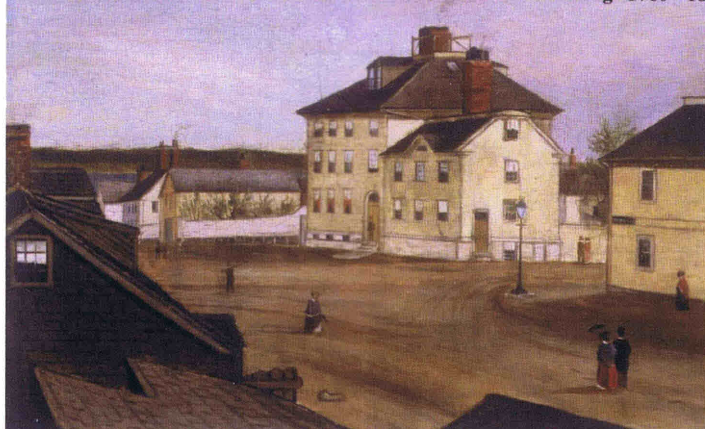


THE NOVA SCOTIAN SURVEYOR

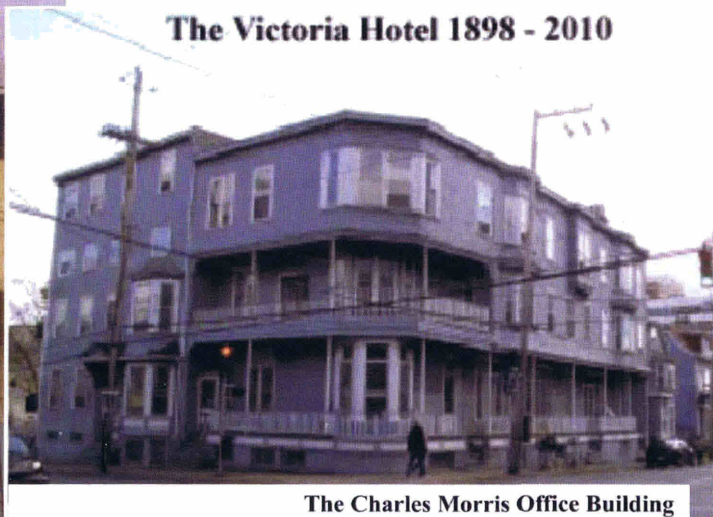
Spring 2011

No. 190

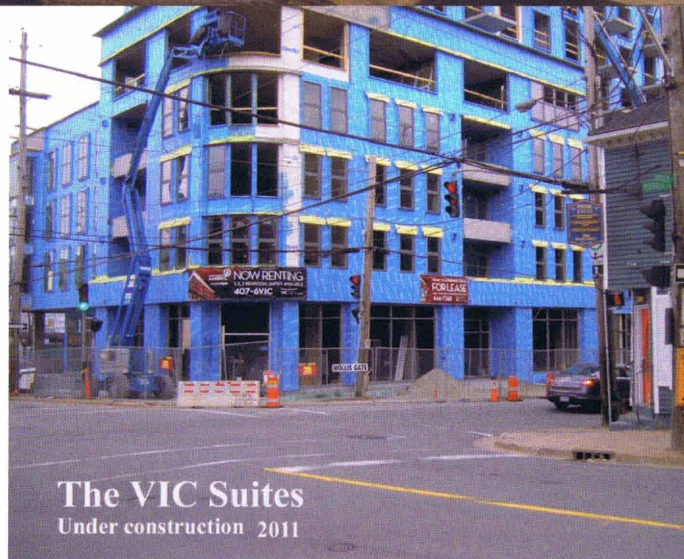
The Charles Morris Residence 1760 - 2010 & Office Building 1760 - 1898



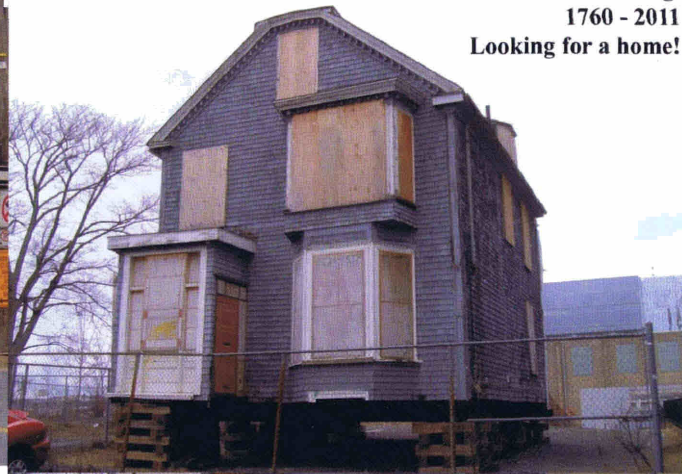
The Victoria Hotel 1898 - 2010



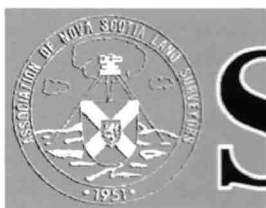
The Charles Morris Office Building
1760 - 2011
Looking for a home!



The VIC Suites
Under construction 2011



The Evolution of a Street Corner Hollis & Morris, Halifax, Nova Scotia



THE NOVA SCOTIAN SURVEYOR

SPRING 2011

No. 190

CONTENTS PAGE

President's Report	<i>Glenn Myra</i>	2
Executive Director's Report ..	<i>Fred Hutchinson</i>	4
Parol Testimony	<i>Knud E. Hermansen,</i>	6
Surveyors Forum at COGS	<i>Ray Pottier</i>	8
Can a Land Surveyor be Wrong Without Being Negligent ...	<i>Will O'Hara</i>	9
Spring 2011, Notes from the Side of the Road	<i>Fred Hutchinson</i>	11
Professional Surveyors Canada	<i>Ray Pottier</i>	12
The Story of the Charles Morris' Office	<i>Philip Pacey</i>	14
Geomatics and the Law	<i>Izaak de Rijcke</i> ...	18
Obituaries		20
Ignorance is Not Bliss for Land Surveying	<i>Bryan Bates</i>	22
Minutes of the 60th Annual General Meeting		24

THE NOVA SCOTIAN SURVEYOR

Editor: Fred C. Hutchinson

Production: Sarah Rygiel and Wade Atlantic Limited

Cover: Photo credits: 1. Watercolour from 1840's by R.D. Wilkie (Public Archives). 2. Heritage Trust of Nova Scotia. 3. F.C. Hutchinson. 4. F.C. Hutchinson.

Circulation: Free of charge to ANSLs members. To non-members at a yearly rate of \$12.00 in Canada and the USA; \$16.00 plus handling charges for other countries.

The Nova Scotian Surveyor is published three times a year. Address all enquiries to:
The Association of Nova Scotia Land Surveyors, 325-A Prince Albert Road, Dartmouth, NS, B2Y 1N5 Canada.
Tel: (902) 469-7962 Fax: (902) 469-7963 E-mail: ansls@accesswave.ca

- Views expressed in articles appearing in this publication are those of the author and not necessarily those of the Association.
- Letters to the Editor should be limited to one page.
- Articles or material originating with the Association of Nova Scotia Land Surveyors or its members may be reprinted without permission, but should include the appropriate credit.

PRESIDENT'S REPORT

Glenn Myra, NSLS



Now that bitter winter has been put to flight by fair spring's blandishments, we land surveyors may look forward to what will be, I hope, a busy and profitable year. Since our convention in Truro last year, there have been two council meetings which have both been productive and decorous. I have instituted a strict code of formal discussion at our council meetings which may seem antiquated, or even atavistic, to some; but, I believe that I am not mistaken when I say that your councillors have appreciated the more open and less intimidating atmosphere created by this practice.

Since our convention last year, I have attended three conventions held by our sister associations. New Brunswick's convention was held in January at Moncton. The main concern was, as with us, wetlands delineation and water course buffer zones, their province being, like ours, a wet and swampy one; and they are closely watching our endeavors in this area. Another concern was the liability which could attach to land surveyors who determine sight distances for new driveways in case of a dangerous or fatal accident occurring because of the driveway location. The presidents' forum held a discussion on our collective efforts to plan for a future in which our associations may face decreasing membership, although this was not a fear of some of the larger associations.

Ontario's convention, held in London, was a large affair, there being a number of seminars held simultaneously, although some were of such an intense focus as to apply only to a select few. Nevertheless, they were eminently educational and well presented by speakers who were intimately familiar with their subject. The presidents' forum was concerned with the advisability of the introduction of hydrography as a required examination subject for new land surveyors. I, however, took the opportunity of expressing my disappointment at the Ontario regulation requiring a land surveyor, who has acquired an Ontario license through labour mobility, to wait five years before establishing his own practice. Their Executive Director admirably defended his association's regulation, while I steadfastly refuted any suggestion that priority was an adjective more appropriately applied to a provincial regulation rather than to Nova Scotia's historical involvement in land surveying.

Victoria was the venue for British Columbia's convention, and the affair was well appointed and elegantly managed. The business meeting was the epitome of order and propriety, although your president was fined \$25 for "showing deference to the sergeant-at-arms in excess of good taste."-it seems the brash New World of the Pacific Rim does not appreciate Atlantic Old World manners. The number of new land surveyors sworn in at this meeting was almost large enough to constitute a quorum at one of our conventions. The presidents' forum was occupied by another discussion on hydrography, it being mostly a reiteration of opinions on the subject discussed in London. Everything went swimmingly, except when the temperature dropped below 10 degrees and a slight breeze arose which caused actual ripples on the waters of the

harbour.

Fortunately, all the presidents made it safely back to the Empress Hotel, where the ladies refreshed themselves at High Tea and the gentlemen repaired to the Bengali Club for emergency martinis to restore them to their former vigour.

I have tried to conduct myself, as president of our association, with impartiality - favour to all and fear of none-and I have not entered into any debate or discussion of any matter relating to our common good. The president of our association must hold himself aloof from any partisan activity, for he is everyone's president and cannot represent all of our members if he sullies himself in the frank and diligent consideration of everyday business.

Considering the population and extent of Canada, there are only a few land surveyors in this country and we must work together for our common good. We have all heard, as children, of the exploits of the "thin red line": a small number of professionals who, by standing together, were able to prevail in situations which would have overwhelmed each of them individually and who were able to contend with forces more powerful than they. Their advantage was that they were better organized and motivated than their foes because they realized that before them stood the forces of chaos and confusion whereas behind them shone order, peace and freedom.

We, ladies and gentlemen, must regard ourselves in such a light. We are beset constantly by those who would undo all our great endeavors in creating order out of chaos and clarity out of confusion. We must not falter or break rank before these forces, for the public depends upon us to safeguard their continuing peace of mind and enjoyment of their own little piece of creation. †

ProMark: 3 Blends, 1 Brand

Choose Your Size



Features

- Exceptional post-processing and RTK
- Flexible and scaleable
- Ruggedized for professional use
- Very lightweight and compact
- Extended built-in communications

The ProMark Series

The right GNSS solution for every budget and for every surveyor.

Small, medium or large, choose the receiver that best suits your needs and grow with ProMark.

The ProMark 100 is the best tool for L1 post-processed surveys. Should your needs change to a multi-frequency RTK solution, there's no need to buy a new unit, simply upgrade to a ProMark 200. If you need access to more constellations, that's easy too. Use your existing ProMark handheld receiver as a controller, and buy only the ProMark 500 smart antenna.

ProMark accuracy, advanced multi-path mitigation and ruggedness, adds up to better productivity and profitability for you. With ProMark 500 and the new ProMark 100 and 200 receivers, Ashtech offers land surveyors the complete range of GNSS solutions to meet each surveyor's individual needs, style and budget.

