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Summer 2009

No. 186

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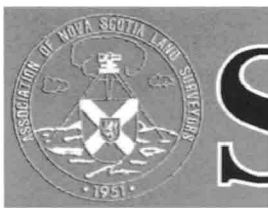
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THE NOVA SCOTIAN SURVEYOR

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PRESIDENT'S REPORT

Raymond Pottier, NSLS



Another four months have passed since I last reported to you, and fully two thirds of my term as President is now behind me. Just as any number of my predecessors must have done, I am writing this report at 38,000 feet on the way back to Halifax after a hectic but informative three days at a sister association's AGM. The sun has set behind me and the northern lights are visible outside my window.

The long flights home usually afford me the time to consider the issues discussed at the past few AGM's I attended and how these issues will impact our association. This year has been a very busy one and the Association has been dealing with a number of issues in Nova Scotia as well as some important national initiatives.

In Nova Scotia the Governance Committee presented the draft Land Surveyors Act and draft Regulations to the membership at two Legislation Workshops held in late May.

The Wetlands Committee has met with the Deputy Minister and senior staff at Nova Scotia Environment and has outlined our Association's concerns with the existing legislation. This has started what I hope will be a productive and mutually beneficial dialogue that will address our concerns.

The SRD Futures Task Group has been meeting on a regular basis and has nearly completed its mandate of redefining the role of the Survey Review Department and to put a new manager in place.

The Strategic Planning Committee has met and the task of refocusing the planning process has begun. With guidance from Council and help from our Executive Director and the membership, I believe that we will be able to make Strategic Planning a part of our yearly activities.

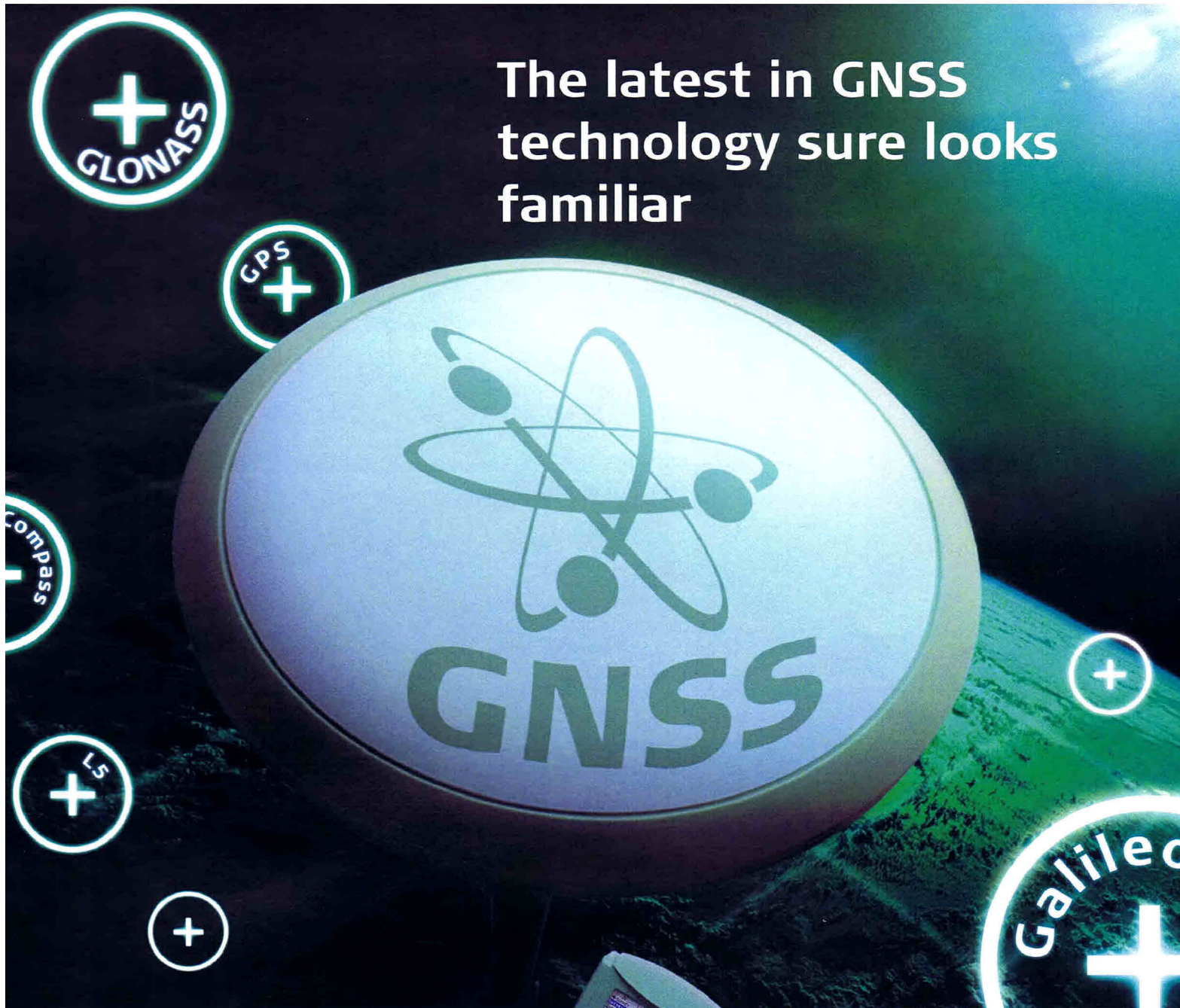
Issues with a more national focus include discussions surrounding the Agreement on Internal Trade (AIT) Chapter 7 covering Labour Mobility in Canada. The CCLS has secured funding from the federal government to help the eleven land surveyor associations come to an agreement on Labour Mobility that will satisfy the requirements outlined in the AIT.

