

THE NOVA SCOTIAN SURVEYOR

Fall 2012

No. 192



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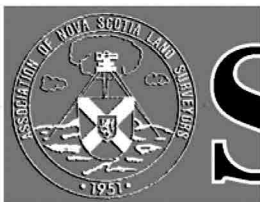
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THE NOVA SCOTIAN SURVEYOR

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Address all enquiries to: ANSLs, 325-A Prince Albert Road, Dartmouth, NS, B2Y 1N5 Canada.

Tel: (902) 469-7962 Fax: (902) 469-7963 E-mail: ansls@accesswave.ca

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PRESIDENT'S REPORT

Carl Hartlen, NSLS



It is with mixed emotions that I prepare this, my last report, as it represents the culmination of a year that I will certainly never forget. On one hand, I will not miss trying to balance a busy travel schedule with my personal and professional responsibilities, combined with what seemed to be inevitable delays while travelling across Canada by air. On the other hand, it marks the end of an opportunity to represent our association on a national level, gaining invaluable insight into issues that our sister associations address and become intimately involved with our association and its members.

On a national level, our travels ended by attending Manitoba's AGM in September. It is significant that they have about one third of our membership and that they voted to double their annual dues which now exceed \$2000.00. Although I have refrained previously from summarizing all of the lectures and tours attended by delegates, I will mention at least this one.

Frank Albrow, a Cambridge architectural historian, made a presentation on "The Magic and Mystery of the Manitoba Legislative Building". Clearly one of the most engaged and energetic speakers we've heard. He enlightened us about some of the hidden secrets associated with the building. Accompanying persons toured the building. For anyone interested in the history of architecture, I recommend you get a copy of his book "The Hermetic Code".

Although welcomed, we did not attend the Quebec AGM as, unfortunately, it falls immediately after the Manitoba convention and time and commitments made it difficult to make the trip.

As I reflect back, I can't help but wish that we had accomplished more during my term in office. I'm sure most outgoing Presidents feel somewhat the same. The year goes by so fast that it seems almost impossible to get done all that one would like to before it is time to step down and let another take over the reins. At least one outgoing President, from another association, suggested two year terms would be more appropriate. Although I can see some merit in the concept, I'm not sure that that level of commitment would work for most members.

I believe the experience I have gained throughout this year will serve our association favourably next year as I remain on Council as past president.

Although we managed to accomplish certain goals, there is work that still needs to be done. Our Act and Regulations are close to receiving government approval, the culmination of at least five years of hard work. We have a contingency plan in place for adoption of Survey Standards to align with our impending legislation; however, an immense amount of work is still required on that front. I believe that the reduced size and structure of Council will be a huge asset since we depend upon volunteers to govern our association.

We must continually review and modify our strategic plan and endeavor to accomplish goals set out therein. We must focus on specific issues and force ourselves to identify action plans and mechanisms to achieve results. To make this happen, our members must become engaged and be willing to put in the time required. I recognize that with ever increasing demands upon everyone's time, this is difficult, but necessary. I believe that when needed, we must seek professional assistance to accomplish some of these goals and, if required, allocate funds to make them happen.

At our 2011 President's luncheon, I commented on how I would be interested in observing how serving as your President would change me both personally and professionally. I can assure you that it is virtually impossible for me not to change, at least somewhat, based on my experiences over the last year. I was able to identify some of my strengths and some of my weaknesses and have already begun to implement processes that will hopefully make me a better person and land surveyor. For those of you who are considering representing your association as President, I sincerely recommend that you take the opportunity to do so, but make sure the time is right for you. I can guarantee you that you will enjoy the experience and create relationships that will far outlast your tenure as an active land surveyor.

In closing I would like to thank the following:

- Members of Council who always maintained an extremely high level of decorum at all meetings while managing to get our business accomplished.
- Committee members who gave up their time to assist with running our association. For those new members of our association or who have yet to serve at the committee level, I encourage you to become engaged.
- Executive Director, Fred Hutchinson, whose efforts cannot be over-stated. You would really have to walk a mile in his shoes to appreciate the amount of work that is generated in his position; clearly the oil that keeps the associations' motor running.
- Our association staff, Cathy McInnis and Kim Vacon, who help to make Fred's job easier.
- Last, but not least, my wife Rhonda, who managed to keep me on track over the past year.

It was an honor and privilege to serve you, an experience I will never forget.

Carl

WETLANDS

By AMY DOERKSEN

In Canada we lose 80 acres of WETLANDS every single day. That's *every single day*. It's obvious the race is on to conserve, protect and maintain these vital natural resources. The day the start gun fired is questionable and the rules around wetland loss continue to change, but what matters most is what's happening now to ensure we cross the finish line as quickly as possible. We'll break the red ribbon the day wetland loss stops and we start seeing more marshes and ponds.

Ducks Unlimited Canada (DUC) is a big player in the wetland conservation game. DUC has nearly 75 years of experience conserving wetlands with over 143,000 supporters and volunteers backing their efforts. With a loss of wetland equaling 45 soccer fields every 24 hours, it's double overtime and these dedicated people have joined the DUC team roster to fix a national problem. They're wetland champions who are passionate about conservation. Without them, DUC's ability to achieve its mission is substantially more challenging if not impossible.

**This article was re-printed from the Ducks Unlimited Canada Conservator, Volume 33, #2, Summer 2012.*

EXECUTIVE DIRECTOR REPORT*F.C. Hutchinson, BA, NSLS, CLS*

It has been a good race but now it's time to put the compass and chain on display in the rec-room and sell all the other survey equipment and files. Well the equipment and office furniture found a new home but what of the files?

Our Standards, Part II, of our existing Regulations require us to pass on our file legacy or preserve them for future use. Sections 31-35 of our Regulations state that this is a requirement, as does sections 65 and 66. What if no one wants to buy or accept your files, then what? Hang on to them during your retirement and take them with you to the nursing home? Oh, of course, why not just go through your files and purge the irrelevant material and scan everything else. Assuming you have a reliable index system that can also be scanned or computerized also adds to the workload. Files without an index have little value and do you still possess the financial and mental resources to complete the preservation project?