Choose ProMark for high-performance and the safety of high ROI.

Gemini Positioning Systems Ltd.

13-190 Colonnade Rd
 Ottawa, ON K2E 7J5

Tel: 1 613 723-8865

Fax: 1 613 723-2784

Email: gerryb@gps1.com

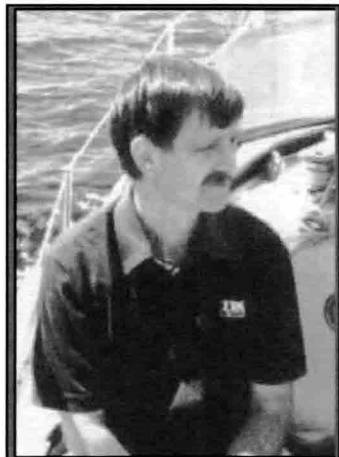
Visit us at:

www.gps1.com



EXECUTIVE DIRECTOR'S REPORT

F.C. Hutchinson, BA, NSLS, CLS



The dynamics of business is always an interesting topic. I often wonder, as I drive through a business park and see a business name that I don't recognize, what the business might be about. All I see is a name on a building and a parking lot full of vehicles. Is the

business a branch office for a large multi-national or a locally owned company? Be assured that they are selling something since that is the game played by all businesses, large or small.

I often muse over the terms large and small with respect to business since all businesses use the same rule book. Yes, there may be disparities with regard to revenues, expenses, employees and ownership but the goal is to make a profit for the owners. That in essence is what business is about and "if it doesn't make money, it doesn't make sense". Even if one is operating a business as a sole proprietor; wages along with expenses must be met. Some common basic similarities are communication services, wages, accounting, advertising, vehicles and let's not forget tax returns. These vary from monthly, quarterly to annual submissions and usually accompanied with a payment.

Okay, now that I have rambled on longer than planned, I come back to the locally owned business that set up shop in the local business park or on some side street. Is it a one-man show, a partnership or limited corporation with shareholders? The land survey industry has all of the fore mentioned. The limited corporation with shareholders is the one most likely to survive should there be a change in the ownership structure such as a retirement, illness, death

or sale of shares. The partnership may have a minimum of two partners or several. The more partners there are, the more likely the business can survive a crisis. Partnerships, however, are similar to a marriage. The partnership relationship is very dependent on the skills and cooperation of both parties and like marriages has a high rate of divorce.

The one-man show or sole proprietorship is by far the most common scenario and the one most vulnerable. It is also the type of business that does not survive should something prevent the owner from continuing in business. Succession planning is seldom practiced by the sole practitioner because no one is brought onboard that has a financial investment in the operation. The value of a sole proprietorship is very limited in today's society since it is often-times cheaper for a new entrepreneur to set up shop across the street. I know that when I ceased private practice I just locked the door and could not find anyone to even store my files for their exclusive use. I only hope that was not a reflection on the perceived quality of my work. However, I do get calls from my peers for a peak at a file or two.

A business needs to grow, diversify, make a profit, offer employees and shareholders secure employment and maybe even a pension; should I dare suggest. One way for succession planning is to take on a partner and slowly ease into retirement. Your continued salary and limited employment for a period of time could be the investment made by the new partner. Another drawback to selling a survey business is the liability baggage that is attached, the lack of diversification as well as the potentially obsolete assets. Unfortunately, the business plan that is practiced by many practitioners is waiting for the phone to ring and buying lottery tickets.

I repeat; "if it doesn't make money, it doesn't make sense". ↓



TRIMBLE TSC3

We've added a lot more capability.
Without taking anything away from its simplicity.



THE NEW AND IMPROVED TRIMBLE TSC3 CONTROLLER

The problem with new and improved is that too often it means unfamiliar and different. That's not the case with the new Trimble TSC3 controller.

Optimized for Trimble Access, this new field solution delivers more capable data collection, computing and connectivity than ever before, without sacrificing the familiar functions that have made our surveying systems famous.

COLLECT SHARE AND DELIVER:

A larger, full-color screen means more function from the map screen and more direct access to the features you need to complete the job. And keep the data flowing with integrated Bluetooth, WiFi and cellular modem.

Trimble Access field software allows you to bring data from the internal GPS, compass and camera into your workflow. In a single step you can automatically add images as attribute information to any point you are measuring.

Easier and more effective? Yes. More complicated? Not at all. The new Trimble TSC3 controller. It does amazingly complex things—all designed to make doing your job easier.



To learn more about the new
Trimble TSC3, visit: trimble.com/TSC3



COLLECT



SHARE



DELIVER

SUCCESS FOUND HERE



TRIMBLE NAVIGATION LTD.

Tel: 1.800.563.7184 Fax: 1.416.252.8635

Email: info_trimble_canada@trimble.com

© 2011 Trimble Navigation Limited. All rights reserved. Trimble and the Globe & Triangle logo is a trademark of Trimble Navigation Limited, registered in the United States and in other countries.

Trimble Access is a trademark of Trimble, Inc. (Trimble, Inc. is a registered provider of the Trimble Access system). All other trademarks are the property of their respective owners. 5110-100

Parol Testimony

By Knud E. Hermansen, P.L.S., P.E., Ph.D., Esq

Parol testimony or verbal testimony is an important source of information for retracing boundaries. Few surveyors would ignore a landowner who describes how to find the corner monument or the elderly resident who shows where the corner tree once stood. Yet, not all parol testimony should be considered. There are four hurdles to be considered before relying on parol testimony.

Useful

The first hurdle is that the parol testimony be useful. The testimony should advance the surveyor's efforts at arriving at an opinion. Of course, there is often parol information that is not useful. All surveyors are familiar with landowners who want to talk but do not provide useful information. Most surveyors have experienced a landowner who tags along with the survey crew and maintains a constant flow of questions and gossip about the neighborhood. This later parol testimony is not useful and not helpful.

Acceptable

The second hurdle is that the parol testimony be acceptable. The parol testimony must be a source and circumstance that the testimony would more likely than not be used by other competent surveyors in the same or similar situation. This hurdle is codified in the Federal and many state rules of evidence as the following sample illustrates:

The facts or data in the particular case such an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinions substantially outweighs their prejudicial effect. Federal Rules of Evidence, Rule 703.

It is important for the surveyor to understand that the standard for acceptance is measured against what other reasonable surveyors would not do, not what one particular surveyor would do. Put in other words, if most surveyors would readily use the testimony, it is acceptable to use. If only a few (minority) of surveyors would use the testimony, it is not acceptable to use under the rules of evidence.

Admissible

As the last part in the underline portion of the previous quote states, not all parol testimony the surveyor finds useful and acceptable to aid in retracing boundary will be admissible in court (nor does it need to be). However, parol testimony that is not admissible yet forms the basis of the surveyor's opinion could place the surveyor in a difficult position – the surveyor has an opinion but can't disclose how the opinion was reached. The result is the surveyor on the witness stand can provide an opinion but the foundation of the opinion is deemed inadmissible and therefore the surveyor's opinion is suspect.

As a general rule, parol testimony will not be admissible where parol testimony will contradict, vary or change the written terms of the contract, agreement, or deed (known as the parol evidence rule). Conversely, parol testimony is generally admissible to aid in the construction, clarification, or interpretation of an ambiguity in the deed or when a deed description is applied to the site. Parol testimony may be used to explain that which is not clear or latent ambiguity such as the meaning of words and site conditions at the time of conveyance.

For example, parol testimony is not admissible to prove the corner tree is a maple contrary to the deed description that cites and oak to be a monument to the corner. On the other hand, parol testimony is acceptable to show which of two oaks is the one intended by the deed to mark the corner.

Therefore, parol testimony is generally admissible to identify the monument cited in the deed, explain its disappearance, show its former location, and show a replacement is in the position of the original, to name a few applications of parol testimony. Also, parol testimony can be used to show elements of equitable claims or defenses such as acquiescence, practical location, and adverse possession.

Credible

The final hurdle is that the parol testimony be credible. Credibility does not prevent the information from being accepted as evidence. The credibility affects how the information is perceived by the judge, jury, arbiter, etc.

The lack of credibility, I believe, is the most common deficiency of parol testimony used by surveyors. Many surveyors claim not to be an advocate for their client, yet accept, rely, and adopt parol statements from the client or the client's witnesses that lack credibility. Therefore the surveyor becomes an extension of the advocacy of their client or client's attorney.

There are three elements involved in determining the credibility of parol statements. 1) The person making a statement would be unaffected by the outcome of the decision. 2) The person would or has some basis for the knowledge sufficient to "sear" the knowledge into memory. 3) When the memory of the witness was formed or the memory recounted there was no actual or an appearance of bias at that time.

Unaffected

The first element of credibility requires that the person making a statement be unaffected by the outcome of the decision. This element would generally make any statements by the client or neighboring property owner suspect. Both the client and neighbor stand to gain if their statements were accepted and relied upon. Even prior owners are suspect if they gave a warranty deed and may be called upon to defend their warranty should the boundaries not reside where they claim the boundaries reside.

There is one exception to this element of credibility. The exception is when the statement of the witness

is against the interest of the witness. For example, if the client were to agree with the neighbor's assertions regarding the former location of a boundary stone, the client's testimony regarding the stone's location would be judged credible since it is a statement against their interest.

Basis for Knowledge:

The second element affecting the credibility of a parol statement requires the witness have some basis for their knowledge sufficient to "burn the knowledge" into their memory. The basis for the knowledge must be such that logic and experience would compel a reasonable person to believe the witness would remember the facts they testify about. Was there something unique or noteworthy that would cause the witness to remember or retain the knowledge in their memory? In the instance of a corner location, is often insufficient for a witness to merely state they remember there was a corner pin at a certain location. The witness must be able to relate their memory gained in the past to an existing location on the ground in a manner that is logical, reasonable, and trustworthy.

"The pin was right at the top of the ditch and the ditch hasn't moved". "I watched my dad put a stone right on the old stump and after the stump decayed that stone was still there."

Consider an 83 year old witness who insists that she remembers the location of a pin she saw in her cousin's yard when she was 12 years old. That statement without some other supporting information is not credible because logic and experience suggest that 12 year old children have trouble remembering to feed the dog that day, let alone the location of a corner pin the elderly witness saw 70 years earlier. However, it is believable that the 85 year old witness can remember the location of the corner pin if she recounts that the pin was under a tree branch she fell out of when playing in the tree at age 12 and the corner pin injured her very badly when she landed on it. The tree and severe injury is something that a reasonable person would believe someone could remember many decades later. Since the tree and the branch the witness climbed on still stands, the witness is able to accurately place where the pin stood 70 years previously.

Impartial:

The disposition, temperament, or bias of the person when the memory was created or the statement is made also forms an element of credibility. Statements by close friends and family of the client or neighbor are suspect. Also, witnesses who were angry or emotional to the extent their judgment may be impartial or biased against or for a party may hurt the credibility of the witness.

Documenting parol testimony using an affidavit should incorporate the criteria that was discussed previously.

This article has focused on parol testimony, yet many of the criteria would also apply to other forms of extrinsic evidence. The age, loss of information over time, and unreliability of the surviving information often do not allow the surveyor to be discriminating as to the information the surveyor uses. Yet, where there is conflicting information, including parol testimony, the surveyor must be prepared to critically examine the parol testimony before relying on it or making it superior to other possibly more reliable evidence. †

Surveyors Forum at COGS

On 15 March 2011 the Association of Nova Scotia Land Surveyors held a Surveyors Forum at the Centre of Geographic Sciences in Lawrencetown. In attendance were the students from the first and second year Geomatics Engineering Technology program as well as a number of instructors. The event consisted of five presentations from Nova Scotia Land Surveyors and Surveyors in Training followed by a Surveyors panel at the end of the day where the students were encouraged to ask questions about the survey industry.

