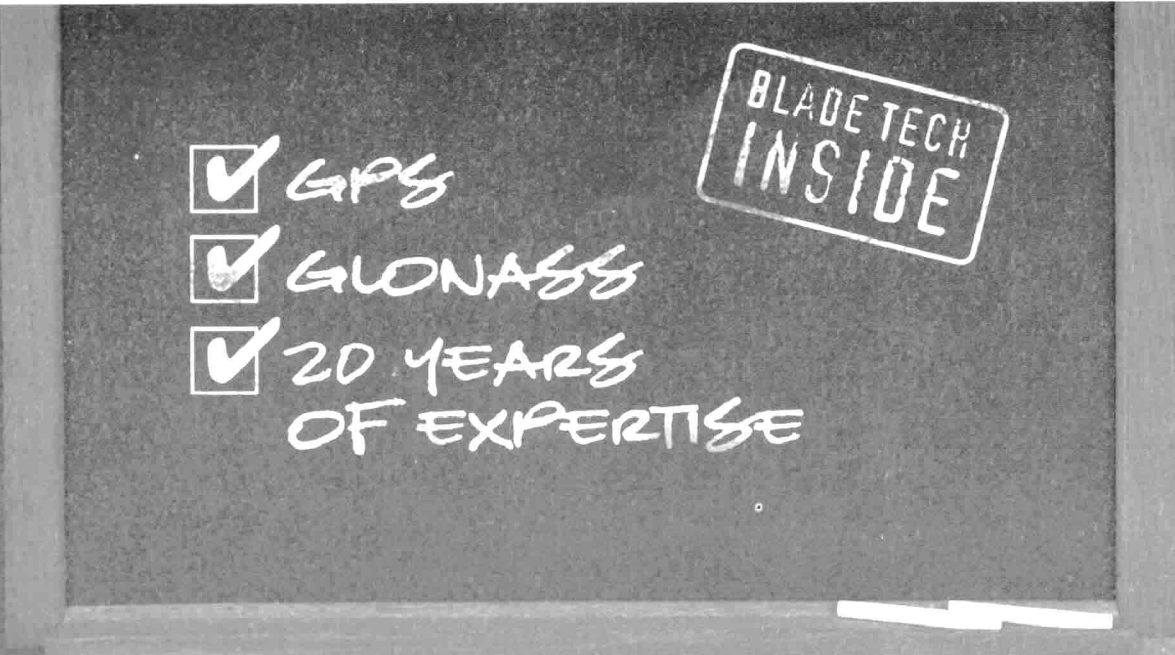
Continued on page 16



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Continued from page 14

leading mathematician and philosopher, Hooke theorized that the inverse square law of gravitational attraction created an elliptical orbit of the planets around the sun in 1676. This theory was accredited to Newton as documented in his *Principia* published in 1686.

Hooke was himself a great scientist in his own right having invented telescopes and microscopes and having developed various pendulum and spring clocks for determination of longitude at sea. His own *Micrographia* was a work of art with many fine detailed drawings of various scientific observations including a full page image of a flea as viewed under

one of his microscopes. His endeavours reached into the fields of astronomy, chemistry, botany and medicine. He is credited with introducing the theory of elasticity which led him to design many spring clocks.

Lisa Jardine's biography of Hooke tells an interesting, no holds barred story of Hooke, empathizing with his plight in his various disputes for acclaim but at the same time recognizing the faults in Hooke's personality which lost him both battles for fame and the respect of loyal friends.

Hooke died at the age of 67 without having finalized his will, thus dying intestate with a large estate and many prized inventions and other possessions. ■

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Architectural model courtesy of Archetype 3D and Riverfront Park.

Obituary

Earl J. Verner, NSLS # 113

Earl John Verner, 86 of Thompson Avenue, Sydney River, passed away peacefully after a short illness, Saturday, June 7, 2008, in the Cape Breton Regional Hospital, Sydney.

Born in Glace Bay, he was the son of the late William Emanuel Verner and Mary (Foran) Verner. Earl was a veteran who served overseas in World War II. When in Europe he was a member of the Canadian Army Hockey Regimental Team, where they won the Canadian Championship. During his early years, he excelled in hockey, baseball and tennis. Music was always a major part of his life, having sung in Fr. Hugh A. Mac Donald's Men's Choir throughout Cape Breton for many years. Many evenings were spent listening to classical music from his diverse collection. He passed his love for music and the arts on to his children and grandchildren, who continue his tradition; some of whom have produced music CD's and children's books and have had art shows from Sydney to Halifax.