I hereby personally confess that I just junked my 64K Apple IIe, dual disk drive computer that I bought in 1982 for \$5,500. And yes, I also confess to putting all my 5¼ floppy discs in the garbage. It has been 14 years since I last signed a plan but insurance advice is that one needs to hold on to

one's files in case there is a legal "notice of action" and your files are needed for review. I still have my chest freezer or should I say my Gabs vertical plan cabinet that I am considering turning into a family burial vault. Well everyone thinks that it is a freezer. I have probably had one or two requests per year for file information which, is always provided.

This is the plight of the sole practitioner upon retirement. The recording of surveys is much better than it used to be, while room for improvement still exists. Recording should reduce the need to reference old files. The survey business that will continue to exist due to partnerships is really the only solution to file preservation and even they face storage and retrieval problems.

There is a great deal of personal pride in the plans and files held by a surveyor. Most of my plans were done on the drafting table after many hours of toil. These plans each tell a story of the property they illustrate but they are much more than a boundary survey. They are signed works of art in the eye of the author with a story behind every location and how do you let go of such.

There is no regulation in the province that demands that survey plans be filed in the Registry other than subdivision plans as legislated under the Municipal Government Act of 1984. Even that requirement was initiated by our Association. The Association of Nova Scotia Land Surveyors needs to be proactive again in preserving boundary information in an effort to protect the public for which the work was done. An unregistered plan with survey markers in the ground only invites liability for the land surveyor and promotes ambiguity and uncertainty for property owners.

The clock is ticking for my over 3000 files and plans and I am not alone!





CANDIDATE FOR COUNCILLOR – ZONE 1 – Bob Becker, NSLS

Bob grew up in the Niagara Region, Ontario. He graduated from NSLSI in 1979, and received his commission in 1981.

After 27 years in private practice, he joined Able Land Surveying Inc; in Chester, NS. With three children in post-grad programs, Bob and wife Kelly are hoping to someday have more time to indulge in their favorite pastimes of tennis and sailing. Bob is re-offering to serve on council.



CANDIDATE FOR COUNCILLOR - ZONE 4 - Blake Beaton, NSLS

Blake is a native of Judique, Cape Breton and now resides in Antigonish.

He is a graduate of COGS in 1993 as a survey technologist. He then attended the University of New Brunswick, where he graduated in 1998 with a Bachelor of Science in Survey Engineering.

After graduation, Blake worked with Fugro Jacques GeoSurveys, in Dartmouth, as an Offshore Survey Engineer for 6 years. Blake received his certificate from APBELS in 2003 and then pursued his Land Surveying career by moving to Sydney in 2004.

Blake mentored under Paul Harvey NSLS #509, (owner of Harvey Surveys & Island Surveys) where he obtained his Nova Scotia Land Surveyors Commission in 2007. Blake is also a registered Professional Engineer since 2006 and presently works for HJS Consultants Inc. as Survey Manager since 2008.

Blake and his wife Deanne are happily raising three girls Kara, Jenna and Krista.

Blake volunteers his time coaching his daughters in minor hockey and minor soccer.



CANDIDATE FOR COUNCILLOR – ZONE 5 – Ray MacKinnon, NSLS

Ray was born and brought up in Sydney. After graduating from NSLSI in 1976, he worked with Lands and Forests while articling with Wayne Hardy. Ray received his NSLS commission in 1978 and remained working with Lands and Forests until 1981. After retiring from Lands and Forests, he worked in private practice.

Ray has previously served two terms as a Zone 5 councillor. He also has been involved as a coach in Sydney Minor Baseball and Sydney Minor Hockey along with having been active in church committees.

Ray and his wife Rita have two sons John and Daniel. Ray and Rita enjoy their trailer in Dunvegan and Ray loves skating and square dancing. He also has a hobby of collecting biographies and autobiographies. Ray is looking forward to being a Zone 5 councillor.

CANDIDATE FOR COUNCILLOR ZONE 6

Brian J. MacIntyre, NSLS



Brian is from St. Peters, Cape Breton. He attended the Nova Scotia Land Survey Institute, graduating in 1979. He received his commission as a Nova Scotia Land Surveyor in 1985.

He worked for private survey firms in Sydney River and Halifax before moving to hydrographic/offshore surveying at BIO and Nortech Atlantic Ltd. Brian then moved to the City of Dartmouth for several years before joining his current employer, the NS Department of Natural Resources in 1995. He is presently working in the Halifax office in the Crown Survey Administration section of the Lands Services Branch.

Brian has previously served as Councillor for Zone 6 from 1998 to 2000. He has also participated as Chairman for the annual Convention Committee on two occasions and served as a member of the Public Relations Committee.

Brian and his wife Maureen reside in Dartmouth and have two adult sons, Ian and Neil. Brian is active in various community activities including serving as operations manager for the SEDMHA Minor Hockey Tournament for the past seven years.

CANDIDATE FOR COUNCILLOR ZONE 6

Andrew Morse, P.Eng., NSLS, CLS



Andrew grew up on a beef farm near Greenwood, NS. He became interested in the survey profession while in high school when a local land surveyor and family friend subdivided his parent's lot. Having always had an interest in computers, working outdoors and mathematics, Land Surveying seemed like a good fit. He attended COGS in the fall of 1999 and continued to UNB in the fall of 2001. After graduating UNB in 2005 with a Bachelor of Science in Geodesy and Geomatics Engineering, he started work for Terrain Group Inc. as a surveyor in training. After articling for 4 years under Kevin Brown P.Eng, NSLS, PEILS, he received his NSLS designation in 2009. In 2010 he received his P.Eng designation. Andrew now lives in Cole Harbour and works for GENIVAR Inc., Dartmouth, NS. (formerly Terrain Group Inc.).