The day went well as Eric Morse, NSLS #609 started off the event with a presentation describing the advantages of a company offering both Surveying and Engineering services. Sandy MacLeod's NSLS #555 presentation covered Municipal Surveying as it

relates to the Halifax Regional Municipality, Design and Construction Services. The following presentation was done by Mike Williams, student member and Andrew Morse, NSLS#632 of Genivar covering a variety of survey services offered by a large multi-discipline company.

After a hearty lunch the presentations continued with Kyle Bower, student member of Servant Dunbrack McKenzie and MacDonald Ltd. describing the process involved in earning a commission as a Nova Scotia Land Surveyor. Ray Pottier's NSLS #560 presentation covered international marine and geodetic surveying in a variety of different countries.

After the presentations an informal question and answer session was held with the presenters fielding questions from the students for about an hour. There were a number of great questions from the students and the instructors.

The Association holds these events every two years or so and the response from the school is always very good. This is the third time I've participated and I have always found them to be an enjoyable and worthwhile event. The Association is always looking for participants so if you would like to be included next time let us know, we'd be happy to include you in the next one.

Ray Pottier, NSLS#560, Past President, Crown Land Surveyor for the Nova Scotia Department of Natural Resources. †

**ASSOCIATION OF NOVA SCOTIA
LAND SURVEYORS**

1951-2011

DIAMOND JUBILEE YEAR

**JOIN US ON OCTOBER 20-22, 2011
AT OUR AGM TO HELP CELEBRATE
THIS EVENT.**

Can a Land Surveyor be Wrong Without Being Negligent

By Will O'Hara

Introduction

Most professionals try hard to be perfect – or at least good. And if not good, they aim to be competent.

There are many good reasons for this. In many jurisdictions in North America there are professional standards and codes of conduct that impose ethical duties on professionals to be competent. The laws of negligence also impose standards on professionals in every discipline, and if the professional fails to meet these standards, he or she will face liability.

Most of us are not perfect. Even the best professionals make mistakes and face exposure to liability. Often our first reaction when we make a mistake is to say: "I might have been wrong, but I sure wasn't negligent."

Is there a difference between being wrong and being negligent? If there is, what practical difference does it make? The answers lie within an area of judge-made law, an area of common law that is constantly evolving. Let's see what the judges say.

Negligence

Negligence in the context of professional liability is usually described as the failure to meet the standard of skill and care possessed by a person of ordinary competence in the same calling, or in general terms "the failure to use the requisite amount of care required by the law in the case where the duty to use care exists" Negligence is a finding made by a court of law and it usually carries with it the obligation to pay damages to the party affected by the negligence.

Standard of care

There is no question that professional land surveyors can be negligent. This universal truth is accepted throughout the common law world. The American approach is described in this way:

The liability of a surveyor for his errors does not differ from that of professional people generally. He may be held responsible for such damages as are sustained as the result of his negligence and lack of skill. He is

obligated to exercise that degree of care which a surveyor of ordinary skill and prudence would exercise under similar circumstances.

The subtle distinction in the law in various states was outline in *Graves v. S.E. Downey Registered Land Surveyor*, from the Maine Supreme Judicial Court:

The duty of care that the Superior Court imposed in this case required the Graveses to demonstrate that S.E. Downey's work on the survey was below that of an ordinarily and reasonably competent land surveyor in like circumstances. Courts in other jurisdictions have articulated the duty of care of land surveyors in similar ways. For example, in West Virginia a surveyor is held to the standard of care that a "reasonably prudent surveyor" would have applied with regard to the same project. Both Maryland and North Carolina state that a surveyor must "exercise that degree of care which a surveyor of ordinary skill and prudence would exercise under similar circumstances". We agree with the Superior Court that the duty of care a land surveyor is obligated to provide is that degree of care that an ordinarily competent surveyor would exercise in like circumstances.

The Canadian approach was described by the Ontario Court of Appeal in 1881:

A surveyor is under no statutory obligation to perform the duty, but undertakes as a matter of contract, like any other professional man, to do the service required of him; and there must be evidence of a want of reasonable skill and knowledge or of gross negligence before he can be made liable.

Gross negligence is not required to show liability on the part of the land surveyor. The question now is whether there was a failure on the part of land surveyor to "use reasonable care and skill" of a person in that profession.

Error in judgment

Not every error amounts to negligence. Sometimes a professional can be wrong without being negligent.

This fine but important distinction was made clear by Lord Denning, a judge with a rare gift of clarity:

Apply this to the employment of a professional man. This law does not usually imply a warranty that he will achieve the desired result, but only a term that he will use reasonable care and skill. The surgeon does not warrant that he will cure a patient. Nor does the solicitor warrant that he will win the case.

The distinction was explained with an example in *Wilson v. Swanson*, a case dealing with medical negligence:

An error in judgment has long been distinguished from an act of unskilfulness or carelessness or due to lack of knowledge. Although universally-accepted procedures must be observed, they furnish little or no assistance in resolving such a predicament as faced the surgeon here. In such a situation a decision must be made without delay based on limited known and unknown factors; and the honest and intelligent exercise of judgment has long been recognized as satisfying the professional obligation.

The authors of Professional Liability in Canada warn that the public – and the courts – will be more tolerant of errors made by some professionals than others. They argue that the courts accept the view expressed by Lord Denning in legal cases or medical cases, but they expect a standard approaching perfection in other professions, such as engineers or architects. Land surveyors are likely to fall within the latter group, as their work is more scientific, they have more control over their work, and are not usually forced to make instant judgment calls like doctors in the middle of an operation or lawyers in a jury trial.

Land Surveyors

Land surveyors can clearly be wrong without being negligent. The Chief Justice of Prince Edward Island adopted the law as stated in Survey Law in Canada:

In an action in negligence, the mere fact that there has been a mistake does not mean that the surveyor is liable in negligence. A surveyor is not a guarantor and, if the mistake or error in judgment occurs despite the surveyor having conformed to proper and prudent practice in accordance with the standards of the

profession, there may be no liability. On a cursory reading statements like these may give comfort to land surveyors, but they deserve a closer look. In any action for professional negligence it will be necessary to determine whether the land surveyor has “conformed to proper and prudent practice in accordance with the standards of the profession” as a first step in determining liability. This is where the contest begins. A judge will want to hear the evidence about the proper and prudent practice of others in the profession. This will require expert evidence to establish what the accepted practice was. An expert will describe the current practice and describe the legislation governing specific procedures. There will be evidence about whether the practice was actually followed.

In many cases where an error was made there will be (perhaps coincidentally) examples of where he or she did not “conform to proper and prudent practice in accordance with the standards of the profession”. This is especially so when the services that were provided are subjected to the closest scrutiny. Any examples of transgressions or short comings will provide a basis for a court to conclude that the land surveyor was not only wrong, but negligent.

The concept that “an error of judgment is not negligent” has been criticized in the English case of *Whitehouse v. Jordan*, a medical malpractice case:

...an error of judgment “is not necessarily negligent.” But, in my respectful opinion, the statement as it stands is not an accurate statement of the law. Merely to describe something as an error of judgment tells us nothing about whether it is negligent or not. The true position is that an error of judgment may, or may not, be negligent; it depends on the nature of the error. If it is one that would not have been made by a reasonably competent professional man professing to have the standard and type of skill that the defendant held himself out as having, and acting with ordinary care, then it is negligent. If, on the other hand, it is an error that a man, acting with ordinary care, might have made, then it is not negligent.

Based on this statement of the law, it is important to look at the nature of the error and ask whether it would have been made “by a reasonably competent professional man professing to have the standard and type of skill that that (professional) held himself out as having, and acting with ordinary care.” If the answer is no, the error was a negligent error.

Practical differences between being wrong and being negligent

The critical difference between being wrong (making an error that was not negligent) and being negligent (making a negligent error) is that liability flows from being negligent, but not from being wrong. With liability comes the obligation to pay damages, which usually means calling on your errors and omissions insurer, paying a deductible and paying increased liability insurance premiums.

It is possible for a land surveyor to make errors that would not be considered negligent but for the fact that there were no damages caused by the error. In *Parrot v. Thompson & Monty* the Supreme Court of Canada stated that without damages caused by the land surveyor's error there can be no negligence. Again, this is a judge-made rule of law. The aim is to avoid clogging up the courts with needless law suits. The rule may allow a careless professional to avoid liability for a clear error in some circumstances, although it would not insulate the professional from disciplinary proceedings.

Conclusion

Based on the statements of law from the judges who make the common law, it is possible for a land surveyor to be wrong but not negligent. The courts do not expect perfection and will not insist on land surveyors warranting or guaranteeing the results of their work. The courts do insist that land surveyors comply with the generally accepted standards and procedures in the profession, especially when the standards are clearly set out in legislation. Assuming there are damages, those who do not meet the standards will be wrong and negligent. The consequences of being negligent are far more severe than the consequences of being wrong. †

Will O'Hara is a partner at the firm of Gardiner Roberts LLP, practicing in professional litigation, intellectual property, insurance and dispute resolution. He is certified by the Law Society of Upper Canada as a Specialist in Civil Litigation and teaches a postgraduate course at Ryerson University entitled Legal and Ethical issues in GIS and Data Management.

Spring 2011 Notes from the Side of the Road

1. Emerson Keen, NSLS #249 has resigned his commission as of December 31, 2011
2. Mike Allison, NSLS #538 has set up shop in Stewiacke in the building formerly occupied by E. C. Keen Surveying Limited.
3. Robert Daniels, NSLS #396 has moved to Retired Membership status as of January 1, 2011.
4. Mark Macmillan, NSLS #611 was reinstated as of January 24, 2011 after serving a 6-month disciplinary suspension.
5. Allnorth Consultants Limited of Bedford has been granted a Certificate of Authorization to practice professional land surveying with Mark Macmillan, NSLS #611 as the land surveyor on staff.
6. David Steeves, NSLS #585 was granted Life Membership at the October 29, 2010 Annual General meeting.
7. Jeff Fee, NSLS #595 (ret) has qualified as an Ontario Land Surveyor.
8. Stephen Acker, NSLS #639 received his commission as a Nova Scotia Land Surveyor on January 14, 2011.
9. Acker & Doucette Surveying Inc. of Tusket has been granted a Certificate of Authorization to practice professional land surveying.
10. Gerald Pottier, NSLS #394 is no longer offering land surveying services to the public and Acker & Doucette Surveying Inc. are now occupying his former office and have access to his files.
11. Matthew C.S. Smith, CLS, NSLS #640 received his commission as a Nova Scotia Land Surveyor on February 15th, 2011. After having completed the requirements under Labour Mobility. Matthew is employed with Public Works and Government Services Canada.
12. Allen Hunter, NSLS #384 retired from Halifax Regional Municipality as of March 25, 2011.
13. Harry Ashcroft, NSLS #430 and Terry MacGillivray, NSLS #591 are planning their retirement from the Department of Natural Resources as of the end of April, 2011. †



Professional Surveyors Canada

Your National Surveying Community

“Advocating for an integrated and dynamic Canadian surveying profession.”

As you all know Professional Surveyors Canada was launched late last year and you have been receiving invitations to join this newly formed organization as individual members. While Professional Surveyors Canada continues to be a national forum for land surveying associations across Canada our goal is to work on behalf of our individual members to help create an environment where their work is valued as an integral part of Canadian society.