All of the land surveyor associations across Canada except Quebec have become members of the Canadian Board of Ex-

aminers for Professional Surveyors (CBEPS). The Ordre des arpenteurs-géomètres du Québec (OAGQ) currently has legislation issues which do not allow them to join CBEPS. However, in the spirit of cooperation, the OAGQ has a representative sitting on CBEPS as an observer.

The CCLS is also undergoing changes and in the not too distant future will be forming a new national body called Professional Surveyors Canada (PSC). The new organization will still be delivering the programs and initiatives delivered under CCLS such as the Professional Liability Insurance Program, Harmonization of Entry Standards, Labour Mobility and Career Awareness. In addition the plan is to move away from Association centred program delivery and focus much more on delivering services to the individual member land surveyors. These would include delivering Continuing Education opportunities, for example.

As you can imagine there is a seemingly never-ending list of issues and initiatives to be dealt with by your Council. As predicted this is turning out to be a busy and interesting year full of challenges and therefore, by definition, replete with opportunities to move the Association forward and to promote our profession in Nova Scotia and across Canada. ☒



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EXECUTIVE DIRECTOR'S REPORT

F.C. Hutchinson, BA, NSLS, CLS



Another summer is upon us and we are always hopeful that it will be enjoyable and rewarding both for those who endure the wrath of flying insects and those who sit at a keyboard and reminisce about black flies with saddles.

In our last publication I reported on the labour mobility landscape in Canada. I am pleased to report in this issue that I attended a labour mobility meeting in Winnipeg on June 7 and 8, 2009. Our vice-president, Glenn Crews, NSLS, who attended as an observer, accompanied me. Glenn, like some of the other observers, was very active in the discussions that resulted in an agreement between all 11 survey associations.

There is still more work to do by most of the participating associations to be fully compliant with Chapter 7 of the

Agreement on Internal Trade (AIT). The majority of the work consists of the compilation of an appropriate exam on "local knowledge" by each association and/or minor amendments to association legislation. The land surveying profession is extremely organized on this front and appears to be well ahead of other groups that are also subject to Chapter 7 of the AIT.

The Continuing Education Committee has been hard at work organizing a seminar for June 25th on "Forensic Approaches to Evidence Discovery & Location". It will be presented by Don Wilson, PLS, from New Hampshire. The seminar will have concluded by the time you read this but the Committee is hopeful that it will be a productive session for all attendees. There is another seminar planned for Friday morning, October 23, 2009, at Digby Pines Resort in conjunction with our 59th Annual General Meeting. At present, it is planned that some of our members will make presentations on dealing with issues of concern that land surveyors encounter on a regular basis. Common approaches and consistency are always desirable when providing opinions.

The recent meetings dealing with the review of our proposed new Act and Regulations were well attended by a little less than half of our licensed mem-

bers. There was good discussion on questions that were asked at both the Halifax Airport and Port Hawkesbury locations. It is hoped that any member who has concerns or questions about the legislation will forward them to the Governance Committee either directly or through the office. The various sections that were removed from the existing Regulations are planned to be reviewed and placed in By-laws or other stand-alone documents as provided for in the proposed new Act.

The Standards Section is presently under review to update or delete various clauses in order to bring this section in line with present-day surveying techniques and technology. The new Standards Section will no longer be subject to Governor-in-Council approval but approval by the membership only.

On another note, I encourage members to consider authoring an article for future issues of *The Nova Scotian Surveyor*. It need not be long or overly technical. It could even be about a survey experience, project, trip or words of wisdom for the benefit of others. This is your chance to get published and start a career in print.

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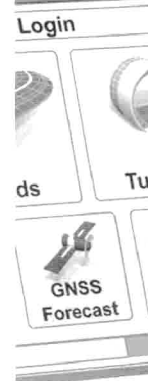
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Difficult Conversations

Janice Henshaw, Executive Director, Association of BC Land Surveyors

As seen in *The Link*, Volume 31, Number 1, March 2008.

“It’s time to end the myth of the complete leader: the flawless person at the top who’s got it all figured out. In fact, the sooner leaders stop trying to be all things to all people, the better off their organizations will be. In today’s world, the executive’s job is no longer to command and control but to cultivate and coordinate the actions of others at all levels of the organization. Only when leaders come to see themselves as incomplete—as having both strengths and weaknesses—will they be able to make up for their missing skills by relying on others.” (Peter Senge et al, Harvard Business Magazine, February 2007)

We all know that management has changed. The leaders who succeed in today’s business environment aren’t the imperious commanders of yesteryear; they are the men and women who can build successful teams. Many of the best will freely acknowledge that they surround themselves with people who they consider smarter, more organized and better educated than themselves. That’s because their goal isn’t to be the best at all things, their goal is to get the best people doing the things they are best at, and directing the larger unit to new heights of business and organizational achievement.

One of the biggest problems that can keep a team (and thus its leader) from reaching its full potential is the way a manager and team members deal with difficult problems and the resultant difficult conversations. By these I mean the topics we fear to broach because of concerns that doing so will lead to embarrassment, hostility, or a loss of face. I also mean *all* types of difficult conversations, the ones we sometimes avoid in committee or team meetings, the ones we have before we rush out the door, and the ones we allow to spiral out of control - they can all poison our work environment.

The dilemma of the difficult conversation, writes

Douglas Stone in *Difficult Conversations* (2000, Toronto, Penguin books) is that if we avoid addressing problems:

- * We feel taken advantage of
- * Our feelings fester
- * We feel like a coward
- * We’ve lost an opportunity to improve things

However (and this is a big however), you may worry that if you confront the problem – things may get worse.