Survey Related Work History:

- Summer 2000 Canadian Coast Guard, Dartmouth, NS, - Instrument Person
- Summer 2001 FOCUS Corp., Medicine Hat, Alberta, - Instrument Person
- Summer 2002 TSC Engineering, Houston, Texas, - Instrument Person
- Summer 2003 Feldman PLS, Boston, Massachusetts, - Instrument Person
- Summer 2004 Canadian Hydrographic Service, Dartmouth, NS, - Student Hydrographer
- May 2005 – Present GENIVAR Inc., Dartmouth, NS, - Project Surveyor

Association of Nova Scotia Land Surveyors

2013

(PROPOSED)

BUDGET

Administration and SRD combined

Prepared August 01, 2012

ADMINISTRATION REVENUE		2013 Budget (Proposed)	2012 Budget	2011 Actual
REVENUE				
Membership Dues				
Regular Members	(152 @ \$1200)	\$182,400	\$180,000	\$183,482.13
Retired Members	(35 @ \$120)	\$4,200	\$4,200	\$4,146.41
Associate Members	(1 @ \$120)	\$120	\$240	\$240.00
Student Members	(20 @ \$120)	\$2,400	\$2,640	\$2420.84
Total Membership Dues		\$189,120	\$187,080	\$190,289.38
SLC Numbers	(see note 15)	\$18,000	---	---
SRD Plan		\$82,000	---	---
Total		\$100,000	---	---
Nova Scotian Surveyor		\$4,500	\$5,000	\$3,255.00
Convention Revenue		\$22,500	\$25,000	\$13,898.84
Seminar Revenue		\$16,000	\$17,000	\$9,604.91
Certificate of Authorization	(51@ \$100)	\$5,100	\$5,200	\$5,025.00
Discipline Committee		---	---	---
Interest Earned		\$500	\$200	\$498.36
Other Revenue		\$200	\$200	\$575.00
Total		\$48,800	\$52,600	\$32,857.11
OTHER OPERATIONS				
Dues Service Charges		\$900	\$800	\$890.00
SRD Administration Fee	(see note 2)	---	\$11,260	\$11,259.96
Rental Income	(see note 4)	\$5,400	\$7,100	\$6,796.09
Total		\$6,300	\$19,160	\$18,946.05
TOTAL REVENUE		<u>\$344,220</u>	<u>\$258,840</u>	<u>\$242,092.54</u>

ADMINISTRATION EXPENSES

	2013 Budget (Proposed)	2012 Budget	2011 Actual
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OFFICE EXPENSES

Salary	- Executive Director (3%)	\$69,216	\$67,200	\$67,200.12
	- Exec. Assistant (PT)	\$20,200	\$31,500	\$16,970.54
	- SRD Assistant (see note 16)	\$21,690	---	---
	- SRD Contract	\$60,000	---	---
Benefits	- Medical and Dental	\$5,800	\$4,500	\$2,576.48
	- CPP	\$4,500	\$3,500	\$3,142.72
	- EI	\$3,600	\$1,755	\$1,790.02
	- Workers Compensation	\$800	\$900	\$663.07
	- Life Insurance	\$2,000	\$2,000	\$0
Total		\$187,806	\$111,355	\$92,342.95
Accounting		\$3,500	\$2,500	\$5,327.00
Advertising		\$1,500	\$1,500	---
Annual Meeting & Convention	(see note 3)	\$25,000	\$22,000	\$24,832.42
Council Meetings		\$4,000	\$6,000	\$2,571.83
Depreciation	(see note 14)	\$2,600	\$2,400	\$2,685.00
Equipment Rental/Maintenance	(see note 6)	\$1,800	\$1,700	\$535.56
Executive Director Expenses		\$1,500	\$1,200	\$1,504.42
Executive Expenses	(see note 8)	\$400	\$400	\$86.82
Legal Services	(see note 7)	\$5,000	\$5,000	\$6,853.90
NS Surveyor		\$5,000	\$6,500	\$2,145.00
Office Expense		\$3,000	\$4,000	\$1,539.50
Office and Computer Equipment		\$2,000	\$500	\$3,457.71
Postage		\$5,000	\$5,000	\$2,818.91
President's Travel	(see note 9)	\$18,400	\$18,000	\$20,419.47
Printing		\$1,000	\$1,000	\$108.00
Professional Dues and Fees	(see note 11)	\$1,500	\$1,360	\$1,495.00
Seminars		\$10,000	\$5000	\$6,066.66
SRD Manager Expenses		\$7,000	---	---
Staff Training		\$600	\$500	\$449.00
Telephone, Fax & Internet		\$2,400	\$1,800	\$1,702.08
Zone Meeting		\$1,500	\$1,500	\$977.01
Total		\$102,700	\$87,860	\$85,575.29

ADMINISTRATION (continued)	2013 Budget (Proposed)	2012 Budget	2011 Actual
Committees			
Administration Review Committee	\$600	\$400	\$0
Complaints Committee	\$1,200	\$1,200	\$118.96
Continuing Education Committee	\$500	\$500	\$0
Discipline Committee (see note 1)	\$2,000	\$2,000	\$329.00
Governance Committee	\$1,000	\$1,000	\$213.52
Membership Committee	\$0	\$0	\$0
Other Committee	\$500	\$0	\$144.47
Public Awareness Committee	\$2,000	\$2,000	\$0
SRD Review Committee	\$1,000	\$1,500	\$0
Strategic Planning Committee	\$500	\$500	\$0
Wetlands Committees	\$1,000	\$1,000	\$212.45
Total	\$10,300	\$10,100	\$1,018.40
Grants, Levies and Awards			
CBEPS levy	\$2,500	\$2,500	\$2,499.00
PSC levy (see note 10)	\$12,000	\$11,230	\$10,251.58
COGS Awards (see note 5)	\$2,000	\$2,000	\$2,000.00
Total	\$16,500	\$15,730	\$14,750.58
Boards of Examiners			
Canadian Board (CBEPS)	\$500	\$500	\$0
Exams	\$300	\$300	\$200.00
N.S. Board of Examiners	\$500	\$500	\$112.35
Total	\$1,300	\$1,300	\$312.35
Accommodation			
Building Maintenance (see note 13)	\$3,000	\$3,000	\$637.70
Cleaning	\$400	\$400	\$100.45
Insurance	\$3,200	\$3,000	\$3,125.00
Taxes	\$12,000	\$11,500	\$10,163.88
Utilities	\$3,500	\$3,200	\$2,251.31
Total	\$22,100	\$21,100	\$16,278.34