The Professional Surveyors Canada Board of Directors recently met in Toronto and spent two very full days working on plans for the coming year. The discussions focused on each of the three Strategic Pillars of Professional Surveyors Canada which include Advocacy (for the Profession), Career Advancement (including Professional Development) and Building Community. A number of priorities were identified during the course of the discussions and they included developing and delivering Continuing Professional Development opportunities for surveyors, recruiting new members, communicating with our members by sending out regular E-blasts and E-newsletters, advocating to government in support of land surveyors licensing bodies or other issues affecting the profession, supporting the David Thompson national surveyor awards to help promote the profession and to commission a demographic and salary study. There is a full meeting report and an executive summary available to all members - just send a request to sarah@psc-gpc.ca.

It will be a busy year getting all of these priority initiatives going but we are up to the challenge. We are increasing staff capacity to improve member services and move forward on the national job bank, the on-line equipment exchange, more professional development opportunities, and increased member communication. We are also activating committees under each of the three strategic pillars of advocacy, professional development, and community building and volunteers are always welcome!

Our first Continuing Professional Development seminar “Project Management for Canadian Surveyors” is ready to go and plans are to present it for the first time at the Association of Newfoundland Land Surveyors annual meeting coming up in April. This Project Management seminar will be presented at a number of venues across the country this year. It is a professionally developed and facilitated small group seminar with “hands on” exercises and survey specific examples. If you are interested in having it in your area, please contact us.

I encourage all Nova Scotia Land Surveyors to become members of our new organization and enjoy the benefits of being part of Professional Surveyors Canada. In addition to being part of a national community of professional surveyors other benefits include great savings on seminars presented by Professional Surveyors Canada.

If you would like to know more about Professional Surveyors Canada there is a great article this month in Professional Surveyor magazine and it is online at www.profsurv.com/magazine/article.aspx?i=70905 or even better, you could visit our site at www.psc-gpc.ca. And don't forget that Professional Surveyors Canada members receive a free subscription to the magazine. Simply go to the “Benefits of Membership” page on the Professional Surveyors Canada web site (psc-gpc.ca) and click on the Professional Surveyor Magazine graphic to go straight to the subscription page and sign up.

I look forward to keeping you all informed about the progress Professional Surveyors Canada is making on our priority initiatives this year. If you have any questions or comments please contact me by e-mail at ray@psc-gpc.ca. ↑

Raymond V. Pottier, NSLS
Interim Director
Professional Surveyors Canada

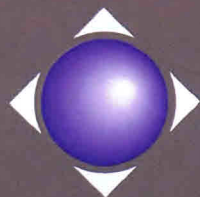


PROFESSIONAL SURVEYORS CANADA
GÉOMÈTRES PROFESSIONNELS DU CANADA

ADVOCATING FOR AN INTEGRATED AND
DYNAMIC CANADIAN SURVEYING PROFESSION

**Become part of
this exciting new
venture...TODAY!**

psc-gpc.ca



Cansel

Improving field to finish productivity

New Survey Data-Collection Solutions

from



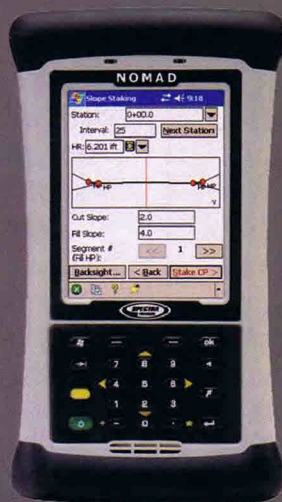
and



Trimble TSC3



Nomad 900 Series



Ranger 3 Series



The Trimble rugged TSC3 controller with Trimble Access software is purpose-built to make both Integrated Surveying and Spatial Imaging jobs easier, more efficient, and more flexible.

- * Large, bright, high-resolution screen, with the option of a QWERTY or conventional alphanumeric keyboard
- * Inbuilt 5 MP Autofocus camera and LED flash, images are automatically geotagged
- * Integrated GSM/GPRS modem enables wireless Internet connectivity
- * Access your office network through 802.11 LAN, or USB and serial RS232 communication options.
- * Internal compass
- * Internal 2.4 GHz radio option ideal for controlling Trimble robotic systems
- * Powered by Windows Mobile 6.5 Professional operating system

Powered by a 806 MHz processor optimized for graphics processing, advanced caching, and a proprietary high-speed journaling file system, the new Spectra Precision Nomad 900 series handhelds run Windows Mobile and have a 5200-mAh rechargeable long-life lithium ion battery, up to 6 GB of Flash memory, and a sunlight-visible VGA touchscreen display. In addition, users can take advantage of the Nomad 900 series CompactFlash (CF) and Secure Digital (SD) slots to add more devices, such as SD/SDHC memory.

Built tough for everyday outdoor demands, the Nomad 900 series have an IP67 rating and meet MIL-STD-810F standard for drops, vibration, and temperature extremes.

Spectra now offers three Ranger 3 models: the 3L, 3XC and the 3RC.

These data collectors come standard with an 800MHz processor, 256MB of Memory, a full VGA display, integrated Bluetooth, GPS, compass, and 802.11 Wi-Fi. Optional features, depending on the model, include a 3G GSM/GPRS/EDGE (WWAN) modem real-time GNSS workflows, a 5-megapixel camera to enhance data-capture routines with image, and a 2.4GHz robotic radio module to support robotic total station survey workflows.

Powered by Windows Mobile 6.5 Professional operating system and a full ABC alphanumeric keyboard, the Ranger features the same ruggedness common to all Spectra Precision data collectors, which have an IP67 rating and meet MIL-STD-810G standard for drops, vibration, and temperature extremes



Autodesk

Gold Partner

Architecture, Engineering & Construction
Manufacturing



autodraft



Global CADD Systems
A division of Cansel

1-888-222-6735



Vancouver • Edmonton • Calgary • Winnipeg • Toronto • Ottawa • Montréal • Québec • Halifax • St. John's | cansel.ca

The Story of the Charles Morris' Office

Philip Pacey, BSc, PhD

From March 18, 1744, when Britain joined the War of Austrian Succession, until the signing of the treaty of Aix-la-Chapelle on October 18, 1748, Britain and France were at war. The French captured and burned the British fort at Canso and twice besieged Annapolis Royal. On the other side, the British captured Louisbourg and in December of 1746 sent five hundred Massachusetts militiamen to Grand Pre, one hundred of them under 35-year-old Captain Charles Morris. There they billeted in Acadian houses to winter over before a spring offensive. However, the French attacked in the wee hours of February 10, 1747, defeated the New Englanders and forced the survivors to retreat to Annapolis Royal.

In 1748, at the behest of Governor William Shirley of Massachusetts, Charles Morris and fifty men returned to Nova Scotia to survey its resources and identify areas suitable for settlement. Morris prepared a survey of the Bay of Fundy, then "utterly unknown to the English" and of the Acadian settlements in Nova Scotia and wrote a 100-page description of the colony, a *Brief Survey of Nova Scotia*. He was "Nova Scotia's first practical field geographer". This so impressed Shirley that he recommended that Morris be given further surveying work in Nova Scotia. Lord Halifax concurred, directing the governor of Nova Scotia to make Charles Morris the Chief Surveyor of Lands.

Morris recommended that a strong fort be constructed on the Atlantic coast to counteract the strength of Louisbourg in Cape Breton. When his advice was accepted, he came to Halifax. He and a colleague laid out the original town plot in 1749. Captain Morris constructed an office and store at the corner of Hollis and Morris Streets. Eight-inch square beams were laid on a stone foundation, 24 feet by 33 feet. Seven-inch posts were erected at the corners, with five-by-six-inch posts at two-foot intervals between and diagonal braces at the corners. Roman numerals identified matching mortise and tenon joints. Tree trunks were partially squared with adzes and were slung between the beams as joists

and supported 12- to 15-inch wide floor boards. Between the vertical posts, handmade bricks were mortared in place, providing brick nogging for extra stability.

Charles Morris practiced his profession in this little building. Most of Canada was in a natural state when Charles Morris sat in this building, drawing lines on maps and turning forests into settlements, including Lunenburg, Barrington, Yarmouth, Liverpool, Gagetown, Burton, Saint John, and Charlottetown. He also laid out land grants along the Saint John River and surveyed the border between New Jersey and New York. As Chief Surveyor, besides the work of surveying, maps and plots were made, copied and sold. He was the first town planner in Nova Scotia.

Morris was a democrat and advocated for an elected assembly, and administered the oaths of office for the first assembly when it was elected in 1758. He recommended reservation of the Halifax Common. As well, he became a justice of the peace, a judge and a member of the provincial council. Charles Morris was a very busy man. In his will in 1781 he bequeathed "the office and store on the north part of my house lot in Halifax."

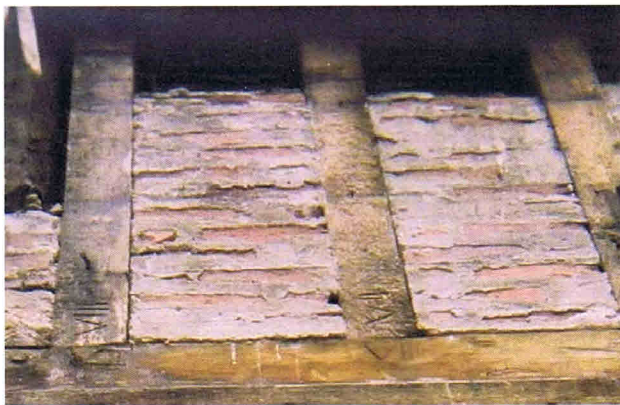
His son and heir, Charles Morris II, had arrived in Nova Scotia in 1760 and carried on his father's profession. He became particularly busy arranging lots for the Loyalists who arrived at the end of the American Revolution. By the time he died in 1802 he had amassed a considerable fortune of £17,000. There were no banks in Halifax at this time and Morris kept £2,899 in 14 bags in a chest below the stairs in the west room of this building and £750 along with loose cash in three bags in a box in the east chamber of the building. Surveying was a lucrative profession!

Charles Morris III succeeded his father as Chief Surveyor and laid out the road from Halifax to Annapolis Royal. His son, John Spry Morris succeeded his father as the fourth and last Surveyor General of the Province: one post, one family, four generations and 102 years.



Morris building, corner of Hollis & Morris

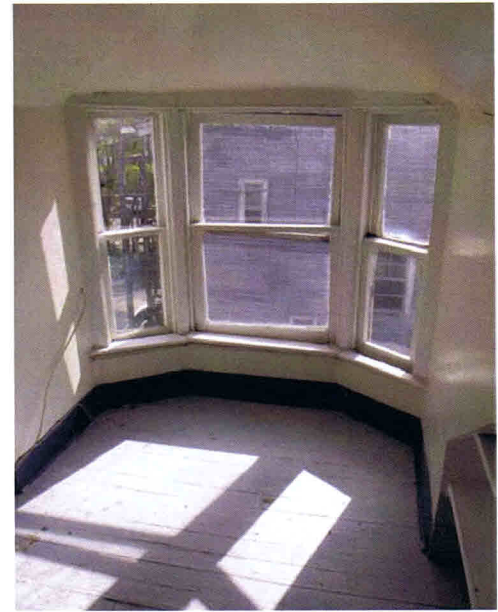
A watercolour from the 1840s by R.D. Wilkie shows Charles Morris' office in its original location at the corner of Morris and Hollis Streets, adjacent to the 3.5-storey Morris family home. The office building has slender corner pilasters and a truncated pitched roof and molded cornice and returns. On the south side of the roof there is an early Scottish dormer. Inside there is a wooden Georgian mantelpiece, Georgian trim around doors and windows, an early narrow staircase to the third floor and wooden cornices under the plaster ceilings.