In the office environment there are a host of problems that can slow down your team. Some of the most common include basic clashes of personality and work styles, distrust, a perennially late employee, or a person who fails to carry his or her share of the workload, causing other team members to have to work more to pick up the slack.

This is when you, the leader, must act: even if the other person is ‘at fault’, your leadership (and likely your bottom line) depends on solving these issues in a professional and constructive way.

One of the most important things to remember when confronted with one of these difficult situations is that problems have a way of compounding over time. Not addressing problems as they come up can lead to a number of issues building up and creating a situation that can do serious damage to a team environment. It can also lead to entrenched patterns of behaviour. If people start getting frustrated or resentful because of the actions of a team member the problem can impact performance across the board. At its worst, frustration over difficult situations can lead some employees to try to sabotage work on a project just to get even with an offending person, or to avoid ever working with them again.

Continued on page 8

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While all of this might sound pretty dire (particularly if you have a generally harmonious relationship with your staff) we should still keep it in mind. When we are deciding whether or not to address an issue and are balancing the potential awkwardness of a conversation against the direct benefit of resolving the particular problem, it is important to remember that avoiding little problems can lead to much bigger ones down the road. As such, the benefit from addressing the issue might be more than we can predict at the time.

Another problem that can prevent us from dealing with difficult issues is that we aren't exactly sure what they are. Just as police officers sometimes hear radically different reports from witnesses to a crime, co-workers, and managers can often observe and hear totally different sides of a story depending on the participant they speak with.

When you, as a manager are involved in the issue it is likely that your perception is going to be partial as well.

In fact, in any given problem there are likely to be at least four stories. When Alan and Bob have conflicting attitudes about cleaning up their shared office we could make a fairly safe wager that Alan (cleans his computer screen three times a day with Windex) and Bob (leaves his gym socks hanging on every available flat surface) are going to have a different perspective.

There is also an objective narrative of events: ie, the things that have happened, stripped of emotional significance (which no one is likely to achieve because almost everyone filters information and assigns it significance). Finally, there is likely an outside perspective, that of the observer. In this case we have Alan and Bob's boss Margaret, who really just wants to get this project done on time so she can get on to her quarterly report.

Both sides are firmly entrenched, each feeling completely justified that they are in the right, and Margaret might tend to side with one or the other, or neither of them because they, as participants in the situ-

ation can't be trusted to be impartial without judging or relying on their personal filters based on past (often irrelevant) experience. Bob and Alan are both going to search for further examples to corroborate their stories. And of course, "facts" are easy to come by; we always find more of what we look for.

If Alan gets irritated with Bob and then comes running to Margaret she should listen once, but if it happens again she has to find a way to make sure the problem gets resolved. Alan's behaviour (ranting to his superior), is his way of avoiding a difficult conversation while also getting his concerns off his chest. In so doing, he makes Margaret into a "torn middle," someone pulled both ways by people who come to her to vent and hopefully to try to convince her to solve problems that they should really be dealing with on their own. At the end of the day Alan leaves, feeling better after getting his sock-anger off his chest. Margaret is the one pacing back-and-forth worrying about the problem and taking the "monkey" home on her back.

In this situation there are actually two potentially difficult conversations: Margaret needs to tell Alan that he needs to deal with his problems in a professional manner, and Alan needs to address his concerns with Bob. If Margaret allows the problem to become entrenched it can lead to a very unhealthy triangle, one that could have devastating consequences in the work environment.

Furthermore, if Margaret charges in to deal with the problem herself she risks alienating Bob and she reinforces Alan's unprofessional behaviour. The best solution for Margaret is to plan and execute her "difficult" conversation with Alan. What follows is a summary of tips and research on difficult conversations based on the work of Douglas Stone.

Getting Started with a Difficult Conversation

1. Preparation

Before doing anything else, let go of control – You are responsible only for your part of the conversation. Remember that you can only make the

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invitation; it may not be accepted. Moving forward in this type of situation is about standing up and acting differently, you are not going to change the other person. Instead, you have to change your mindset – from knowing to curiosity, from simplicity to complexity, from blaming it all on others to accepting what you have contributed, from “I know” to “Help me understand”.

Ask yourself if there are other ways of resolving the issue. Could you simply alter the way you are approaching the issue or are behaving toward the person? You have to decide if the conversation is a “go” or “no go”. Also, consider the following questions before you decide whether or not to have the conversation.

- i. What is your purpose, your true agenda for this conversation?
- ii. Is there value in having it? (Sometimes not having it may be the right answer)
- iii. Is it fear keeping you from having the conversation? (then you may have to reflect on it further)
- iv. Is it a pattern of behaviour? (then you likely can't let it go any longer because it will become more entrenched)
- v. Is it something you just really don't want to deal with? (then you probably really should have the conversation)
- vi. If you don't raise the issue is there a way you can help yourself to let it go?

Imagine and prepare for the other person's responses – will there be tears, anger, or denial, and will any of these responses trigger emotion or identity issues for you?

Move into the future – dissociate by imagining yourself one year in the future, look back and tell yourself what type of actions you would be proud of in retrospect.

Go through the conversation in your mind. Explore

your feelings and reflect on any identity issues that may arise. For example, head off fear in the other person at the start of the conversation by saying “Ted, I don't want you to feel that your work is not valued here, because it is, you are doing some really great work. There is one thing that needs discussing though, I have been hearing from a few of our long time clients that they are upset by how you are dealing with their projects, that you are not communicating with them, and I need you to have a look at that.”

Clarify your own intention – are you really curious to find out what is going on, or have you already held a trial in your head, weighed all the ‘facts’ and found the person guilty? Are you just having the conversation to pretend to listen to Ted, until the moment when you can tell him how wrong he is and that from now on, this is how he will handle things in the future? If this is the case you are less likely to convince Ted that you have heard him out, and therefore less likely to convince him that his behavior needs to change.