ADMINISTRATION (continued)	2013 Budget (Proposed)	2012 Budget	2011 Actual
Miscellaneous			
Courier	\$400	\$150	\$32.52
GANS Expenses	\$0	\$0	\$9.00
Interest and Bank Charges	\$325	\$250	\$124.97
Penalties & Interest	\$50	\$50	\$37.08
Miscellaneous Expense (see note 12)	\$2,500	\$1,000	\$2,520.23
Refreshments	\$200	\$200	\$0
Total	\$3,475	\$1,650	\$2,723.80
 TOTAL OFFICE EXPENSES	 <u>\$344,181</u>	 <u>\$249,095</u>	 <u>\$213,001.71</u>
 SURPLUS/(DEFICIT)	 \$39	 \$9,745	 \$29,090.83

Notes:

1. If a member is found guilty by the Discipline Committee, costs to a maximum of \$15,000 may be claimed by the ANSLs.
2. The concept of merging SRD and ADMIN was proposed and there was no opposition. Therefore, the 2012 financial statements and the 2013 budget will be reflective of this.
3. In addition to the budgeted convention revenue, \$50 of each member's dues is attributed toward the payment of convention expenses. The total amount for 2013, based on the budget, is \$7,600 (152 x \$50).
4. Rental income includes monthly rent and the power associated with the apartment.
*The apartment has been vacant for a period of time.
5. This is for three awards that are presented annually to students at COGS.
6. Equipment and rental includes maintenance contracts for photocopier, postage system, and postage meter. Also inclusive of repairs, maintenance and annual inspections of equipment

7. Includes legal costs of \$5,000 for the Governance legislation update initiative (legal consultant's fees).
8. Executive expenses are for travel, meals, accommodations etc. incurred by the President, Vice-President and Past President within the province of Nova Scotia to attend zone meetings, executive meetings etc; or for travel out-of-province with council's approval.
9. President's travel is for out-of-province travel of the President or their designate to attend meetings of other associations.
10. The PSC levy is based on \$75.85 per regular member for the first 100, then \$72.95 for the remainder. Dual members ACLS/ANSLS are charged at \$36.48.
$$\begin{array}{r} 100 \times 75.85 = 7,585.00 \\ 26 \times 72.95 = 1,896.70 \\ \underline{25 \times 36.48 = 911.88} \\ 11,952.61 \end{array}$$
11. Professional dues and fees include ANSLS dues, ACLS dues, Development Officers Associate membership & GANS dues for Executive Director.
12. Each year a portion of the HST ITC's for the month of January are disallowed per CRA requirement. This item is included in Miscellaneous Other Expenses and is budgeted for \$2,500.00 in 2013.
13. Building maintenance is comprised of major expenses to repair and/or maintain the association office building.
14. Annual building depreciation.
15. Sticker revenue based on average year sales.
16. The administration assistant position in 2011 was divided into hours for both the SRD assistant and the Administration assistant. This is reflected in the actual for 2011, the financial statement for 2012 and the budget for 2013.
17. The SRD Manager position was vacant for a period of months in 2011 therefore affecting both the actual for SRD Managers expenses and the SRD Managers salary.

SURVEY REVIEW DEPARTMENT

REVENUE

	2013 Budget (Proposed)	2012 Budget	2011 Actual
SRD Plan	---	\$82,000	\$103,260.09
SLC Numbers	---	\$18,000	(included)
TOTAL REVENUE	---	<u>\$100,000</u>	<u>\$103,260.09</u>

EXPENSES

Accounting	---	\$1,000	\$1,033.00
Administration Fee	---	\$11,260	\$11,259.96
Benefits - CPP	---	\$600	\$547.90
- EI	---	\$400	\$251.85
- Workers Compensation	---	\$155	\$134.79
- Medical & Dental	---	\$1,000	\$1,110.00
- Life Insurance	---	\$1,000	\$0
Courier	---	\$250	\$122.45
Equip, Rental & Maintenance	---	\$150	\$0
Interest & Bank Charges	---	\$50	\$0
Manager's Expense	---	\$7,200	\$2,843.36
Miscellaneous	---	\$100	\$0
Office & Computer Equipment	---	\$200	\$48.80
Office Expense	---	\$200	\$129.12
Professional Dues and Fees	---	\$0	\$0
Postage	---	\$1,000	\$0
Salary - Manager (see note 17)	---	\$53,592	\$32,459.38
Salary - Assistant	---	\$16,400	\$16,180.64
Staff Training	---	\$300	\$0
SRD Review Committee	---	\$400	\$0
TOTAL EXPENSES:	---	<u>\$94,257</u>	<u>\$66,121.25</u>
SRD SURPLUS/(DEFICIT)	---	\$5,743	\$37,138.83



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Fences as Evidence

By Don Duffy, BCLS

About five years ago, I wrote an article, entitled “Two Iron Pins and Just One Corner,” which appeared in the March 2007 issue of the *Link*. I explored the subject of survey evidence and how the views of the profession have evolved since I started to practice in British Columbia in 1958.

A recent decision of the BC Court of Appeal, **Phillips v. Keefe, 2012 BCCA 123**, provides further confirmation of the importance of considering old fences in re-establishing corners when there is an absence of original posts.

Phillips and Burke are the owners of Lot 4, Block C, District Lot 30, Group 2, N.W.D., Plan 712 and Brad & Marlene Keefe are the owners of Lot 25 in the same block. Lot 4 fronts on 67th Street in Delta, BC, while Lot 25 fronts on 66A Street. Lot 4 faces east and Lot 25 faces west. The two lots have a common rear boundary, which is the west boundary of Lot 4 and the east boundary of Lot 25. The lots are only about a hundred metres north of the U.S. boundary and three or four hundred metres west of the natural boundary of Boundary Bay.