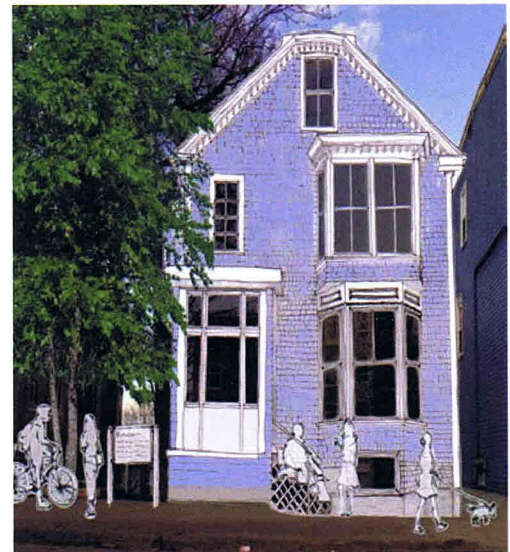
The building was moved south in the 1890s to make way for the Victoria Hotel. Bay windows were added at about this time. The building was moved again on December 21, 2009, and is now awaiting a permanent home.

This is one of the four oldest buildings in Halifax and the oldest commercial building in Halifax. It is truly remarkable that we still have a building standing that was owned and used by one of the principal founders of Halifax. Like any architectural heirloom of great historical importance, this building deserves to be repaired and protected for years to

come. The building represents a unique opportunity for an imaginative designer, owner or developer. ↑



Window added after move in the 1890's

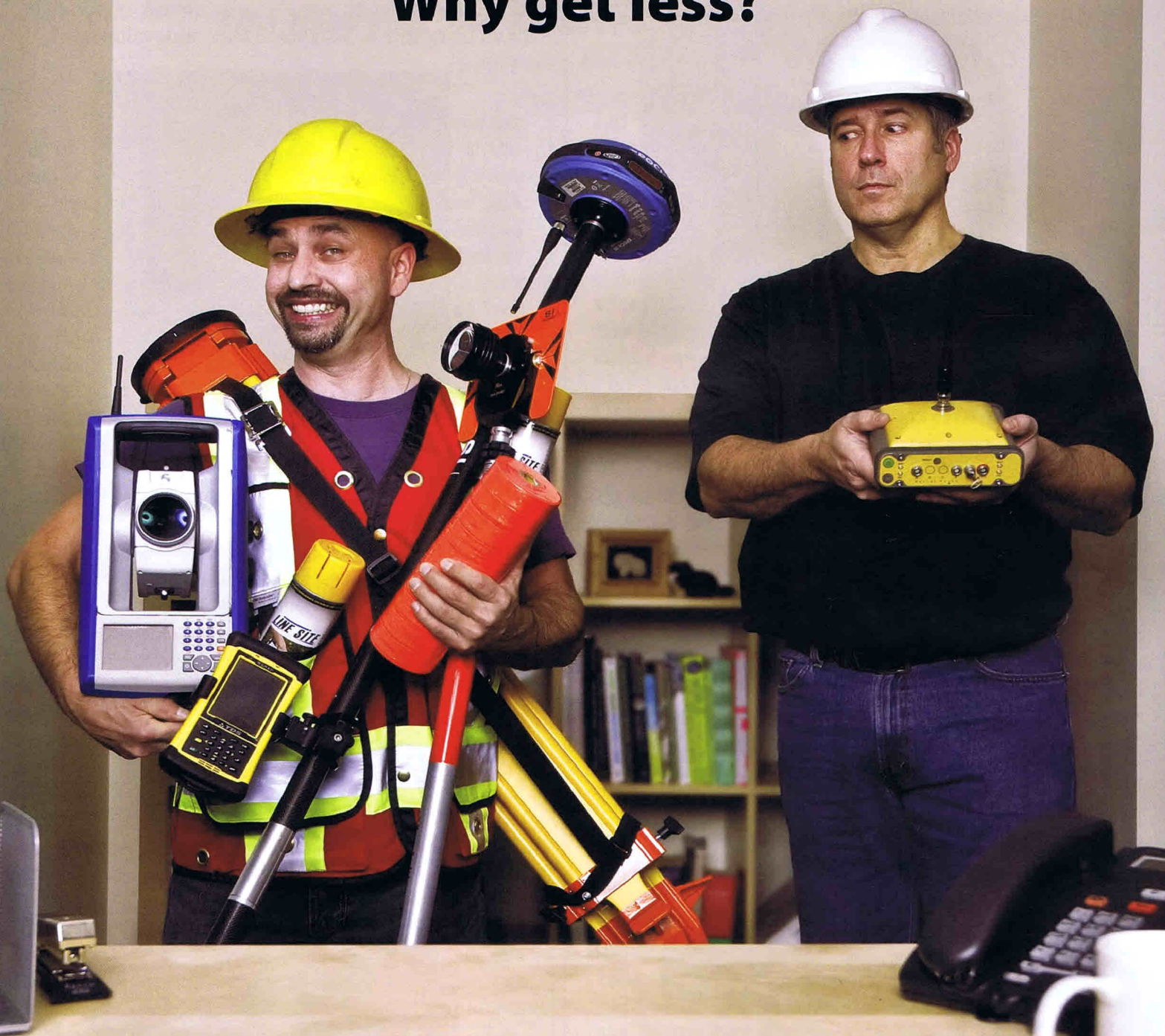


Note – Artist rendition

References:

- Phyllis R. Blakeley, *Dictionary of Canadian Biography*, www.biographi.ca, accessed March 1, 2011, University of Toronto/Université Laval, 2000.
 Elizabeth Pacey, *Georgian Halifax*, Lancelot Press, Hantsport, 1987.
 Garry D. Shutlak, "The New Victoria Hotel", *The Griffin*, Vol. 21, No. 1, p. 5, Halifax, 2002.
 Photos: Arthur Carter, Philip Pacey
 Dr. Pacey is an adjunct Professor at Dalhousie University in the Department of Chemistry and a passionate preservationist of architectural history.

Why get less?



Wade Atlantic is excited to present our new Spectra Precision line of survey equipment. Why?... because it lives up to the same standards as the leading brands at a fraction of the price. It's not cheap. It's not discount. It's bang for buck and we believe in it, we're sure you would also.

Visit our showroom at 100 Ilsley Ave., Dartmouth



**Dartmouth
Nova Scotia**
(902) 429-5002
1-877-256-WADE

**Halifax
Nova Scotia**
(902) 429-6547
1-877-402-WADE

**Saint John
New Brunswick**
(506) 634-1820
1-800-838-4888

**Dieppe
New Brunswick**
(506) 862-0020
1-877-862-WADE

**St. John's
Newfoundland**
(709) 722-8772
1-877-722-WADE

www.wadeatlantic.ca



Whatever your needs, Canon has the large-format solution.



Wade Atlantic • 5 Locations Across Atlantic Canada

**Dartmouth
Nova Scotia**
(902) 429-5002
1-877-256-WADE

**Halifax
Nova Scotia**
(902) 429-6547
1-877-402-WADE

**Saint John
New Brunswick**
(506) 634-1820
1-800-838-4888

**Dieppe
New Brunswick**
(506) 862-0020
1-877-862-WADE

**St. John's
Newfoundland**
(709) 722-8772
1-877-722-WADE

www.wadeatlantic.ca



GEOMATICS AND THE LAW

A Fence as Boundary for Lease, but not a Boundary for Title: How a Court Distinguished the Difference

Izaak de Rijcke, B.Sc, LL.B, O.L.S

A practicing lawyer and land surveyor in the Province of Ontario

Wagman v. Obrigewitsch was decided by the court of Queen's Bench in Saskatchewan. However, the trial judge based the decision on affidavit evidence and argument from counsel; the matter had been previously tried but the judge became incapacitated before being able to render judgment. Nonetheless, this case makes for interesting reading for any land surveyor faced with the assessment of a fence as a potential indicator of a boundary location. This is almost always the case when a surveyor's work involves the retracement of a boundary.

The parties were neighbours but together owned, as tenants in common one single parcel of land. The background is explained as a tenancy in common; three families held the whole of the parcel, but each built and enjoyed their own respective cottage, of which there were three on the parcel. The tenancy in common was not equal in that the plaintiffs owned an undivided on-half share and the two defendant families owned an undivided one-quarter share each.

In 1967, the defendants' predecessor in title signed a 99 year lease for the most westerly cottage and with a notional 25% of the surface area of the whole of the parcel. The lease had attached a hand drawn diagram, not based on survey, and which showed a frontage of 40 feet and an area of 5000 square feet for the Obrigewitsch portion. All tenants in common were landlords and the same parties were lessees of their individual cottages and the land associated with same.

After the lease was signed, Wagnans built a fence which existed from 1968 until approximately 1996. This court application was brought for a partition order so that the tenancy in common could be segregated into individual ownership of three distinct parcels. The plaintiffs argued that the partition should allow the defendants a parcel with an area of no more than 25% of the whole. Obrigewitsch argued that the parties had intended to mark out on the ground the parcel which represented the land associated with their cottage in

1967 by fencing it. In fact, they argued, the Wagnans had built the fence.

In analyzing the evidence and applying the law, the court drew a distinction between a boundary created for the purpose of a long term lease and a boundary resulting from a partition order. This was the direct result of finding that nothing in the lease agreement and the subsequent conduct of the neighbours involving the leased portion to the defendants had any impact on the ownership interests. No one was ever mistaken that the defendants' title interest was 25% of the whole parcel, albeit an undivided 25% interest.

Although the parties had assumed that the fence divided the whole into 25% portion for the defendants, this was a mistake on the part of both sides in 1968. Accordingly, the lease entered in 1967 was still in effect but had no controlling effect on the boundary position. The court located the boundary at the 25% allocation line. A very telling statement appears in the decision from the

court which concluded that the parties had never agreed on where the title boundary should be.

“They choose (sic) to avoid the difficult questions or expense of making possession and use congruent with square footage based on ownership percentage in favour of a usage scheme to which everyone agreed and which generally gave everyone the benefits of the lot. I do not read the lease and its diagram as establishing the boundaries for the purposes of a subdivision or partition.”

The result appears to suggest that settlement by the parties of a boundary and its demarcation on the ground for the purpose of a leasehold estate in land was not binding on a later determination of the boundary in a partition application by a court. Of course the facts in this dispute were rather unique but it does emphasize the possibility that a fence for one boundary purpose may not be a fence for all boundary purposes. How is a land surveyor to know?

The problem in Wagman resulting from the conflicting evidence of the parties is made even more difficult for a land surveyor to determine because of the different characterization of the legal interests at play. The decision refers to numerous survey plans prepared by the land surveyor – each one a variation based on what was being instructed and each considering the relationship of the fence line to the total area of the Obrigewitsch parcel that resulted from the partition application was

not possible for the land surveyor to know until after this case had been decided.

Intention of the parties was strong consideration in the court’s analysis of the evidence. Intention of parties can be subjective or objective (this begins to sound like cases in which adverse possession is put forward as a legal theory). Land surveyors are not accustomed to the assessment of mental intention – only it’s manifestation in conduct and the memorial that remains as a fence, hedge, wall or other structure. The defendants argued:

“.....that there was a divergence between Wagman’s real subjective intention and the objective manifestation of that intention and whatever his real intention may have been it was not articulated at the time and was not reflected in the actual location of the fence and could not avail Wagman now on any subdivision.”

Distinguishing between subjective intention, objection intention and real intention (assuming there exist such things), would be a tortuous task for land surveyors to take on – the physical structure is simply there on the ground, noted and measured. The court did not accept the defendants’ argument as summarized.