Ask yourself if you have time for this kind of conversation. These are not drive-by events; don't think you can drop important statements off as you go out the door and let time take care of them, this action will likely make things worse. If you cannot set up a good period of time for the undivided attention a difficult conversation may require, then you will send the message that it is not important. The result will be a relationship further undermined.

2. *The Conversation*

Don't just approach the conversation like you would any other discussion about work or day-to-day subjects. The following framework will help you to think consciously about the way you approach the issue.

The Difficult Conversation Framework

1. Describe the problem as the difference between your stories. Include both viewpoints as a legitimate part of the discussion.

I'd like to first acknowledge that we have some difficulties and differing opinions about how to get projects completed for our clients on time and this has

been going on for a number of years.

2. Describe/share your purpose.

What I would like to do is to learn more from you today so that I can understand how you see things and then I would like to share with you how I see the situation.

3. Invite them to join you as a *partner* in sorting out the situation together.

Start from the third story...

My intention today is to be in a position to move forward in such a way that we will have a more productive and stronger working relationship because we have taken the time to sort this out together.

It is important to accept the role of feelings and emotion in conflicts. Even though many people would rather get a root canal than start a sentence with “I feel” the truth is that any difficult issue is going to be loaded with feelings on both sides. If a person is emotionally charged, it’s right back to his reptilian nature. He can’t hear fully, he stops listening, and it is you who has to instantly create a time out.

The best way to do this is to create a space and time that will allow him 10 seconds or so, so that he can regain his balance. When things are getting derailed, when the conversation is in trouble - it is vital that we stop and step back to create a safety zone. This can be as simple as offering to bring in some coffee, or asking the person if they could hold on for a second while you turn off your blackberry – *anything* to create some breathing time.

In emotionally charged conversations, it may be a good idea to sit for a moment of reflection before saying anything further. If you think the other person may be uncomfortable with the silence, tell them that you need a moment to reflect on what they have said. This is not at all the same as passive aggressive silence which is used by some people in a hostile manner, i.e., “I am going to sit here and not partici-

pate, how do you like that?”

Stay curious and explore the stories of others as well as your own. When you hear yourself reiterating your favourite viewpoints/opinions/judgments, perhaps it is time instead to listen with curiosity and without judgment to understand the perspectives of others. Ask questions. Acknowledge the feelings behind the arguments and accusations. Try to unravel how everyone got to this place.

Susan Scott, author of *Fierce Conversations* suggests setting it up like this when you want colleagues to discuss issues candidly:

“You can count on me to tell you what I think and feel and how I’ve arrived at my perception. I invite you to do the same, especially if you disagree with my view. Our differing perspectives are invaluable. After all, our goal is to make the best possible decisions for the company, not to be right about our individual points of view.”

And as Susan reminds us – “We resent being talked to. We’d rather be talked with.”

Finally, when your conversation is ending, thank the person for taking the time to talk with you. Don’t be afraid to acknowledge that it was a difficult discussion. This can also be a good point at which to reiterate the value you place on your relationship with the other person. Hopefully, addressing the issues will build a basis for an even better professional bond in the future.

Susan talks about the “accountable position... Take your finger and touch your nose. This is where the resolution begins... If you want to make progress towards a better ‘here’ in your professional or personal life, identify the conversations out there with your name on them and resolve to have them with all the courage, grace, and vulnerability they require.”

Good luck in your conversations!

“Our thoughts are traitors and make us lose the good we oft might win by fearing to attempt.”
William Shakespeare.



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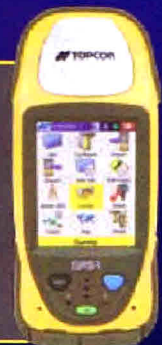
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G.T. Bates Scholarship

For attaining the highest standing in the Survey Technician Program was awarded to **Sean Brandt**, shown here receiving the award from Ray Pottier, NSLS, ANSLs President.

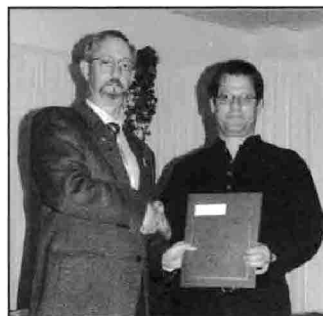


Photo credit: Paul Illsley

Letter of thanks from Sean Brandt:

May 31, 2009

I recently received the George T. Bates Scholarship for Highest Standing in the Survey Technician Program at COGS.

I would like to thank the Association and its members for making this award possible. It is always encouraging for students to see their work acknowledged by participants in their chosen field.

Also, in these difficult economic times where money and jobs are difficult to come by, the award is also useful in helping me continue my studies.

Yours sincerely,
Sean Brandt

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The Magnificent Seven: Heading for summer employment in Schefferville, Quebec

by Fred Hutchinson, BA, NSLS, CLS

Summer employment is usually a goal of any student, and in 1968 the Iron Ore Company of Canada hired seven students from the Nova Scotia Land Survey



All the comforts of home

Institute (now COGS) to work in Schefferville, Quebec. The work involved control surveys for geo-physical evaluation. Housing at the base camp was a four-bed building on skids moved from site to site by a bulldozer. Housing in the more remote area was under canvas, with the only building being the cook

house, also on skids. Our immediate supervisor was Murray Banks, NSLS # 313.

Over 40 years has now passed and the following is a brief note on each of the students as they appear in the cover photo from left to right.

Donald Parker, NSLS # 375

Don articulated with K.W. Robb, NSLS # 225, and received his commission as a NSLS in November 1970. In 1981 he received his Canada Lands Surveyor commission. Don retired from the NS Department of Natural Resources, having served as Manager of the Crown Lands Record Centre for many years and resigned his Association membership in 2007. He was Association President in 1985 and presently resides in the Nova Scotia community of Hilden with his wife, Gloria.

