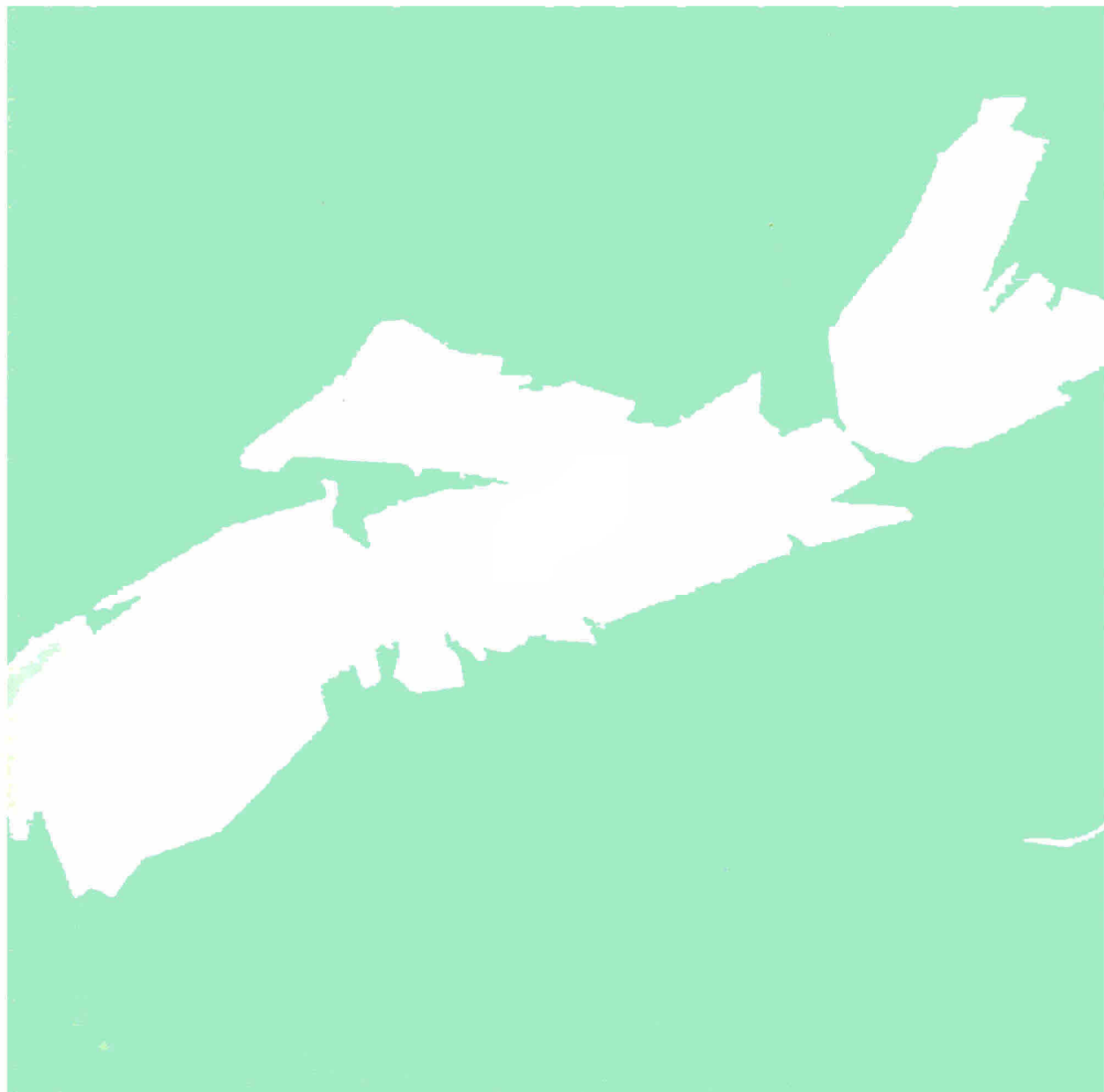


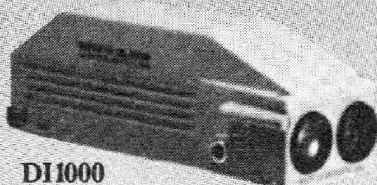
# The NOVA SCOTIAN SURVEYOR



SUMMER  
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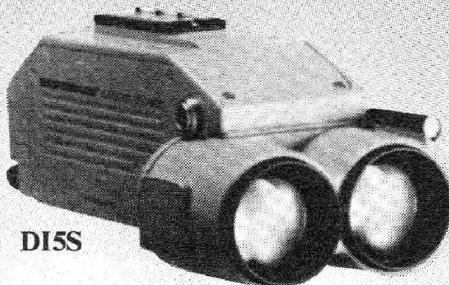
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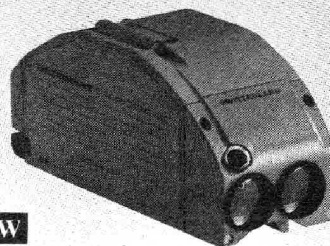
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# The NOVA SCOTIAN SURVEYOR

*Published four times a year by*

**THE ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS INCORPORATED**

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\* \* C O N T E N T S \* \*

Views expressed in articles appearing in this publication are those of the authors and not necessarily those of the Association.

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Council has held two full day meetings, the fifth and sixth of the year, since the last issue of this publication. As I begin to prepare this quarterly report I feel that it is time for me to be less philosophical and instead report on the actions and the deliberations of Council and Committees. Since the minutes of the last two Council Meetings have been ten and twelve pages, I will for the sake of brevity, try to summarize below some of the issues that have been considered.

-The Regulations Committee, with advice from our solicitor, is working on revisions to the Regulations regarding the admission of new members. These Regulations of the Board of Examiners will be spelled out in detail, in order that changes to the Act may not be necessary.

-Council has been made aware that the new Crown Lands Act of 1987, contains three sections pertaining to Land Surveying. A letter from the Director of Surveys will be going out to all members regarding the interpretation of this Act. Under the Act, when any surveying is carried out adjacent to Crown Lands, the surveyor is to advise the Director of Surveys in advance and a copy of the plans and field notes must be submitted to him upon completion of the project.

-The Councillors of Zone 6 are negotiating with the Planning Departments of that Zone, to reach agreement on a common format for the approval stamp space requirements on subdivision plans.

-The Statutes Committee has been asked by Council to investigate and work toward having the profession of Land Surveying included in Section 2b of the Nova Scotia Trade Union Act. Land Surveying not being listed as a profession in this section means that Land Surveyors in some places of employment might be forced to join a union.