There is more, Although Wagman was successful on the partition application, the defendants were successful in asserting the fence as the boundary of the leasehold parcel for the balance of the 99 year least term. The case also speaks about detrimental reliance, estoppel, and the difference in Canadian law on these points from English law. Overall, the

case makes for worthwhile reading for any land surveyor. Unfortunately, the decision makes reference to numerous exhibits, diagrams and surveys, but none are attached to the report of the case in CanLII. ↑

October 20 – 22, 2011

AGM NOTICE

Please note that the 61st Annual General Meeting of the Association of Nova Scotia Land Surveyors will be held from:

October 20 – 22, 2011 at the:

**Holiday Inn
Harbourview**

101 Wise Road
Dartmouth, NS

**Hotel Front Desk:
1.902.464.1227**

OBITUARY

WAGNER, GILBERT KIRK, NSLS # 476 New Germany, Lunenburg County, passed away peacefully on November 24, 2010, at South Shore Regional Hospital, Bridgewater, with his family by his side. Gilbert spent the last seven months in a brave fight with brain cancer. Born in Bridgewater, NS he was the son of the late Clarence and Marion (Bruhm) Wager. Gilbert was employed with Maritime Tel & Tel for 35 years, having retired in 1994. After his retirement Gilbert spent much of his time working in the woods. Gilbert was an avid sports fan. In his early years, he played broomball, hockey, and softball and in later years took up curling and golf. He loved attending his grandchildren's sporting events and watching it on TV. Gilbert always enjoyed a good card game and took great pride in figuring out what was in his opponents hand. He was a member of the Telephone Pioneers and a member of Eden Golf and Country club for the last 10 years. He loved his time spent golfing at Eden and especially the Wednesday morning breakfast. He also met with some of his friends and co-workers for coffee a couple of times a week. Gilbert enjoyed his summers spent camping with his family and especially the once-a-year trips to Fundy and Cape Breton. He was an oxen exhibitor at the South Shore Exhibition for over 30 years and always looked forward to spending the week socializing with old friends. Gilbert was a master ox yoke maker and he made many yokes for local teamsters. The one thing that his family will miss most is Gilbert's one-of-a-kind laugh, it was what made Gilbert unique. The touching stories we have heard from his family and friends have been truly heartwarming and will become a legacy to his grandchildren. Gilbert was a kind and gentle soul who would do anything to help a friend. He was a loving and devoted husband, father and grandfather and will be truly missed by all who knew him. He is survived by his wife of 46 years, Beulah (Slauenwhite); son, Arden (Mary) Wagner, New Germany; and daughter, Heather (Gerald) Kent, Lower Sackville; grandchildren, Tiffany and Brandon Wagner, Michael and Aaron Kenty; brothers, Brenton (Maleta), New Germany; Cyril (Mabel), Sydney; Clarke, Aylesford; as well as many nieces and nephews. Gilbert was predeceased by sister, Irene (Kirchner), and brother, Claude.

OBITUARY

MARSHALL, JOHN WILLIAM "JACK", NSLS #271 Lawrencetown, Annapolis Co. passed away peacefully Saturday, January 28, 2011, in Soldiers' Memorial Hospital, Middleton, surrounded by his family. Born in Halifax, he was the son of the late John I. And Annie (Jensen) Marshall. Jack was a graduate of the Nova Scotia Land Survey Institute, and over the years was employed with Central Mortgage and Housing, Weber Harrington & Weld Architects, Defence Construction Limited – CFB Cornwallis, Roscoe Construction and Santec Construction as a Construction Supervisor. In his early years, he was an avid curler, hockey coach and loved snowmobiling. Jack enjoyed hunting, fishing, playing cards, and crib with his friends. In his retirement years, he enjoyed working around the yard and was often found riding his John Deere tractor. He loved his family and was especially proud of his children and grandchildren. He is survived by his wife of 49 years, the former Erdine "Dene" Ayre; sons, Scott (Dianna) and Gary (Melissa), both of Middleton; grandchildren, Caden and Lyla. Besides his parents, he was predeceased by his sister, Jean.

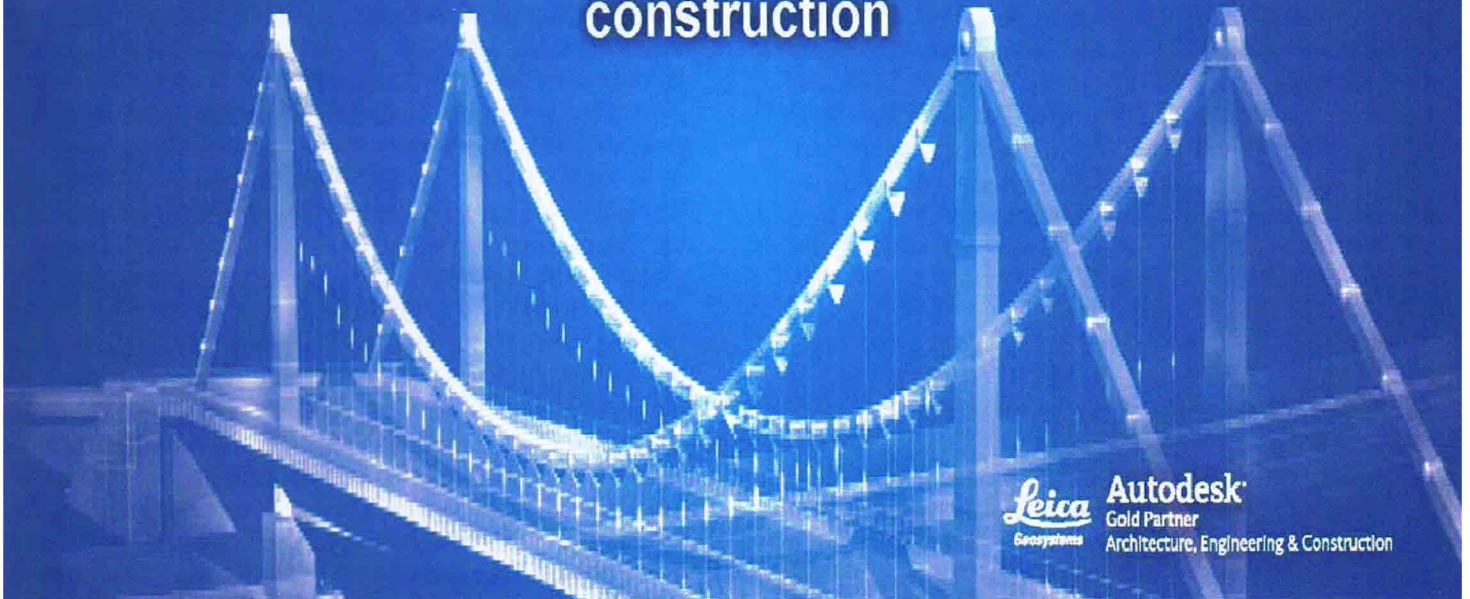
OBITUARY

MCKEOWN, FREDERICK WILLIAM, NSLS #239 It is with great sadness that his family announces the passing of Fred on Feb 4, 2011, in Dartmouth General Hospital. Born in Halifax he was a son of the late Edmund and Ellen (booth) McKeown. Fred retired in 1987 from the City of Dartmouth as Chief Surveyor after 25 years of faithful service. Following retirement he maintained an avid interest in travel and world affairs, spending many hours reviewing maps. He and Betty enjoyed their trips to Bermuda and travels within the province. Courteous and kind, Fred was a gentle loving family man. His stories and sense of humour were appreciated by all who knew him. Fred is survived by his wife Elizabeth "Betty" (Starr); son Paul (Anne); granddaughters, Amy and Robyn; and many nieces and nephews. He was predeceased by his first wife, Elaine (Cleaveland); sister, Helen Scott; and brothers Thomas Clarence and Ron. Donations may be made to Dartmouth General Hospital. On-line condolences may be made to www.atlanticfuneralhomes.com. Editor's note: I had the pleasure of being hired by Fred in October of 1970 and worked with him at the city of Dartmouth until 1976, Fred Hutchinson.

OBITUARY

CROOKER, DAVID L, NSLS #213 CLS Ret'd Passed away peacefully in South Shore Regional Hospital, Bridgewater, Friday, March 11, 2011. Born in Brooklyn, Queens Co., he was a son of the late Leander and Mary (Waterman) Crooker. David was an avid volunteer and participated in many organizations in every community in which he lived. His favourite activities included children, history, the church, and the outdoors. He was a cub-scout and 4-H leader, member of South Brookfield United Baptist Church, and a member of many other community organizations to numerous to mention. He also participated in local and regional politics and was respected in everything he did. His family and his community were the most important things in his life and he devoted himself to making both the best that they could be. Survived by wife, Sharon; daughters, Queena (Ken Smith), Alison (Rawding), Sharon (Tim MacQuarrie), Erin (Jason Mansfield), Davonna and Murphy; grandchildren, Stephen and David Smith, Kyle and Mason Rawding, Connor and Taegen MacQuarrie, Avery and Kale Mansfield; sisters, Blance (Pierre) Alaine, Pauline (Gordon) Fevens, Lena (Allen) Oickle, Bertha (Kenny) Wile, Carolyn (Vic) Adams, and brother, Jim (Anne) Crooker. He was predeceased by son-in-law, Terry Rawding. David was a former employee of the Department of Natural Resources for Nova Scotia and one of his many surveys included the boundaries off Kejimikujik National Park.

Helping you bridge the gap between inspiration and construction



Best-In-Class Training - More Than 85 Technical Experts Specialists In 8 Different Industries

We offer the deepest talent pool of Civil 3D experts and licensed surveyors in the industry. With extensive experience harnessing the power of Leica Geosystems tools, our experts can help you with everything from a simple support call to implementation and custom software development.

Call Chris Carpenter in Halifax today at 902-468-2425 or visit imaginitt.com

IMAGINiT
TECHNOLOGIES
A RAND Worldwide Company

IGNORANCE IS NOT BLISS FOR LAND SURVEYING

By Bryan Bates, BCLS, CLS, ALS

Land surveyors, if I were to lump the ones I know together into one stereotype, are a modest bunch. They go about their work carefully and diligently without expecting much for recognition from their clients or the public. They take personal pride in knowing they have done their part to preserve property rights, boundaries, and the cadastre, while non-surveyors go about their business as though nothing unusual has happened. We are quiet caretakers of the land.

For many land surveyors, this is the way it has always been and the way it should always be. We know our work is important, but we don't expect everyone else to recognize that importance. Through my story today, I hope to change that mindset. My fear is that if it does not change there will not be land surveyors to carry on the traditions for many more years.

A few years ago I had the opportunity to join the External Relations Committee of the Association of British Columbia Land Surveyors (ABCLS). This committee has broad terms of reference that generally involve anything to do with liaising with government and other entities outside of the association. The Chair, Brent Taylor, BCLs, sold it to me as a way to keep up on many different issues concerning the association, so I jumped at the opportunity. I thought it would be interesting and a good way to expand my knowledge of association affairs.

A few weeks into my term we were surprised by a new piece of legislation: the Oil & Gas Activities Act (OGAA), one of several bills that were expedited through the provincial legislature in a matter of a few days. I work in the oil & gas side of land surveying as a part of my practice, so it made sense for me to look over this new act and what effects it might have on land surveying issues. It did not take long to realize this act had dire consequences for oil & gas land surveying work.

In short, OGAA repealed all of the statutory responsibilities of land surveyors as far as oil & gas surveys are concerned. They were gone. No traces left. You might think that legislators would carefully consider and consult with affected parties before making changes like this, and if you think so you would be wrong. Instead, anything that had the appearance of being unnecessary or outdated was deleted without much extra question or thought. What was left was what legislators thought was important and nothing more.

At the time the association found out about OGAA, the bill had been through first and second reading in the legislature. I learned very quickly this meant we had a very short time to do anything to influence this act before it was signed into law. A small group of us (Brent Taylor, Chuck Salmon and I) pooled contact info and started calling and emailing anyone in government we thought might pay attention. The bill was due to go back to the legislature for third and final reading within a week or two, so there wasn't much time to deal with the problem.