Fred Hingley, ALS # 511

Fred was one of the group of seven who traveled west to continue his surveying employment and career. He acquired his Alberta Land Surveyor's commission in 1981 and is presently the Vice-President and Secretary-Treasurer of Universal Surveys Inc. and resides in Edmonton, Alberta. He is the brother of Ed Hingley, NSLS # 342.

Gary Glenn, NSLS # 407

Gary articulated with W.S. Crooker Jr., NSLS # 238, along with several other land surveyors. He received his commission as a NSLS in December 1972 and was employed with the Nova Scotia Department of Lands and Forests until 1973. Gary was very active in Association affairs despite a debilitating and life-threatening illness. He was employed with Wallace, Macdonald & Lively Ltd. (now Terrain Group) from 1973 until his death in January of 1989. Gary was a good friend and dedicated professional.



L to R: Joe, Fred Hingley, Don, John and Bert

Cuthbert Seely

Bert entered the field of public service and played an active role in the coordinate control monumentation and mapping under the direction of the Council of Maritime Premiers. Bert retired from Service Nova Scotia & Municipal Relations in 2007 after having served as manager of the Geomatics Centre in Amherst for several years. He presently resides in Amherst with his wife, Wanda, and continues to be involved in the geomatics industry as a manager with Interpretive Resources Consulting Incorporated, with offices in Amherst, NS and Sackville, NB.

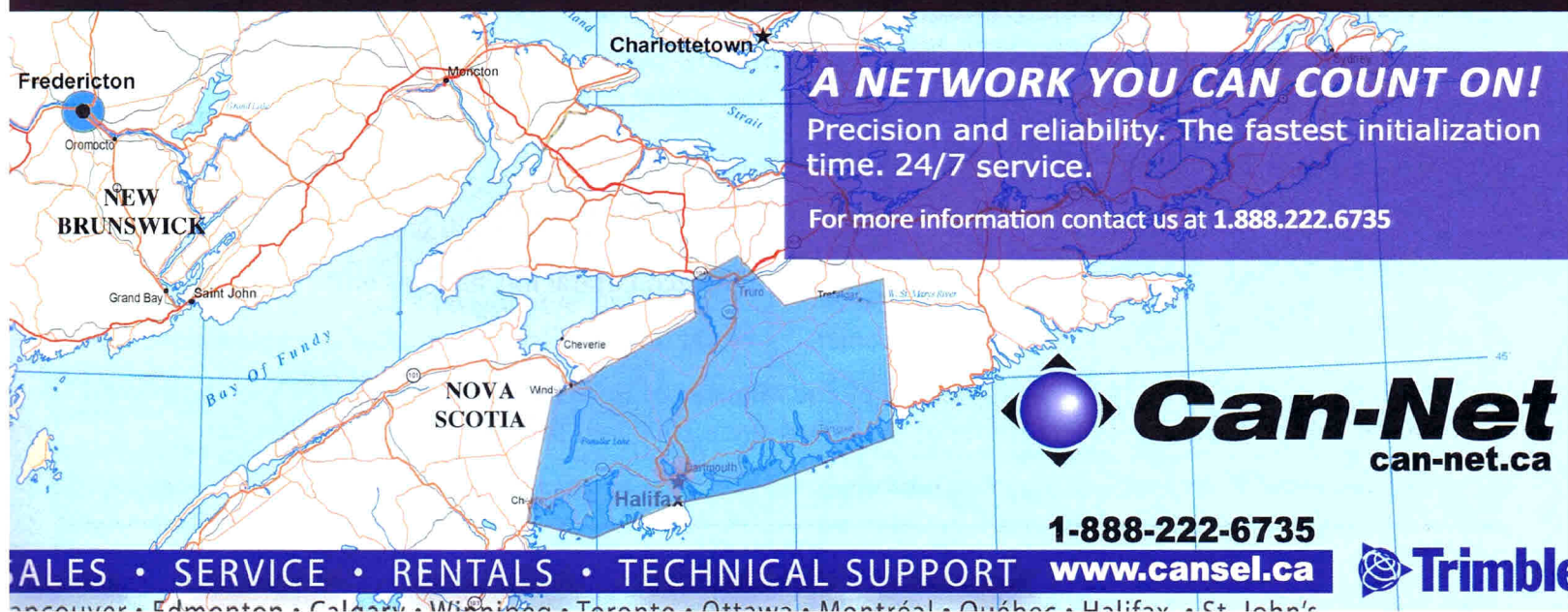
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John Henry Gaskin

John H. was always a free spirit and pleasure to be around. He suffered a leg injury with a chain saw during the summer, which ended his employment with the Iron Ore Company of Canada as well as a career in surveying. His career path and existing whereabouts are not presently known to the author.

Joseph Cormier, NBLs # 267

Joe is a New Brunswick native with a rich French heritage. He obtained his NBLs commission in 1971 and was employed with Service New Brunswick until his retirement from public service a few years ago.

Joe is presently a Life Member in the Association of New Brunswick Land Surveyors and resides in Bathurst, NB with his wife, Cécile.