-As part of the Association Public Awareness Programme, Council has approved the establishment of the Trigstar Program in ten Halifax Metro area high schools. This will be a pilot project in cooperation with COGS and may be expanded to other high schools throughout the province in coming years. The purpose of the Trigstar Program is to promote the study of trigonometry and to demonstrate practical applications of its usefulness within the land surveying profession.

-Council considered a request from AMLSE, not to distribute lists of Land Surveyors carrying liability insurance due to the lists becoming outdated. Presently, the Secretary answers queries by phone as to who is carrying liability insurance.

-Council has asked the Statutes Committee to investigate the possibility of a Statute of Limitations on the services provided by Land Surveyors. There is a real concern that we are liable for our work to the grave and beyond. Other provincial associations are studying this matter, and it is understood that Quebec has recently achieved a ten year limit of liability for Land Surveyors professional services.

-Council moved to budget a \$2500 contribution, requested by the CISM 1989 Convention Committee for the Annual Meeting to be held in Halifax June 6 to 9, 1989. This grant is to be made conditional on one of the events being sponsored in the name of the Association, and that reimbursement is expected if the overall convention turns a profit.

-Council has moved the establishment of a \$50 annual prize in the Survey Office Technician Program at COGS. This will complement the prizes the Association provides in the other surveying programs.

-Council has approved a policy specifying that the expenses of the Secretary and his wife, while he is working at the Annual Meeting, be paid out of Association funds. This has not been the case in the past.

-A submission was recently prepared by Council to the Law Amendments Committee concerning Bill #80, which is an Act Respecting Storm Water Drainage in the Municipality of the County of Halifax. This submission was presented to the Committee by a member of our Political Action Committee. Since this Act is enabling legislation, the really contentious parts will be dealt with through Regulations, so follow-up action may be required later.