A businessperson for over 50 years, Earl founded Verner Surveys Ltd., Sceptre Developments Ltd. and was a partner in County Farmlands Ltd. For many years he worked alongside of his sons, Gregory and Geoffrey, in the family survey business, retiring in 1986.

He was known throughout his profession as a man of high ethical standards who took great pride in every job that he undertook. He had a great love for outdoors and loved nature, and would spend countless hours working on projects in his yard or at his cottage in Northside, East Bay.

Earl is survived by his wife of 56 years, Kathleen (O'Connell) Verner, sons Gregory and Geoffrey (Colleen), Sydney, and daughters Estelle (Rick) Janega and Regis Verner, Bedford. Grandchildren Daniel Verner, Austin, Avery and Hannah Janega. Sisters, Anita Morrison, Port Hastings and Dorothy White, New Waterford.

Earl was predeceased by half-siblings, Joe Verner and Susie Verner O'Connell and brother, Charles Verner and sisters, Flossie MacNeil, Allie Connors, Margie Verner, Mary Verner and Millie Hiltz.

Letter to the Editor of the *Cape Breton Post* regarding Earl J. Verner and the land surveying profession:

Recently a fine member of our community, an associate and good friend, Earl J. Verner, NSLS, passed away. Not only was Earl well regarded as a person, but he was highly respected in his profession as a land surveyor.

Very often we are not aware, or we forget, the vital role surveyors play in the development of our community. Every building, subdivision, or other physical development of any community has to start with a plan drawn with precision.

Whether it be a road, street, sewer or water line, or a paving project, commercial building or residential development, it all starts with a surveyor's plan, filed with the planning or building authority and signed by the surveyor. These plans very often require considerable research, both in the field and at the Registry of Deeds, to be authentic and guaranteed by the signing surveyor who ensures the plan is correct and can be depended upon.

Earl's name can be found on many, many plans from major developments such as the location of King's Road, Alexandra Street, Upper George Street, Welton Street and Victoria Road, completed only in the late 1950s. His work included the total revision of the Victoria Park site, Boulderwood and other subdivisions, as well as many commercial and residential developments in Sydney and elsewhere in Cape Breton. Earl was noted for his precision and reliability, and although he had been retired for many years, his legacy remains on record. Well done, thou good and faithful servant.

A. Bruce MacDonald,
President, Boulderwood Development Co. Ltd.,
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Notes from the Side of the Road ...



1. Alberta Land Surveyor, Ken Allred, was elected to the Alberta provincial legislature on March 3, 2008 as a Progressive Conservative in Premier Ed Stelmach's new government. Ken is also an Honourary member of the ANSLs. He was commissioned as an Alberta Land Surveyor in 1965 and was president of the Alberta Land Surveyors' Association in 2001-2002. He was the Association's first permanent secretary-treasurer and registrar, serving in that position from 1977 to 1991. Mr. Allred has been an active figure on the international scene, most recently as vice-president of the International Federation of Surveyors (FIG).
2. Kevin Lombard, # 613, has returned to Nova Scotia as a partner in Meridian Consulting Ltd.
3. Wayne Mailman, # 589, has moved to retired membership and is active as a title searcher in the Bridgewater area.
4. Jim McIntosh, # 603, has left HRM and is now with Servant, Dunbrack McKenzie and MacDonald Ltd. in Halifax.
5. Douglas Seamone, # 265, resigned his membership as of May 31, 2008.
6. Elizabeth Fraser, # 548, has moved to retired membership and has taken employment with the NS Department of Transportation and Infrastructure Renewal.
7. Rebecca (Becky) Ritchie, # 590, is now employed with Hiltz and Seamone Company Ltd. in Coldbrook.
8. Doug Mehlman, # 372, has resigned his commission after retiring from Public Works and Government Services Canada.
9. Dale Castle, # 372, has resigned his commission
10. Bruce Millar, # 366, retired from HRM.
11. Mark C. Hatcher, # 630, received his NSLS commission on July 10, 2008; he also received his CLS commission earlier this year.
12. David Lorimer, # 518, has been appointed Supervisor, Surveying Services for the Halifax Regional Municipality.
13. Blake Beaton, # 628, is now employed with HJS Consultants Ltd. in Antigonish.
14. C.J. MacLellan & Associates Inc. was purchased by SNC-Lavalin.

Please forward any relevant membership information to the attention of the Editor.