Fred Hutchinson, NSLS # 379

Fred obtained his commission as a NSLS in January of 1971 and his commission as a Canada Lands Surveyor in 1981. He has served on several Association committees over the years and was Association President in 1984. Fred was self-employed in the private sector of the surveying industry from 1976 to 1998. Since the summer of 1998, he has been employed with the Association of Nova Scotia Land Surveyors and for the past 10 years has served in the position of Executive Director. ☒

Notes From The Side Of The Road



1. Jeff Fee, NSLS # 595, has relocated and is now a Senior Project Manager, Geomatics Division, with the MMM Group Ltd. in Thornhill, Ontario. We wish Jeff all the best with this career change.
2. Andrew Morse, NSLS # 632, received his commission on April 7, 2009. Andrew is employed with Terrain Group Limited in Dartmouth. Congratulations!
3. J. Carl MacDonald, NSLS #217, resigned his commission as of May 31, 2009 after 52 years in practice. All the best in retirement.
4. Kevin Robb, NSLS # 633, received his commission on June 4, 2009 after 23 years in the surveying industry. Kevin is employed with Servant, Dunbrack, McKenzie & MacDonald Ltd. in Halifax.
5. Shaun Stoddart, NSLS # 534, was suspended from membership in the Association due to lack of professional liability insurance coverage, as per section 108(1) of the Regulations.
6. Peter Murray, NSLS # 456, moved to retired membership as of January 1, 2009. (This is a correction to item 4 on page 6 of the Spring 2009 issue of *The Nova Scotian Surveyor*).
7. Andrew Giles, NSLS # 618, recently left the employ of Armco Capital Inc. and has embarked on a career in private practice. Good luck, Andrew!
8. Gerald Pottier, NSLS # 394, was appointed by the Minister of Health as the new Chair of the South West Health Board. He has been a member of the board since 2000 and has also served as Vice-Chair.

Outward Bound

by Hal Dornadic

reprinted from *Open To The World*, Autumn 2008

AG Research has come a long way from computerizing Cape Breton's municipal systems. Now it consults widely in the Caribbean, the UK and the US, and is an Export Achievement winner for 2008.

Jean Ferguson dreamed about becoming a doctor since she was a child. By 1992 she had finished her pre-med studies at the University of British Columbia and had been accepted to medical school in both Ottawa and Halifax. But with a husband and two small children, the cost of attending forced Ferguson, then 33, to place her plans on hold. Ferguson's husband, Eric Whyte, was then a 37-year-old engineering student. He wanted to help his wife fulfill her dream, so in 1991 he created Atlantic Geomatics Inc., a software engineering company, in the hopes of helping Ferguson pay for school.

Today AG Research (its name changed in 1999) has 35 employees and clients in such far-flung places as the Caribbean, the United Kingdom, and the United States. "There was a lot of serendipity along the way," admits Whyte, AG Research's president, adding that his company's early success was due in large part to the technological vision of Cape Breton County's CAO Jerry Ryan.

When the company first launched, it was approached by the then County of Cape Breton to provide Geographical Information Systems (GIS) services, which computerized the municipality's sewer, water, and electrical maintenance systems. Whyte maintains that Ryan's progressive attitude toward technology made the municipality one of the most forward-thinking in Atlantic Canada. "We owed the municipality, the Metro Planning Commission [the planners], and Enterprise Cape Breton Corporation [the project funder] for giving us a jump-start," says Whyte.

In the mid-1990's, eight municipal units amalgamated into the Cape Breton Regional Municipality (CBRM); they all needed GIS service centres to replace their redundant town halls. Atlantic Geomatics' business took off, and by 1998 it was depending on the CBRM for 90% of its revenues. Realizing how disastrous that could be if the status quo changed with its municipal clients, Whyte decided to reduce that dependence to 20% by increasing the number of clients the company serviced, so he started looking for work elsewhere.

At about this time, good timing once again played a major role in the acquisition of new business for AG Research (www.agresearch.ca), this time offshore. Shortly after a former employee went to work for a firm in Bermuda, the Bermuda company needed GIS services above and beyond the employee's expertise and was directed to AG Research by the employee. That led to the formation of a partnership to build an environmental information-management system with the Bermuda company for the Government of Bermuda. Soon the Bermuda government recruited AG Research directly to develop a property information-management system; that client continues to contract the company's services today.

AG Research still maintains a GIS component but has branched out into many other technology-based services, including database development and management, project management, software development, and computer-network design and maintenance. And along the way it has acquired the expertise for those areas through diligence in recruitment, both locally and off-island, in the form of corporate managers, aerospace workers, programmers, and software developers. While there were available workers in Cape Breton who didn't have

the specific skills required for certain jobs, they were easily trained (last year AG invested 8% of its revenues into training). Others had to be hired from elsewhere, which meant making the jobs attractive. "A lot of people are drawn by the lifestyle here; Cape Breton is very stable culturally and socially," says Whyte. "But some people don't come here cheap, necessarily. We pay on a scale that's competitive with larger centres like Halifax. That's necessary to attract really good talent."

Although AG Research is headquartered in Sydney, it has begun to build a branch in Summerside, PEI. It also has staff in Bermuda and in the Lake District of England. "We go to those locations to identify the talent there and try to recruit from there," says Whyte. Good pay and not having to relocate leads to employees who are happy with both their income and their workplace, resulting in low staff turnover.

The company also does work for governments in Gibraltar and Trinidad. At home it has developed a single-billing system for Canadian cable companies with up to one million customers, it's creating environmental project-management solutions for federal and provincial governments, and it has done extensive program development for insurance company New York Life in the US. Added to that list are the strong industry partnerships it has developed with Microsoft, Hewlett Packard, and IT companies ESRI and Oracle.

There have been challenges along the way, particularly considering the company's Cape Breton location. "There's very little market for us right here outside of the CBRM, so we have to be very outward looking," says Whyte. Due to AG Research's growth, the CBRM now comprises on 5% of the company's revenue. "We either try to ally ourselves with partners in the 'rich markets' or we establish a professional presence somewhere else,

such as we did in Bermuda." Other barriers include the lack of an international airport in Cape Breton, which increases the time it takes to travel to the other company locations when necessary.