We reached out to our colleagues at the Surveyor General Division of the Land Title and Survey Authority. They were also aware of the bill and its contents, and were deeply concerned over the effects of failing to have surveys of wellsites and pipelines and to have those surveys stored in public registries. They were also working to contact anyone involved in the construction of OGAA to express their concerns.

Both the ABCLS and the Surveyor General made a number of contacts through email, phone and face-to-face meetings over the next week or two. Although we communicated with a number of people in government on the issues, we were all told that government's position was to pass this act the way it was and nothing would be changed.

We took a bit of time to assess what had just happened and decided to press onwards talking with government representatives in various ministries and divisions within government about the problems OGAA was creating. A common theme arose from many of those conversations and responses: a large number of people who had influence over this legislation had basically no idea what land surveyors did to contribute to the development of oil & gas resources in the province. "Sorry, you're the Association of who?" was a frequent response. The ones who at least did know who land surveyors are often had little idea of what we actually do. Concepts such as contributing to the organization of property rights and maintaining the cadastral fabric were abstract to many of them. While we see our work as crucial to the socio-economic foundation of the province, too many people in government saw it as silly field workers hammering pieces of metal in the ground for fun. The lack of understanding within many parts of government was simply staggering.

It was not looking good for oil & gas surveying, but over the next few months we made contact with a few people in government who understood why property rights and tenuring were important to the province, and they took the time to understand how surveyors and the work they do are an important part of that. We also received word that an amendment act to OGAA was being contemplated to make adjustments to it, so we had an opening to get land surveying back on the table. Through some careful discussions we were able to convince the Ministry responsible for OGAA to put back in provisions for surveys (and their public recording) and to include meaningful language about the kinds of surveys that need to be done. Now, getting agreement on ideas from a Ministry representative and seeing those ideas actually make it into the legislation are two very different things. We had to wait impatiently and hope that we talked to the right people, and then wonder if we had communicated the importance of our work to them clearly enough. We were extremely relieved when an amendment to OGAA containing the provisions we needed for surveys was passed in the legislature and signed into law.

Our work wasn't done yet. We had been successful in getting the legislation to authorize surveys, but the nuts and bolts of the survey requirements still needed to be assembled in a new regulation. This took more discussions with various parts of government and a pattern became obvious: every time we dealt with someone new from another department or ministry we frequently had to educate them on who land surveyors are and what they do. It was frustrating and discouraging to see how little people knew about something so fundamental to the economy. However, we kept on working at it and eventually saw the completion of regulations that substantially replaced what had been lost when OGAA first appeared. It took 18 months of effort, bunches of meetings, and countless emails and phone calls to fix something that could've just been left as it was in the first place. I bet this issue would not have come up if the OGAA legislators understood what land surveying means to the oil & gas development.

Now that activity on this issue has wound down and I have time to reflect on what happened, I came to the conclusion that much of this was preventable and that land surveyors have themselves to blame for how bad this situation got. I think it all goes back to how we prefer to do our work quietly and privately and not concern anyone else with how important this work is. By being "off the radar" of government and the public at large we are finding ourselves and our work ignored. Society in general doesn't know much about land surveyors because they don't need to look too closely at what land surveyors do. If people don't realize what we do is important, then we risk being forgotten, ignored, repealed.


Part of this is because we do our work so well that problems, especially problems that could affect the public, are very rare occurrences. This is an immensely positive feature that we definitely don't want to change. Without the work of land surveyors the cadastre would begin to degrade, which would eventually lead to conflicts over rights to land. In a way, the cadastre is like a complex machine: if it is properly maintained and taken care of, it will function well; if it is neglected serious problems will eventually come up. The problems wouldn't show up immediately, so land surveyors would have likely moved on to other kinds of work and wouldn't be available to repair the damage done.

I believe the habit we should and need to change is to stop keeping quiet about who land surveyors are and what they do. The land surveyors I know are fiercely proud of their work, but you would not know it because they rarely talk about it to non-land surveyors. Why are we so quiet about it? Is there something wrong with expressing pride in or talking about what we do?

I challenge all land surveyors to do more to educate people about what land surveying is and why it is important. This isn't a job for a small committee or task force; I believe it is something we all need to contribute to. I even go so far to suggest it is part of our duty to society, since my story illustrates what could happen if we don't educate the public.

This educational role doesn't need to be daunting; it starts with making sure everyone you deal with on a day to day basis knows a bit more about land surveying after talking to you. When people ask what you do, you take the time to show your interest in the profession instead of replying, "Yeah, we're those folks looking through the telescope on the side of road". Any time you get to talk to someone in any part of government, whether it is a municipal engineer or your elected representatives, you take the opportunity to explain *why* land surveying matters instead of just what it is. Small efforts applied by everyone will eventually have a big effect.

I look back at our experience with OGAA and imagine what would have happened if more people understood how crucial land surveying is to the oil & gas industry. We would have been approached by government when changes were contemplated. We would have been asked for our opinion on survey standards. We would have been partners in the development of a better version of OGAA, instead of sitting on the other side of the table and trying to repair gaping holes in legislation. If you can imagine better things happening for land surveying, then I hope you take on this challenge too.

Be proud of what you do. 

ONE COMPANY TWO BRANDS



On GRADE Inc.
Survey & Machine Control Systems



SOKKIA

Maritimes (NS/NB/PEI)

109 Ilsley Avenue, Unit 14 • Dartmouth, NS B3B 1S8
902.252.3390
Fax 902.252.3391
Cell 902.441.8543 (Mike)
1 877.424.4545

Newfoundland & Labrador

980 Kenmount Road • Paradise, NL A1L 1N1
709.747.1199
Fax 709.747.1191
Cell 709.743.6561 (Bill)
1 888.747.1133

www.on-grade.ca

MINUTES OF THE 60th ANNUAL GENERAL MEETING
Held at the Truro Glengarry, Truro Nova Scotia
October 28-30, 2010

Friday, October 28th, 2010

1. The Honourable John MacDonnell, Minister of Natural Resources, brought greetings to the members and delegates and welcomed all.
2. President Glenn Crews called the meeting to order at 1:36 p.m. The meeting is governed by Roberts Rules of Order and common sense. Gerald Pottier was appointed Parliamentarian, Quorum achieved.
3. Introduction of new members Jody Isenor #637 and Matt Bigney #638.
4. The out-of-province delegates and exhibitors were introduced.
5. Introduction of Council Members: President Glenn Crews introduced the members for Council: Zone 1 - Peter Berrigan,; Zone 2 - Kirk Hicks; Zone 3 - Doug Macleod; Zone 4 - Nathan Clark; Zone 5 - Paul Harvey & Britt Roscoe; Zone 6 - Kirk Nutter, Nick Dearman, Jim McIntosh & Allen Owen; DNR representative - Bruce MacQuarrie; Vice President - Glenn Myra; Past President - Ray Pottier.
6. President Glenn Crews asked that everyone stand and observe a moments silence in memory of members and former members who passed away and offered condolences to those who lost friends and family. Members who passed away are:

Robert Burgess, NSLS #26 & Life Member; Ernie Boehk, NSLS #66; Donald Bird, NSLS #146; Otto Rosinski, NSLS #269; Albert Wright, NSLS #401; Rick Surette, NSLS #444, Fred Sheppard, NSLS #463.
7. Order of Business (section 5. 10) of the By-laws read by President Glenn Crews.
8. Secretary's Report on Convention Attendance and Membership: Fred Hutchinson reported that there are more than 35 members present at the meeting, which satisfies the quorum requirement. Fred reported on membership and dues as follows:

Year	Dues	Reg	Life	Ret	Std	Hon	Assc	Total
2010	\$1100	155	18	35	24	3	4	239
2009	\$1100	161	19	35	21	3	5	244
2008	\$1100	165	19	35	24	4	7	254
2007	\$800	172	19	34	24	4	7	258
2006	\$800	173	19	39	23	4	3	261
2005	\$800	177	20	39	24	4	2	266
2004	\$800	187	20	35	24	4	0	270
2003	\$800	197	18	34	21	4	0	274
2002	\$800	203	16	35	21	4	0	280
2001	\$670	208	16	36	19	4	0	284
2000	\$670	216	16	35	17	3	0	288

9. Life Membership: Presentation by Bob Feetham. Dave Steeves is nominated for life membership.

It was moved by Bob Feetham, seconded by John MacInnis that Dave Steeves be appointed as life member.

Motion Carried.

10. Approval of the Minutes of the 59th Annual Meeting: The minutes of the 59th AGM held at the Digby Pines Resort, Digby Nova Scotia on October 23-24, 2009 were published in the Summer 2010 issue of The Nova Scotian Surveyor .

It was moved by Bob Feetham, seconded by Brian Wolfe that the minutes of the 59th AGM held at the Digby Pines Resort, Digby, Nova Scotia on October 23-24, 2009 be approved as published.

Motion carried.

11. Approval of the Minutes of the June 25, 2010 Special General Meeting: The minutes of the Special General Meeting held at the Glengarry Hotel, Truro Nova Scotia on June 25th, 2010 were published in the summer 2010 issue of The Nova Scotia Surveyor .

It was moved by Ray Pottier, seconded by Dan Gerard that the minutes of the 2010 Special General Meeting held at the Truro Glengarry, Truro, Nova Scotia on June 25, 2010 be approved as published.

Motion Carried.

12. Business Arising from the Minutes of the 58th Annual General Meeting: There was no business arising from the minutes.

13. Report of Council Activities: Council meetings were held on November 20, 2009, Teleconference on December 10, 2009, February 12, 2010, April 16, 2010 and September 10, 2010. Issues dealt with in 2009-2010 were:

- * Committee Terms of Reference
- * Act and Regulations
- * Proposed By-laws
- * Wetlands
- * Nova Scotia Power Inc. (easements)
- * Mandatory Continuing Education
- * Wetlands
- * Finances
- * Law Suit
- * Presidents activities

14. Treasurer's Report: Fred Hutchinson - The December 31, 2009 unaudited financial statement is as published in the fall 2010 issue of The Nova Scotian Surveyor. The administration deficit was (\$48,396.00), the SRD surplus was \$28742.00 for a net (deficit) of (\$19654.00). The budgeted combined deficit was \$20,600.00. A difference of \$39,654.00 between budget and actual.

15. Report from Survey Review Department: Jim Gunn - the most recent report is published on page 10 in the fall 2010 Nova Scotian Surveyor. No additions or questions.

16. Report of Scrutineers: Fred Hutchinson - The positions of Councillors for Zones 1, 4, 5 6, and Vice President were filled by acclamation.

New members of Council for 2010 are:

President elect: Glenn Myra
 Vice-president elect: Carl Hartlen
 Zone 1 Councillor: Bob Becker
 Zone 4 Councillor: John Delorey
 Zone 5 Councillor: Dennis Prendergast
 Zone 6 Councillors: Garry Parker & Sandy Macleod

Retiring councillors were thanked for their service and presented with plaques:

Zone 1: Peter Berrigan
 Zone 4: Nathan Clarke
 Zone 5: Paul Harvey
 Zone 6: Kirk Nutter & Nick Dearman
 Past President: Ray Pottier

17. Report of Committees: Committee reports are as published in the fall 2010 issue of The Nova Scotian Surveyor / Reports from the following committees were published: Administrative Review, Complaints, Continuing Education, Discipline, Governance, MCE Evaluation, NS Board of Examiners, Strategic Planning, Survey Review Department.

Administrative Review Committee: The committee has completed the following items. A job description for the executive director has been developed and is in review stages. Performance management documentation has been developed and a review by the committee was completed. The implementation stage of that performance management activities will start after the AGM.