-Considerable discussion has been generated at recent Council meetings in regards to ongoing legal actions by the Association of Professional Engineers of Nova Scotia against members of ANSLs. Council has moved that a policy statement prepared on Land Surveying and Engineering Responsibilities in subdivisions where street construction is proposed, be handed back to the ANSLs section of the Surveyor/Engineer Liaison Committee for firming up with our solicitor.

-After due consideration, Council has come up with a policy to handle situations which may arise if one of the members is charged with an offence where the outcome could have broad implications on other members. This policy will be circulated to the membership as a policy statement of Council.

-The CCLS is presently developing a national self-funded professional liability insurance program, with hopes that all provincial associations will join. An actuarial study is being commissioned by CCLS to develop the cost of this program. A committee of ANSLs Council has been established to study the proposal, make recommendations and prepare an information package for the membership. It may be that in order to join this program, the Association will have to reconsider mandatory liability insurance, and this aspect will also be considered by the committee. It appears that requirements have changed since the last time mandatory insurance was considered by the Association, in that members not in practice may not need to be covered.

-Council has learned of a recent directive from the Canadian Bar Association, instructing its members not to deal with Land Surveyors who do not carry professional liability insurance.

-Following a report from the Survey Standards Committee, Council has moved to initiate complaints on behalf of the Association against two members.

-Council has approved the preparation of a series of Bulletins, on Council policy and other matters, which will be mailed to the membership at appropriate times. These will be on 8½ x 11 paper, will be three hole punched, and should be filed in an Association policy manual or posted in a conspicuous location for the information of all concerned.

-Council has directed the President to write a letter to the Board of Directors of the Land Registration and Information Service, to impress upon them our concerns regarding the degeneration of the Nova Scotia coordinate survey monuments and to request that more emphasis be put on control monument maintenance.

-The Executive of Council are presently taking the necessary steps to prosecute an individual for practicing professional land surveying in contravention of Section 23 of our Act. The person in question is not a member of the Association.

-Council is presently giving serious consideration to the establishment of a policy on surveyor's mortgage/location certificates. There seems to be mounting support for the elimination of the "Surveyors Certificate" and replacing it with a fully researched survey. There certainly is a deep concern that any land surveyor who would provide an unresearched or "drive-by" certification is playing Russian roulette and eventually will have severe liability claims against him.

Most other provinces have already set standards in regards to surveys for mortgage purposes which include, or closely approach, a full survey of the property.

The subject of mortgage certifications was addressed at the Annual Meeting of CCLS in June, when one of the lenders requested that a common national policy be established. Following considerable discussion on how to approach this subject, it was decided that representatives of all the provincial associations would get together and develop a set of minimum requirements or standards which would be appropriate in all provinces. This was done in a marathon session, and the resulting guideline was unanimously adopted by the Directors, as minimum requirements for the Surveyor's Real Property Report (this new name replaces various others currently in use). CCLS will now approach various lenders promoting this policy as a national minimum standard.

After consideration of the CCLS guideline, the ANSLs has moved to adopt it as Council Policy, while continuing to give consideration to higher standards of our own.

-Many members of the Association share the feeling that Council must move to have a full time salaried administrative officer as quickly as possible. The workload of managing the organization is increasing to the point that our half-time Executive Secretary has been putting in five to six hours per day this year and other members are volunteering countless hours. As President, I estimate that I will give approximately 800 hours to Association related activities this year, and I see so many other issues that need to be addressed.

The potential workload for an administrative officer is enormous in the areas of complaints, continuing education and public awareness. We must do much more in these areas if we wish to promote a better image of the Association and enhance the professional status of the Land Surveyor. We must do more to promote business opportunities for the benefit of all of our practicing members and finally, we must consider the running of the Association office to be the business operation that it is and insure that it performs in an efficient and productive manner.

It is no longer reasonable for us to expect our volunteer Executive and Committees to do all the work that will be required in these critical areas. We must lessen the workload of our elected Executive if we are to attract capable dedicated members willing to stand for office. Remember, these people still have to work to earn a living too. The time has come when we will have to pay an administrative officer to do the organizational and management tasks, and to do them within the appropriate time frame. Although we appreciate the considerable efforts of all of our volunteers, and will continue to need their help, we cannot afford to wait on urgent issues, for committees to work at their own convenience.

Another matter under consideration by Council at this time, is the need for a better Association office accommodation. As everyone is aware, we are operating out of a cramped location, which affords little room for even small committee meetings. We need a larger, more professional office facility with easy access from out of town, parking, a meeting room, a private office, a general office, and access to food nearby.