But Whyte is quick to point out that the pros of the location outweigh the cons. "We have good brain-power here," he says. "Plus, the people who are here tend to want to stay – and people are the essence of our business. Our staff is as good as we could ask or hope for." To promote a sense of well-being at work, the company hosts regular pizza days, annual golf tournaments, whale-watching tours, and Christmas parties. It's an area of the business that Whyte has developed over time, and he feels that it's working.

In 2000 Whyte took on a partner that he says "greatly increased" the company's fortunes: Irving Schwartz, one of the best-known and respected businessmen in Cape Breton. Whyte says that Schwartz's contacts have been invaluable to AG Research's expansion. The company now operates within the industry-standard Level 3 CMM (Capability Maturity Model), which also helps sell its services. "When we are marketing," says Whyte, "we have to be bold and confident that we really are offering a service that is world class."

The AG Research success story came full circle in 1997 when Whyte's wife finally realized her dream: she is now Dr. Jean Ferguson, a geriatric psychiatrist working at the Cape Breton Regional Hospital. It's a true testament that from humble beginnings, great ideas, careers, and companies are born.

.....

Eric Whyte, NSLS # 514, was commissioned as a Nova Scotia Land Surveyor on July 31, 1980.



A Question and Answer Session with Jeffery N. Lucas, PLS, Esq. Part 2 of 3

by Brian Portwood, PLS - RPLS.com Contributor

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Jeff Lucas is a professional land surveyor with over 30 years of experience and a licensed attorney. He writes a monthly column for P.O.B. magazine and has for the last four years. He has earned the respect of his fellow professionals through his many years of intensive and diligent study of the legal process for resolving property boundary issues, conflicts and disputes, with a special focus on the role of the professional land surveyor in that process. In this interview he answers questions posed by RPLS.com contributor, Brian Portwood, relating to the legal foundation upon which his view of the land surveyor's role in society is based, and he encourages surveyors to remain open to learning what the law has to say and how it can be applied in everyday practice.

Q: Given that surveyors “are not judicial officers”, as Justice Cooley put it, can the surveyor avoid liability on that basis, if his or her work is shown to be in some way at variance with any of the numerous legal principles that may apply?

A: This notion that surveyors are somehow above (or immune to) the law is a myth. Unfortunately, it's a myth that many surveyors take as truth. It is true that at one point in time, two surveyors could walk into court, give two completely different answers, and walk back out almost free from liability. The law has changed, and so has the liability associated with land surveying. Now two surveyors go to court and one is “wrong” and the other is “right”. It is no longer an option to be wrong in court.

Don't get me wrong on this point either. We are not judicial officers, and our “rulings” can be overturned. But here is the problem. For the vast majority of people who hire surveyors, we are the only judge and jury they will ever see for the determination of their property boundaries. And if they want to “overturn” our decisions, they have to go to court. The most arrogant attitude I have ever encountered is the surveyor who wants to ignore this fact, stake deeds (right or wrong), size sections (re-subdivide sections that have already been subdivided), throw the neighborhood into turmoil, and then wash his hands of it by exclaiming: “If they don't like it, they can go get a lawyer.”

Q: Many surveyors are not comfortable with the idea that they should, or even can, anticipate how a judge may rule on a particular legal issue, or predict the outcome of any particular dispute involving legal principles. Is the law applied consistently enough in our courts for the surveyor to take guidance from it?

A: The old saw we've all heard goes something like this: “Only the judge can determine where the boundary line is, and nobody knows what the judge will do.” This has a hint of truth to it. You can and will get almost any ruling at the trial court level that you could possibly imagine. Many rulings will be contrary to the established law of the state. So why worry about anticipating what any particular trial court judge might do? On the contrary, once the cases move up the chain to the appellate courts and state supreme courts, the proper law will be applied (in the vast majority of cases).

If you study enough cases involving boundary disputes from all across the country, you begin to see that what the courts do in Nevada is the same thing they do in Alabama. Why is this? The simple answer is that the law has been developing in this country for 230 years, with another 1,000 years of English common law before that. The judges and other tribunals that deal with the law don't invent new law every time a new case comes up. They go back and study what was done before, and if it's never been dealt with, the courts look to see what

other jurisdictions have done with the same issue. We can do this also.

When it comes to property law, and many other legal subjects, the courts do almost the same thing over and over again. Does your pastor need to understand the Bible when you come to him for spiritual advice? Does your doctor need to understand medicine when she makes a diagnosis and prescribes medication? Does your attorney need to understand civil procedure when you go to court? Why then would your land surveyor *not* need to understand property law if he's surveying your property boundaries?

Q: Does that mean the surveyor has an obligation to consider and deal with lines of ownership, which may have been established at variance with a strict technical interpretation of the calls of a given description, in the process of boundary resolution, and if so, where is the basis or support for this in the law?

A: Any answer that I give here can only scratch the surface, probably be misinterpreted, and will probably create more questions than it answers. Let me answer it this way: There are only two questions to be answered in any boundary dispute: (1) What is the boundary; and (2) Where is the boundary? Search for the answers to these two questions, and you are on the right path. Fail to even address these two questions, and you're wasting everyone's time and your client's money.

Let me also be clear on another issue. Often, staking the deed is exactly what needs to be done. If the deed is clear and unambiguous, then never leave the deed. If, on the other hand, the deed contains ambiguities, either on the face of it or once field survey results are applied, then intent is no longer contained in the deed. A deed is only evidence of title, it's not proof of title. So now, if the surveyor stakes out a clear and unambiguous deed (no ambiguities in the field either) and the clear line of possession is 30 feet south of the deed line, there is a problem that should not be ignored. It's like coming upon a crash scene and you are a paramedic. Do you ignore it and just drive off? Or do you grab your medical kit and get to work? True professionals will

grab their medical kits and get to work. Let me add this one last thought: you're not in court if there are no ambiguities.