In his **Reasons for Judgement**, Chief Justice Finch sets out the “surveyor’s hierarchy of evidence”, which he quotes as:

- 1) Natural boundaries
- 2) Original monuments
- 3) Fences or possession that can reasonably be related back to the time of the original survey, and
- 4) Measurements as shown on the plan or stated in the metes and bounds description.

For some years prior to about 1990, all of the rear fences separating the east and west-facing lots in Block C were in a line running up the middle of the block in a north-south direction. In 1990, Warren Barnard, BCLS, surveyed certain lots in Block C, including Lot 4, and concluded that the boundary lines between the adjacent lots in Block C did not correspond with the rear fences. He produced three posting plans and a subdivision plan in accordance with his opinion. Some of the west-facing residents moved their fences approximately 12 feet eastward, based on these plans and posts. Others did not.

When Phillips and Burke purchased their property in 2002, they were aware of Mr. Barnard’s opinion. However, like the previous owner of the property, they decided not to move the fence.

The Keefe’s purchased Lot 25 in September 2007. In November, Mr. Barnard completed a posting plan of Lot 25, which was consistent with his previous opinion. On February 15th, 2008, Mr. Keefe tore down the fence, despite the objections of Phillips and Burke. Phillips and Burke then commenced an action for trespass and damages in BC Supreme Court.

The original subdivision survey of District Lot 30 was completed in 1893 by William S. Jemmett and registered as Plan 712. Like many plans of its vintage, it is not very clear as to evidence and dimensions. Although the description of the parcel that Mr. Jemmett was subdivision commences at the high water mark of the bay, Plan 712 shows a straight line as the east boundary of the plan and a parallel wavy line at an undefined distance to the east of this as the high water mark of the bay. There is also uncertainty as to the width of 67th street, shown on Plan 712 as 30 links, or 19.8 feet wide. A 1928 survey, carried out by D.J. McGugan, BCLS, shows a width of 31.68 feet.

Phillips and Burke retained Ron Scobbie, BCLS and William Chapman, BCLS, to evaluate the evidence on their behalf and both land surveyors testified as experts at the trial. Both land surveyors found the old fence to be the best evidence of the location of the boundary.

Evidence as to the long term existence of the fence was provided by Susan Olnyk, who had lived on an adjacent lot, and was also able to recall having been told by her mother that the fence had been there for a long time. Aerial photographs dating from 1949, which showed the fence, were also entered in evidence.

Having reached a decision in favour of Phillips and Burke, the trial judge assessed damages for trespass against the Keefe’s of \$16,438.72. She also assigned punitive damages of \$5,000.00 for the “high handed” manner in which the Keefe’s had behaved in removing the fence. Chief Justice Finch upheld the amount of the trespass damages, but reversed the punitive damage award.

As a BC Court of Appeals decision, *Phillips V. Keefe* is binding on future decisions of the lower courts and is an important precedent for consideration in evaluating survey evidence.

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Acquiescence

by

Knud E. Hermansen¹ and Robert A. Liimakka²

Acquiescence, similar to the doctrines of estoppels and practical location, is an equitable doctrine that will fix the location of a common boundary in a location that may differ from the location where a surveyor would place the common boundary based on the rules of construction.

The doctrine of acquiescence is known in some jurisdiction as a consentable boundary. Some states have equated it to a boundary by implied agreement. The motivation for a court recognizing a boundary different from the record is to let boundaries that appear to have been settled to be settled. A person that sleeps on their rights should not be allowed to demand with passion what they have for so long ignored with indifference.

The doctrine of acquiescence generally requires three conditions exist. First, the record boundary must be vague or unknown. The purpose for this element is to prevent persons from usurping the legal requirement that parties alter the location of their record boundaries by written instrument. By requiring the boundaries be vague or unknown, the legal fiction is created that the parties-in-interest have not altered the location of their deed boundaries. Rather, the parties-in-interest have fixed a definite location for the boundaries described in their respective deeds. This fiction survives even though a surveyor would place the boundary with some confidence in a different location than where the boundary location has been historically recognized.

A second condition require some party act by fixing the boundary in a location by definite monumentation, or occupation that appears and is accepted as marking the boundary. The boundary so fixed by the one party cannot be based on fraud or deceit. In other words, the party in placing the monuments or barriers must have reasonably believed the objects are placed on the common boundary.

The third condition requires that the non-acting party recognize the barriers or monuments as marking the boundary. Recognition is sufficient if the individual does not contest the location.

The fourth and final condition is that the three conditions exist for some length of time that a reasonable person would have been expected to object or act had they disagreed. A long length of time is not crucial if the location of the record boundary is otherwise vague or difficult to locate and the location of the monuments or barrier is reasonable to the location of the record boundary.

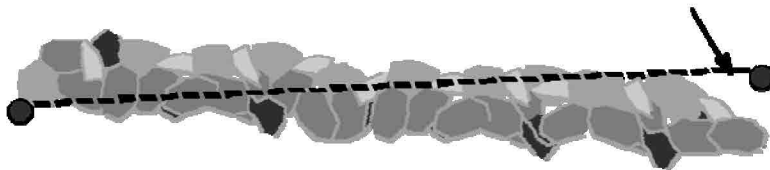
¹ Knud is a professor in the Surveying Engineering Technology program at the University of Maine. He is also a consultant on boundary disputes, alternate dispute resolution, land development, real property law, and access law.

² Rob is a professor in the Surveying Engineering Program at Michigan Technological University. He is a professional surveyor and holds a MS in Spatial Information Science and Engineering from the University of Maine, Orono and is currently working on a doctorate in civil engineering.