Continuing Education Committee: A spring seminar was considered by the Special General Meeting of June 25, 2010 took priority for both time and organization. The meeting also provided the 15 points that would have been assigned to a full day seminar. The half day seminar of October 29, 2010 is worth 10 points when completing the 2010 Mandatory Continuing Education reporting form.

MCE Evaluation Report: The deadline for the MCE 2009 reporting year was March 1, 2010. The 2009 reporting year marked the third and final year of the second three-year program since the inception of the MCEP. A total of 161 members were required to report and as of March 1st, 2011 a total of 159 forms were received. Two members were invoiced with a \$100.00 fine for late submissions. Five members were non-compliant and it was decided by Council that all non-compliant members be given an opportunity to make up their missing points in the 2010 MCE year. Failure to meet the requirements of the agreement would result in a \$500.00 fine.

Complaints Committee: Following the 2009 AGM there were three complaints under active investigation by the complaints committee. In 2010 there was one complaint which was also dismissed. There are no active complaints before the committee at this time.

Governance Committee: Since February 2010 the Governance Committee has spent all of its efforts on the new Act and Regulations and associated issues and concerns. A special General Meeting was held on June 22, 2010 to rescind the Act and Regulations and approve a new package. The Act is now approved for advancement at the fall 2010 sitting of the Legislature.

NS Board of Examiners: The past year has been an active year for students. Six individuals have registered as student members and two student members qualified for their

commission as a Nova Scotia Land Surveyor. New members are - Jody Isenor, NSLS #637 and Matthew Bigney, CLS, NSLS #638.

Strategic Planning Committee: The committee was active in 2010 and drafted a copy of the Strategic Plan has been produced and will be forwarded to Council before December. Meeting held in Truro on February 24, 2010. The committee developed the framework for the strategic plan and also set out the process for completing it. The plan provides a Vision, Mission Statement and sets out our Strategic Goals for the period of 2010 to 2015.

18. Professional Surveyors Canada: Presentation by Dennis Blais, President of the Canadian Council of Land Surveyors. Presentation regarding the transition from CCLS to Professional Surveyors Canada.

19. 2010 Proposed Budget: Reviewed proposed 2010 budget as published in the fall 2010 Surveyor proposed combined surplus of \$0.00. Budget prepared in August for approval by Council.

20. New Business & Approval of the 2011 Budget: Open floor for discussion regarding 2011 budget.

Discussion regarding dues increase to \$1200.00 and how to cut expenses in Administration and SRD Department. Council went over the budget and concluded by recommending a \$100.00 increase in the dues and have directed the administrative review committee to look at ways to reduce expenses.

It was moved by Carl Hartlen, seconded by Peter Berrigan. Be it resolved that the annual dues for a regular member be set at \$1 200.00 per year.

Further discussion regarding dues in other Provincial Associations. ACLS is \$600.00 and Manitoba is \$2200.00 per year. Discussion regarding motion tabled until Saturday, October 30, 2010 morning so that the members have the opportunity to review the budget further.

It was moved by Russell MacKinnon seconded by Dan Gerard that the motion to set the annual dues for a regular member is set at 1200.00 per year be tabled until Saturday, October 30, 2010.

Motion Carried.

Meeting adjourned at 4:15pm.

Saturday, October 30th, 2010

The meeting reconvened at 9:10 am.

21. Discussion continues with unfinished business regarding dues increase and how to reduce expenses and increase revenue in 2011.

It was moved by Carl Hartlen, seconded by Peter Berrigan. Be it resolved that the annual dues for a regular member be set at \$1 200.00 per year.

Motion carried.

It was moved by Ray Pottier, seconded by Forbes Thompson to approve the 2011 budget as published in the fall 2010 Nova Scotia Surveyor.

Motion Carried

22. Introduction of New Executive and Council

The ANSLS Council for 2010-2011 is:

President	Glenn Myra
Vice-President	Carl Hartlen
Past President	Glenn Crews
Councillor Zone 1	Bob Becker
Councillor Zone 2	Kirk Hicks
Councillor Zone 3	Doug Macleod
Councillor Zone 4	John Delorey
Councillor Zone 5	Britt Roscoe
Councillor Zone 5	Dennis Prendergast
Councillor Zone 6	Jim McIntosh
Councillor Zone 6	Allen Owen
Councillor Zone 6	Sandy MacLeod
Councillor Zone 6	Garry Parker
DNR Representative	Bruce MacQuarrie

23. Governance Committee presentation of new By-laws and Code of Ethics:

Presentation by Dave Steeves, Chair of the Governance Committee. The package was presented and discussed in detail.

It was moved by Russell MacKinnon, seconded by Carl Hartlen. Be it resolved that the by-laws presented, reviewed and discussed at the Annual General meeting of October 30, 2010 become the by-laws of the Association at the time of the proclamation of the new *Land Surveyors Act*.

Amendment: It was moved by James Redden, seconded by Stewart Setchell. Be it resolved that the number of Councillors from each zone shall be changed from one to two and that the by-laws be changed throughout to give effect to that intention .

Motion defeated.

Question called on main motion.

Motion carried.

It was moved by Ray Pottier, seconded by Russell MacKinnon. Be it resolved that the Code of Ethics presented, reviewed and discussed at the Annual General meeting of October 30, 2010 become the Code of Ethics at the time of proclamation of the new *Land Surveyors Act*.

24. Governance Committee presentation on Standards:
Presentation by Carl Hartlen of the Governance Committee on the proposed Standards document that will be for approval by the membership in the near future.

The Standards committee is in need of members to volunteer to re-populate.

25. Out-of-province delegates made closing remarks and thanked ANSLS members for the invitation and hospitality.

The 2011 AGM will be held at the Holiday Inn, Dartmouth from October 20-22.

Motion to adjourn at 4:24 pm.

F.C. Hutchinson, BA, NSLS, CLS
Executive Director

INTRODUCING Quick Station™

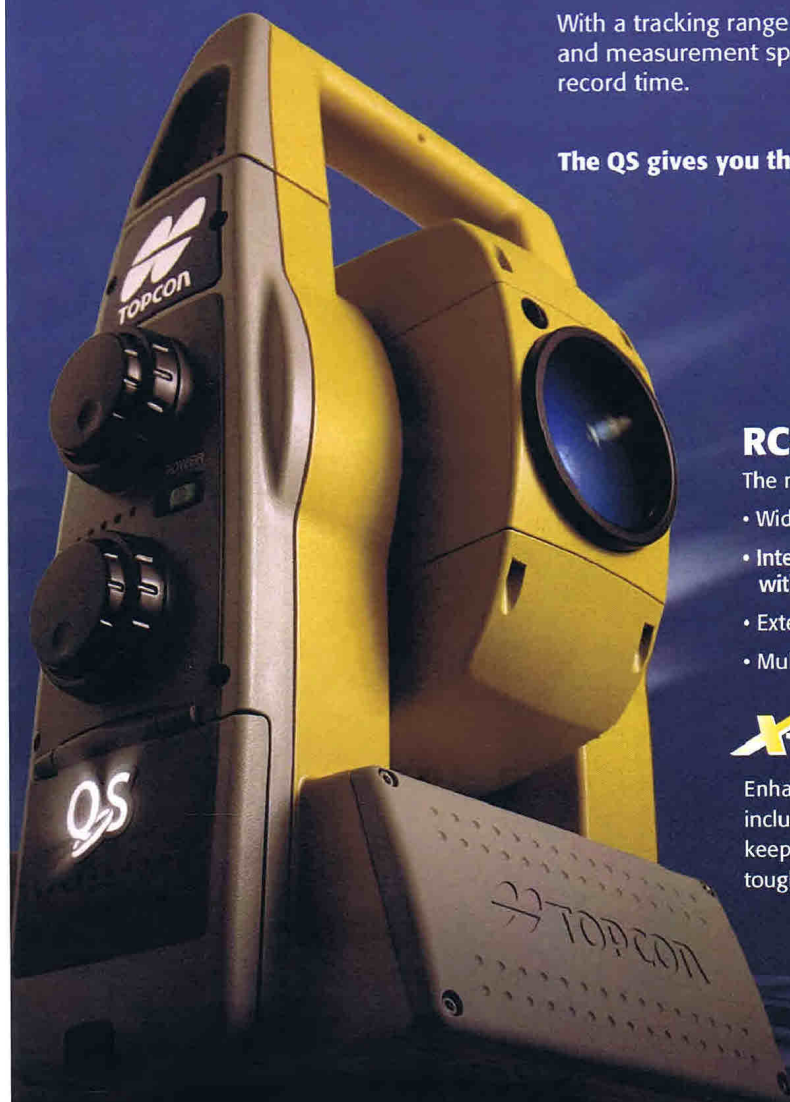
Running shoes not included.

The new QS robotic total station is all about speed and accuracy. From its new RC-4 QuickLock system to its new X-TRAC 8 tracking and control technology, it's speed for the jobs you do everyday. And the jobs you couldn't do before.

Only the QS gives you the added power of super-long range reflectorless mode—up to 2000m with an average measuring time of less than 5 seconds.

With a tracking range of up to 1000m, tracking speed of 15° per second, and measurement speed of 1.2 seconds, you cover the largest sites in record time.

The QS gives you the power to finish faster.



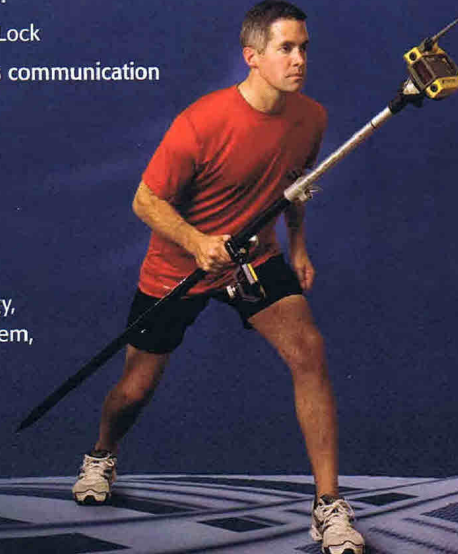
RC-4

The new dual-laser system features:

- Wide-area aiming for faster QuickLock
- Integrated 2.4GHz radio simplifies communication with all Topcon field controllers
- Extended radio range
- Multi-channel support

X-TRAC 8

Enhanced prism tracking technology, including new optics and laser system, keeps you locked on even in the toughest environment.



TOPCON
topconpositioning.com/QS

TOPCON

SOKKIA

On GRADE Inc.
Survey & Machine Control Systems



Maritimes (NS/NB/PEI)

109 Ilsley Avenue, Unit 14 • Dartmouth, NS B3B 1S8
902.252.3390
Fax 902.252.3391
Cell 902.441.8543 (Mike)
1 877.424.4545

Newfoundland & Labrador

980 Kenmount Road • Paradise, NL A1L 1N2
709.747.1199
Fax 709.747.1191
Cell 709.743.6561 (Bill)
1 888.747.1133

www.on-grade.ca



Cansel

Improving field to finish productivity

Are you ready for the new season? Our robots are.

Contact us for a demo.
1.888.222.6735



TRIMBLE S3
TOTAL STATION

TRIMBLE S8
TOTAL STATION

TRIMBLE S6
TOTAL STATION

TRIMBLE VX
SPATIAL STATION



Autodesk

Gold Partner
Architecture, Engineering & Construction
Manufacturing



autodraft



Globe IC ADD Systems
Authorized by Cansel

1-888-222-6735

Can-Ne

cansel.ca

Vancouver • Edmonton • Calgary • Winnipeg • Toronto • Ottawa • Montréal • Québec • Halifax • St. John's