Q: Has the surveyor who takes the position, "All I am licensed to do is lay out my client's deed calls on the ground, to the best of my technical ability, and show the existing conditions on my drawing" fulfilled his or her professional obligation in doing so, and will that position stand up in court, protecting the surveyor from liability?

A: If this is truly "all" the land surveyor is doing, then in my opinion, this is technical work that can be handled by any highly trained technician. Don't call yourself a professional (look up the definition), because you are not doing professional-level work. Also, don't call this a "boundary survey" or boundary survey work; call it what it really is, a "deed stakeout". Maybe this way, the general public will finally get the message that we are not even attempting to define their boundaries and realize that it's not a survey that they need – they need a court decree.

Gary Kent has given me a bit of grief over my use of the term "deed staker". And he is right when he points out that in the great majority of cases, that is exactly what is called for. But, let's be clear, your question states that this is "all" the surveying is doing in all cases. Simply staking your client's deed, in many cases, becomes client advocacy and starts the surveyor down the tort path. Privity of contract is dead in America, and third party beneficiary doctrine (liability to third parties you don't even know) is alive and well.

Q: Most states describe the paramount responsibility of the surveyor, as a licensed professional, using general language requiring "protection of the public". Does this mean that the property owner, adjoiners, or others, are entitled to rely on a retracement surveyor to protect their existing property rights?

A: There is no way to come close to a full explanation here. Therefore, I'm going to say it as succinctly as possible. The surveyor owes a duty to anyone who is foreseeable in the line and scope of

his/her work. Your potential plaintiffs are your client, each adjoint and – conceivably – any subsequent purchasers of any of the property involved. Not to mention real estate agents, title companies, and other ancillary professionals involved with the transaction. Many of these enacting statutes also include in them, “protection of property”. Protection of property also includes protection of the associated rights. Just check your enacting legislation and the purpose statements in your administrative code sections and survey standards. This creates a duty, not only to your client, but to all whom the surveyor comes in contact with.

Q: Is it possible for the surveyor to limit this list of parties to whom the surveyor may be liable, by placing a certification statement on the face of the survey plat, indicating that the surveyor certifies the survey only to the client, and to no other parties, or would such a disclaimer be legally meaningless and ineffective?

A: This is along the lines of the unilateral exculpatory clauses that I have seen surveyors put on their surveys claiming that they are only liable for the amount paid for the survey. Some surveyors used to (maybe still do) put such clauses on their surveys. When attorneys see these clauses, they laugh. There is no such thing as a unilateral “agreement” to limit your liability. If so, don’t you think some lawyer would have used it by now? The only way to be free from liability is to be an inanimate object.

Q: Some retracement surveyors, perhaps most, see themselves as the “defender of the deed” or “defender of the title”, and see that as the only legally mandated role for the surveyor. Is the retracement surveyor, by portraying his or her responsibilities or obligations in this way, effectively excused from the burden of protecting the rights that may have been established by operation of law, when conditions are found not to coincide with a given set of deed calls?

A: Let me just say that in my opinion, these surveyors are misguided in their beliefs. This line of thinking has given surveyors and the surveying community the reputation as problem finders, not problem solvers. With our already weak position in

society, the more problems we cause, the less society will need us. One more thought here – if the deed no longer contains the “intent”, you’re defending a worthless piece of paper, not anybody’s rights. After 20 to 30 years, in every jurisdiction I have studied relating to this issue, the property rights have been settled by law. Waving a piece of paper around that says property rights are in another location isn’t defending property rights, that’s starting a controversy that, in many instances, leads to a lawsuit.

Q: Many surveyors are not comfortable with the suggestion that boundary survey work has an implicit connection with ownership rights. Can surveyors successfully maintain that their survey work is not intended to serve as an indication of the location of lines of property ownership, or perhaps even maintain that this is something the typical property owner should already understand, without being expressly informed of it by the surveyor?

A: If we truly don’t feel that it’s our place to perform “boundary” surveying or to understand anything about property, let’s quit calling ourselves “professional” anything. We need to adopt some other name for ourselves, like “Measurement Technologist”.

There are three basic things that the general public knows about surveyors (I used to say two, but I’ve changed my mind because I’m now sure it’s three): (1) We are the people standing on the side of the road “taking pictures”; (2) no two surveyors can agree on any one property corner; and (3) when we come to the field, we determine where property boundaries are.

If this truly is not what we have any intention of doing, then let’s put a little truth in labeling on our survey products (maps and reports) and in our dealings with the general public. Let’s tell them up front – leave no doubt – that we have no intention of determining where and what the property boundaries are. Let’s also tell them when we are done, through our maps and reports, that all we have done is place one possible location of a deed on the ground. In other words, let’s label our surveys and reports as

what they truly are: "Deed Stakeouts".

Also, let's add this note: "If you need to know where your property is, call a lawyer." In other words, get a *real* professional to help you with your problem.

Q: Does "protection of the public", where such is mandated by law as the foremost requirement for those engaged in professional practice, extend to private parties and private property rights, and compel the surveyor to practice with complete impartiality?

A: In a perfect world, the surveyor should be an

impartial third party. He/she should have no bias in the case. Once the surveyor leans towards client advocacy, that is when the surveyor is headed towards a slippery slope. Client advocacy can lead to the commission of torts.

A tort is a civil wrong where someone is harmed. Not just physical harm, but harm to property as well. This harm to property includes harm to the rights associated with the ownership of property. Slander of title is a perfect example of that. This is where the surveyor's ignorance of property law and its associated rights can be the most troublesome. ☒

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