The following situation may give rise to a boundary by acquiescence:

Bill and Jane live next to each other in an old subdivision. Bill does his best to locate the common boundary he shares with Jane in order to build a rock wall. He makes measurements and sets stakes, eventually building the rock wall along a line between the stakes. Jane watches Bill make the measurements to locate the boundary and observes Bill construct the wall. For many years thereafter, Jane and Bill respect the wall as marking the common boundary. Twelve years later, Jane needs a survey for her property in order to build a garage. In performing the survey for Jane, the surveyor gathers considerable site and record information. Most of the original monuments have disappeared. The surveyor prorates the distances between found monuments that are located several hundred feet away with the following results shown in the diagram:

Boundary by Proration



In the above situation, the court would be reluctant to adopt the boundary established by prorated distances over the location of the stone wall that has been accepted as the boundary for some length of time. The wall is located within reason to the record boundary. It has been accepted as the boundary for over 12 years. The upheaval and disruption in the neighborhood that would result with adopting lines that differ from the long standing occupation flies in the face of equity.

It is reasonable for a surveyor to adopt an occupation line as the boundary where the record boundary location is vague, difficult to fix, or a reasonable location of the record boundary is on or near the occupation line. Justice Cooley remarked on this very situation in the late 19th century using these words:

Occupation, especially if long continued, often affords very satisfactory evidence of the original boundary when no other is attainable; and the surveyor should inquire when it originated, how, and why the lines were then located as they were, and whether a claim of title has always accompanied the possession, and give all the facts due force as evidence. Unfortunately, it is known that surveyors sometimes, in supposed obedience to the state statute, disregard all evidences of occupation and claim of title, and plunge whole neighborhoods into quarrels and litigation by assuming to establish corners at points with which the previous occupation cannot harmonize. It is often the case when one or more corners are found to be extinct, all parties concerned have acquiesced in lines which were traced by the guidance of some other corner or landmark, which may or may not have been trustworthy; but to bring these lines into discredit when the people concerned do not question them not only breeds trouble in the neighborhood, but it must often subject the surveyor himself to annoyance and perhaps discredit, since in a legal controversy the law as well as common sense must declare that a supposed boundary long acquiesced in is better evidence of where the real line should be than any survey made after the original monuments have disappeared. Thomas M. Cooley, Chief Justice, Supreme Court of Michigan, 1864-1885 in *The Judicial Functions Of Surveyors*.

Where the surveyor is convinced the location established for the record boundary is different from the markers or barriers acquiesced to by neighbors, the surveyor should report both locations to the client. In reporting both locations, the surveyor would be wise to inform the client that the acquiesced boundary may in fact be determined to be the ownership boundary based on the doctrine of acquiescence.

The surveyor may want to consider wording such as the following in a letter or report to the client when accepting monuments or barriers by the doctrine of acquiescence:

I have established your common boundary to coincide with a stone wall that exists between you and your neighbor. While the stone wall does not coincide with the measurements that were proportioned between existing monuments found beyond your common boundary, it is my opinion that the small difference between the measurements prorated and the measurements made to the wall is insufficient to overcome the equity that courts often find compelling when recognizing occupation lines that were allowed to exist for some time. The courts are often persuaded to leave things settled when it was believed by the parties to have been settled some time ago. You are, of course, at liberty to reject my opinion and advocate that your boundary be the prorated line. Your neighbor may do so as well. In each case, I will be willing to explain both the proration method I used and my belief that the stone wall is ultimately the monument to the common boundary.

Where the surveyor has come to the conclusion that the location of the record boundary is different from monuments or boundaries that were believed to be the boundary, the following example may be used to illustrate the surveyor's opinion as communicated to the client:

I have determined the common boundary to be a line fixed between two monuments. The line was established by dividing the excess distance measured between the two nearby monuments in proportion to the distances shown on the original subdivision plan between the two monuments. It is not unusual to discover that the actual distance measuring in the field is different from the distance shown on the plan, especially given the age of the original survey. The current surveying technology and education of the surveyor far exceed those of the earlier surveyors.

My opinion places the common boundary in a location different from the wall that exists near this boundary. Although the method I have used to reestablish the common boundary was established by the court as a rule of construction, I feel compelled to warn you that the same court will often adopt occupation lines such as the wall to be the ownership boundary contrary to the record measurements. While I am confident in the methods I have employed in fixing your boundary I would be foolish to predetermine where a court would place the boundary if asked to choose between the boundary I have established and the existing stone wall. I believe you would be wise to consult with legal counsel before taking any action in regard to moving the wall or asking the neighbor to do so.

Acquiescence is similar to the equitable doctrine of practical location. The major difference is that practical location requires the parties-in-interest all participate, while acquiescence requires only one party act while the other parties-in-interest acquiesce to the acts of the one party.

** This article has been reprinted and is available at <http://www.umaine.edu/set/svt/Articles/index.html>*



Incorporated Partners
Lawrence J. Roche, CA
Steven R. Gray, CA

REVIEW ENGAGEMENT REPORT

TO THE PRESIDENT, COUNCIL AND
MEMBERS OF THE ASSOCIATION
OF NOVA SCOTIA LAND SURVEYORS

We have reviewed the balance sheet of The Association of Nova Scotia Land Surveyors as at December 31, 2011 and the statements of operations and accumulated operating surplus and cash flow for the year then ended. Our review was made in accordance with Canadian generally accepted standards for review engagements and accordingly consisted primarily of enquiry, analytical procedures and discussion related to information supplied to us by the association.

A review does not constitute an audit and consequently we do not express an audit opinion on these financial statements.

Based on our review, nothing has come to our attention that causes us to believe that these financial statements are not, in all material respects, in accordance with Canadian generally accepted accounting principles.