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GEOMATICS AND THE LAW: THE USEFULNESS OF CASE LAW REPORTS

ARNOLD v. MERCER [2007] N.J. No. 223

by Izaak de Rijcke
izaak@izaak.ca

As seen in *Geomatica*, Volume 62, Number 1, 2008
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Every licensed cadastral surveyor in Canada understands the importance of common law principles of boundary retracement. Apart from the statutory rules that may apply to the re-establishment of a lost boundary or an un-run line, there is a body of case law which establishes principles to guide the surveyor in making sense out of evidence found on the ground, as well as in other surveyors' notes and records, descriptions, plans, and archival records. The assumption of course is that the availability of this case law, and being able to meaningfully conduct a search of relevant case law that informs retracement decisions, will be part of the catalogue of information available to cadastral surveyors. Unfortunately, this is most often not the case. Not only are searchable databases with guidance or training as to the correct formulation of search parameters usually unavailable, many databases do not in fact span the whole body of case law that might be relevant. The word "relevant" is used in the sense of spanning all common law jurisdictions of the world and also extending back in time to a sufficient point in history to allow for the whole body of relevant case law to be made available.

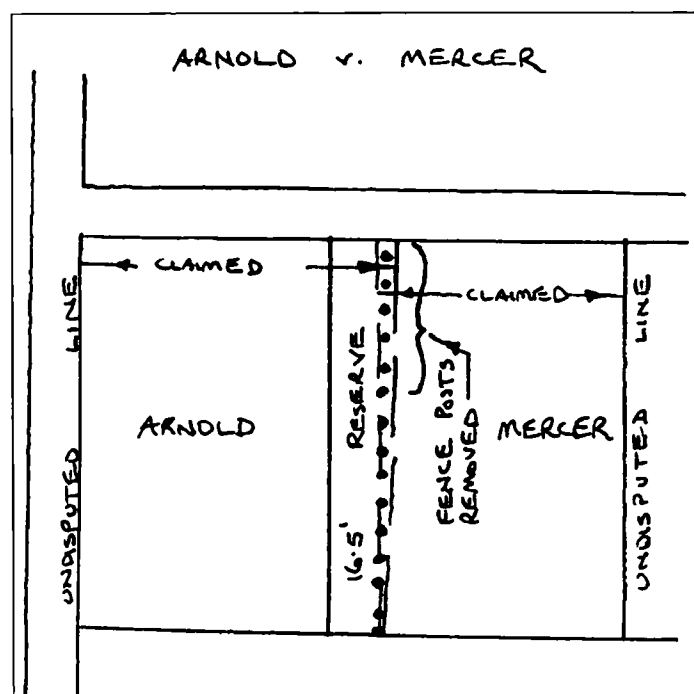
Even then, making sense out of case law continues as a daunting task – in part by reason of the method by which Reasons for Judgment are sometimes written by tribunals and judges.

A good example can be found in the decision in *Arnold v. Mercer* [2007] N.J. No. 223 decided in June 2007 after a trial in Newfoundland. As is common for most on-line searchable case law databases, *LexisNexis® Quicklaw* does not facilitate the reproduction of survey plans, sketches, photographs, or other exhibits entered into evidence in the case report itself. While this may be disappointing, it is understandable because the decision has obviously not been written primarily for land surveyors. Increasingly, *CanLii* versions of case reports do include selected exhibits and documents from the

trial. The article for this page in the next issue of *Geomatica* will review a well illustrated case report – quite the contrast from *Arnold v. Mercer*.

Case law is the result of a dispute between the parties who look to experiencing success after the conduct of a trial in a court room. The resulting judgment usually includes reasons that are perfectly understandable by the parties, but can leave the reader wondering what the dispute was all about. The absence of surveys, sketches, and plans etc. all contribute to this confusion. *Arnold v. Mercer* is no exception.

The real issue in *Arnold v. Mercer* was a claim for damages resulting from the removal by Mercer of a portion of a fence that had been constructed by Arnold. The fight was really about money. To experience success, Arnold needed to prove that the fence which he built was in fact located on Arnold's land. The



removal of the fence by Mercer would then be considered a trespass, resulting in an assessment of the value of the fence removed, and an award of monetary damages. Of course, from the land surveyor's perspective, the decision is only of interest when read in the context of trying to understand how the court decided who owned the land on which Arnold built his fence.