Rector Colavecchia Roche

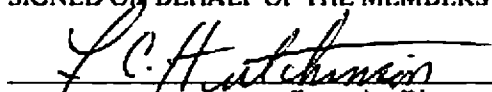
CHARTERED ACCOUNTANTS

June 21, 2012

THE ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS
UNAUDITED BALANCE SHEET AS AT DECEMBER 31, 2011

	ASSETS	2011 \$	2010 \$
CURRENT ASSETS			
Cash		152,574	83,254
Accounts receivable -			
Administration		2,113	14,146
Survey review department		<u>20,515</u>	<u>20,321</u>
		175,202	117,721
LAND AND BUILDING (note 4)		<u>91,245</u>	<u>93,930</u>
		<u>266,447</u>	<u>211,651</u>
	LIABILITIES		
ACCOUNTS PAYABLE AND ACCRUED LIABILITIES		4,276	15,694
	MEMBERS' EQUITY		
ACCUMULATED OPERATING SURPLUS		<u>262,171</u>	<u>195,957</u>
		<u>266,447</u>	<u>211,651</u>

SIGNED ON BEHALF OF THE MEMBERS


 Executive Director



THE ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS
UNAUDITED STATEMENT OF OPERATIONS AND ACCUMULATED OPERATING SURPLUS
FOR THE YEAR ENDED DECEMBER 31, 2011

	Budget 2011 \$	2011 \$	2010 \$
REVENUE			
General operations (schedule A)	235,770	223,146	216,276
Other operations (schedule A)	<u>12,160</u>	<u>18,946</u>	<u>18,541</u>
	<u>254,930</u>	<u>242,092</u>	<u>234,817</u>
EXPENSES			
Administration (schedule B)	210,593	177,918	209,889
Board of Examiners (schedule C)	1,300	312	128
Committees (schedule B)	11,400	1,018	2,037
Grants, levies and awards (schedule C)	15,230	14,751	21,971
Miscellaneous (schedule C)	2,450	2,739	2,318
Office accommodations (schedule C)	<u>20,100</u>	<u>16,278</u>	<u>16,901</u>
	<u>261,073</u>	<u>213,016</u>	<u>253,244</u>
OPERATING SURPLUS (DEFICIT) BEFORE THE FOLLOWING	(6,143)	29,076	(18,427)
SURVEY REVIEW DEPARTMENT (schedule D)	<u>6,143</u>	<u>37,138</u>	<u>17,645</u>
OPERATING SURPLUS (DEFICIT) FOR THE YEAR	<u>-</u>	66,214	(782)
ACCUMULATED OPERATING SURPLUS - BEGINNING OF YEAR		<u>195,957</u>	<u>196,739</u>
ACCUMULATED OPERATING SURPLUS - END OF YEAR		<u>262,171</u>	<u>195,957</u>

THE ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS
 UNAUDITED STATEMENT OF CASH FLOW
 FOR THE YEAR ENDED DECEMBER 31, 2011

	2011 \$	2010 \$
CASH FLOWS FROM OPERATING ACTIVITIES		
Operating surplus (deficit) for the year	66,214	(782)
Adjustments to operating surplus not involving cash - Amortization	<u>2,685</u>	<u>2,797</u>
	68,899	2,015
Changes in non-cash working capital -		
Decrease (Increase) in accounts receivable	11,840	(14,930)
Increase (Decrease) in accounts payable	<u>(11,419)</u>	<u>1,927</u>
INCREASE (DECREASE) IN CASH	69,320	(10,988)
CASH - BEGINNING OF YEAR	<u>83,254</u>	<u>94,242</u>
CASH - END OF YEAR	<u><u>152,574</u></u>	<u><u>83,254</u></u>

THE ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS
UNAUDITED NOTES TO FINANCIAL STATEMENTS
FOR THE YEAR ENDED DECEMBER 31, 2011

1. PURPOSE OF THE ORGANIZATION

The Association of Nova Scotia Land Surveyors was incorporated as a professional organization under the Land Surveyors Act of Nova Scotia to establish and maintain standards of the profession.

2. ACCOUNTING POLICIES

Capital Expenditures

Commencing on October 1, 1993, expenditures for furniture and equipment are expensed as incurred. In common with many not-for-profit organizations, furniture and equipment are recorded as current expenditures in the year in which they are incurred rather than capitalized and amortized over their useful lives.

Amortization

The building is amortized using the declining balance method at an annual rate of 4%. In the year of acquisition, amortization is calculated at one-half of the annual rate.

Revenue Recognition

Revenue is recorded in the period that it is due and collectible.

3. FINANCIAL INSTRUMENTS

The fair value of cash, accounts receivable and accounts payable is approximately equal to their carrying values due to their short-term maturity date.

4. LAND AND BUILDING

	2011			2010
	Cost \$	Accumulated amortization \$	Net \$	Net \$
Land	26,798	-	26,798	26,798
Building	<u>111,565</u>	<u>47,118</u>	<u>64,447</u>	<u>67,132</u>
	<u>138,363</u>	<u>47,118</u>	<u>91,245</u>	<u>93,930</u>

**THE ASSOCIATION OF
NOVA SCOTIA LAND SURVEYORS**
REG. FOR
COLLEGE CREDIT
ROCHESTER
UNIVERSITY

THE ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS

UNAUDITED NOTES TO FINANCIAL STATEMENTS

FOR THE YEAR ENDED DECEMBER 31, 2011

5. FUTURE DIRECTION OF STANDARDS FOR NOT-FOR-PROFIT ORGANIZATIONS

The CICA has determined that not-for-profit organizations (NPOs) do not meet the definition of "publicly accountable" organizations for purposes of consideration of International Financial Reporting Standards (IFRS). This means that NPOs were not required to adopt IFRS in 2011. In December 2010, the CICA approved the incorporation of the standards set out in Part III of the Handbook as the accounting standards applicable to NPOs. Part III comprises the core standards, often referred to as the 4400 series of the CICA Handbook, which will remain the primary source of Canadian GAAP for NPOs. In addition, an NPO would be directed to Part II, the accounting standards for private enterprises, to the extent they are of general applicability or pertain to the NPOs circumstances when there is no relevant standard in Part III. The CICA has stated that any NPO could elect to follow IFRS, if that approach meets the needs of the users of its financial statements. It is important to note that although Canadian publicly accountable enterprises were required to adopt IFRS on January 1, 2011, NPOs were not required to make a choice or to follow the same transition schedule. First-time adoption of Part II of the Handbook is mandatory for financial statements relating to fiscal years beginning on or after January 1, 2012. Management has determined that these changes will have no material impact on the financial statement presentation.

	Budget 2011 \$	2011 \$	2010 \$
GENERAL OPERATIONS			
Membership dues -			
Regular	180,000	183,482	169,679
Retired	4,200	4,146	4,180
Associate	600	240	330
Student	<u>2,640</u>	<u>2,421</u>	<u>2,506</u>
Total membership dues	187,440	190,289	176,695
Certificates of authorization	5,200	5,025	5,000
Convention receipts	20,000	13,899	16,116
Discipline committee	-	-	10,000
Interest income	200	498	265
Miscellaneous	700	575	437
Nova Scotian Surveyor	5,000	3,255	1,963
Seminars	<u>17,230</u>	<u>9,605</u>	<u>5,800</u>
	<u>235,770</u>	<u>223,146</u>	<u>216,276</u>
OTHER OPERATIONS			
Rental income	7,100	6,796	6,536
SRD Administration fee	11,260	11,260	11,140
Service charges	<u>800</u>	<u>890</u>	<u>865</u>
	<u>19,160</u>	<u>18,946</u>	<u>18,541</u>


THE ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS

SCHEDULE B

UNAUDITED SCHEDULE OF EXPENSES

FOR THE YEAR ENDED DECEMBER 31, 2011

	Budget 2011 \$	2011 \$	2010 \$
ADMINISTRATION			
Accounting service	2,000	5,327	2,125
Advertising	1,508	-	-
Amortization	2,600	2,685	2,797
Benefits - medical, dental and life	6,500	2,576	4,042
CPP, EI and workers' compensation	6,155	5,596	6,661
Council meetings	6,000	2,572	4,348
Equipment purchases	500	3,458	640
Equipment rental and maintenance	2,250	536	2,457
Executive director expenses	1,200	1,504	1,043
Executive expenses	400	87	372
General meeting - convention	25,000	24,832	21,101
Legal services	10,000	6,854	36,075
Nova Scotian Surveyor	6,500	2,145	4,505
Office supplies	4,000	1,539	3,170
Postage	5,000	2,819	3,911
President's travel	18,000	20,419	14,395
Printing	1,000	108	1,426
Professional dues and fees	1,360	1,495	644
Salary - Executive director	67,200	67,200	66,131
- Office administrator	31,500	16,971	30,858
Seminars	7,620	6,067	-
Staff training and education	1,000	449	240
Telephone, fax and internet	1,800	1,702	1,789
Zone meetings	1,500	977	1,159
	<u>210,593</u>	<u>177,918</u>	<u>209,889</u>
COMMITTEES			
Administrative review	400	-	-
Complaints	1,500	119	557
Continuing education	500	-	-
Discipline	4,000	329	87
Governance	1,000	214	1,192
Other	-	-	43
Public awareness	2,000	144	-
SRD Advisory	500	-	-
Strategic planning	500	-	158
Wetlands	1,000	212	-
	<u>11,400</u>	<u>1,018</u>	<u>2,037</u>


 RECTOR
COLANGELO
ROCHE

THE ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS

SCHEDULE C

UNAUDITED SCHEDULE OF EXPENSES

FOR THE YEAR ENDED DECEMBER 31, 2011

	Budget 2011 \$	2011 \$	2010 \$
GRANTS, LEVIES AND AWARDS			
C.B.E.P.S. levy	2,000	2,499	3,228
C.C.L.S. grant	-	-	5,000
Professional Surveyors Canada	11,230	10,252	11,743
C.O.G.S. awards	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>
	<u>15,230</u>	<u>14,751</u>	<u>21,971</u>
 BOARD OF EXAMINERS			
Canadian Board (CBEPS)	500	-	-
Examinations	300	-	-
N.S. Board of Examiners	<u>500</u>	<u>312</u>	<u>128</u>
	<u>1,300</u>	<u>312</u>	<u>128</u>
 OFFICE ACCOMMODATIONS			
Building maintenance	2,000	638	330
Cleaning	400	100	188
Insurance	3,000	3,125	3,035
Taxes	11,500	10,164	10,546
Utilities	<u>3,200</u>	<u>2,251</u>	<u>2,802</u>
	<u>20,100</u>	<u>16,278</u>	<u>16,901</u>
 MISCELLANEOUS			
Courier	150	33	156
GANS administration	-	9	-
Interest and bank charges	250	124	247
Other	1,800	2,536	1,796
Penalties and interest	50	37	-
Refreshments	<u>200</u>	<u>-</u>	<u>119</u>
	<u>2,450</u>	<u>2,739</u>	<u>2,318</u>

THE ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS
 UNAUDITED STATEMENT OF SURVEY REVIEW DEPARTMENT
 FOR THE YEAR ENDED DECEMBER 31, 2011

SCHEDULE D

	Budget 2011 \$	2011 \$	2010
REVENUE			
Stickers and SLC numbers	<u>100,000</u>	<u>103,260</u>	<u>106,548</u>
EXPENSES			
Accounting service	1,000	1,033	2,854
Administration fee	11,260	11,260	11,140
Administrative review committee	400	-	-
Assistant's salary	16,000	16,181	15,436
Benefits - medical, dental and life	2,000	1,110	1,124
CPP, EI and workers' compensation	1,155	935	1,012
Equipment maintenance and rental	150	-	-
Equipment purchases	200	49	352
Interest and bank charges	50	-	-
Manager's contract fee	53,592	32,459	49,922
Manager's expenses	7,200	2,843	6,810
Miscellaneous	100	-	20
Office, postage, printing and courier	450	252	233
Staff training and education	<u>300</u>	<u>-</u>	<u>-</u>
	<u>93,857</u>	<u>66,122</u>	<u>88,903</u>
OPERATING SURPLUS	<u>6,143</u>	<u>37,138</u>	<u>17,645</u>

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(877) 424-4545

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Dieppe, NB E1A 6P8
(855) 382-4456

Newfoundland & Labrador
980 Kenmount Rd Unit 3
Paradise, NL A1L 1N3
(888) 747-1133