The court reviewed the title history for both properties, and described how predecessors in title had made improvements, conveyed ownership, and ultimately, had their respective properties surveyed by different surveyors in the last 20 or 30 years. What emerged is that Arnold and Mercer owned adjoining parcels of land, both deriving their title from a Crown grant and, the Arnold parcel including a reference to a Crown reserve for a 16.5 feet wide road or right-of-way between the two properties. The description for the Mercer parcel contained no such reference. As best as one could decipher, in the language used by the court, "there was more land on paper than there was on the ground, resulting in an overlap of the two properties on paper".

At least five registered land surveyors, their historic field notes and plans, and the oral testimony of some more recent surveyors involved was all considered by the court. The test to be met by Arnold in order to succeed was "to establish on a balance of probabilities that the land on which the fence line posts were erected were erected on the plaintiff's land or boundary line. The plaintiffs also had to establish that it was the defendant who removed the fence posts and that the plaintiff suffered a loss as a result of the actions of the defendant...".

Arnold and Mercer, through their solicitors, also hired a surveyor jointly to review both properties in order to attempt to determine who owned the land where Mercer removed the fence posts. He produced a report and it was tendered in evidence, but the trial continued and the dispute was not resolved.

Although *Arnold v. Mercer* is an interesting example of how the court attempted to determine ownership of the land in which the disputed activity took place, it ultimately did reach a conclusion without the need to refer to any other case law, and only made a passing reference to the textbook, *Anger and Honsberger Real*

Property (2nd edition).

In the reading of this decision, the facts remain confusing. This writer attempted to sketch out what in fact was taking place but could not. The attempt appears in the diagram which accompanies this article. Instead, the decision is equally interesting in how the court described the role and function of the surveyors who had worked in this neighbourhood over the last decades. For example, one surveyor referred to the work of a colleague done in 1999 as being, "not a survey, but was a real property report, the purpose of which was to locate on the survey where certain properties were in relation to the description given." No wonder the decision seems confusing or difficult in fathoming exactly what the dispute was about. A layperson reading the trial result may well conclude that when surveyors do a real property report, a real survey is not being conducted. This would be disconcerting. Other laypersons reading the decision might conclude that surveyors were responsible for creating the "overlap on paper". Perhaps the court was never presented with case authority about the importance of original marks on the ground set when the property was first surveyed or made the subject of a patent from the Crown. Nowhere in the case report was a distinction attempted by the court in respect of "retracement" as opposed to "first running". That distinction appears to have been blurred completely in the preoccupation with the existence or non-existence of the 16.5 feet wide reserve.

Surveyors need not despair. Although not all case law lends itself to clear principles which may guide a land surveyor's work on the ground, even confusing decisions must still be considered in the context of the whole body of common law which continues to grow and evolve. One must not dismiss decisions of courts that appear difficult to read as somehow "useless" or not relevant if the difficulty in deciphering what in fact took place is insurmountable. If not helpful from the perspective of understanding exactly what was done about resolving a boundary or land ownership dispute, then case law may be helpful in gleaning the view taken by the court of multiple land surveyors testifying about their work. Even for the court, when all was said, a tremendous muddle continued.



2008 COGS Awards: Congratulations to all the winners!

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For showing the most progress in the Survey Technician Program was awarded to **Stephen Matthew Rafuse**



Zone 6 Councillor, Glenn Myra, presents the J.A.H. Church Award to Stephen Rafuse

Letter of thanks from Stephen Rafuse:

May 15, 2008

I would like to send a Thank You to the Association of Nova Scotia Land Surveyors for the J.A.H. Church award and cheque that was presented at the COGS Awards Banquet.

Sincerely,
Stephen Rafuse

J.E.R. March Award

For best kept field book in the Survey Technician Program was awarded to **Janet Grace Hynes**



Janet Hynes receives the J.E.R. March Award from Glenn Myra

18 May 2008

Members of the Association of Nova Scotia Land Surveyors:

I am writing to thank you for the JER March Award, which was presented to me by Mr. Glenn Myra at the Nova Scotia Community College Awards Banquet in Lawrencetown, NS on 2 May 2008. I have learned that Mr. March was very prominent as the Director of Surveys for the Province of Nova Scotia, and as Head of what was formerly known as the Department of Lands and Forests.

The Survey Technician Program at the Centre of Geographic Sciences was very intensive. I understand the necessity for keeping good field notes, however, it is a duty that I also find quite enjoyable. It is an honour to be recognized by the Association of Nova Scotia Land Surveyors for my work.

The receipt of this award serves to encourage me in my studies and will provide financial assistance for my continuing education.

Sincerely, Janet Hynes