A preliminary report to the last Council meeting of an investigation carried out by Councillors Keith AuCoin and Ken Whalen, indicates that it is more economical to purchase than lease office space. This investigation is to continue and will zero in and report on the purchase aspect at the next meeting of Council in August.

-The Survey Profession Committee will be distributing a questionnaire in the near future to all members, to obtain opinion and input, in order to finalize the Long Range Plan of Association objectives to the end of this century. I implore all members to respond to the questionnaire so that the Committee and Council can respond to your wishes and proceed to take action in new directions and progress toward planned goals.

-The Executive of Council has begun preparation of the operating budget for the coming fiscal year. The intention is to circulate an information package on the proposed financing of planned actions, in order that the membership will have the opportunity to become fully informed prior to the vote on the budget at the Annual Meeting. Naturally, new programs will cost money, so members should anticipate and consider an increase in annual membership dues while considering approval of the budget.

-We have just received an excellent article on "Right of Entry", prepared by Lorraine Petzold of the Association of Ontario Land Surveyors. Although written for use in Ontario, this article will be distributed here in Nova Scotia. The article contains much which is applicable here since the legislation is similar, so I would strongly advise all members actively engaged in Surveying to read and heed. We can still do much to enhance our professional image to our clients and the public.

-A general seminar on legal issues was held in May by the Continuing Education Committee. Two Councillors individually organized seminars in their own zones on Income Tax changes and on Mortgage certifications. All these seminars provided an excellent opportunity for the membership to update their professional knowledge.

-The Convention '88 Committee has met, and preparations for the Annual Meeting, November 17 to 20, in Truro, seem to be well in hand. The theme of the Convention this year will be "Expanding Our Horizons". I would encourage all members to come and hear some of the options that are open to the Land Surveying Profession in the coming years, and be prepared to give input and vote on matters which will concern your own way of life.

David C. Clark, NSLS  
President

\*\*\*\*\*



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Pico weighs no more than 22 lbs. This makes it less than half the weight of ordinary gasoline-powered rock drills like the familiar Pionjär and Cobra. Its capacity is naturally lower, but not as low as you would expect. For example, the Pico will drill a hole of 1" diameter in granite at a rate of 4"/min. The maximum practical drilling depth is 3'.

The diaphragm carburetor permits it to work freely in all positions—even straight upwards. And thanks to its low weight, this is also a practical possibility.

With the function selector you change over in an instant from drilling to breaking.

The thyristorized ignition system, being breakerless, is unaffected by moisture and dirt. It also enables you to work efficiently with the Pico at high altitudes: practical tests have been made at up to 9000' in the Alps.

The machine is well-balanced and can easily be carried by the front handle, which is otherwise used e.g. in drilling, breaking, tamping and digging.

If you have a long way to walk or the going is tough, you can carry the machine on your back in a special harness, where there is also room for tools.



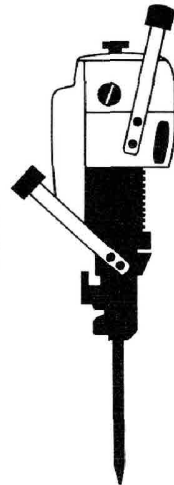
*Atlas Copco's Pico motor drills are popular units with the Bedford Institute chart makers. They are easy to move by helicopter from ship to shore; easy to carry to where they are needed to drill holes to set markers. Here is a Pico on survey location with the Institute.*

### Mode of operation.

The Pico 20 is powered by a single-cylinder air-cooled two-stroke engine with reverse-flow scavenging. The machine operates according to the opposed-piston principle—both the engine piston and the hammer piston work in the same cylinder. The engine piston is connected via the connecting rod to the crankshaft unit and flywheel.

The hammer piston travels freely in the cylinder and its working cycle is automatically synchronized.

The machine is equipped with a diaphragm carburetor, which permits work in any position. The ignition system is of the breakerless thyristor type.



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Ignition system	Thyristor type breakerless
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<b>Dimensions and weights</b>	
Tool chuck	4 1/4" x 7/8"
Weight	22 lbs.
Machine: length	22"
<b>Capacity</b>	
Drill steel rotation	150 rpm
Max. drilling depth	3'
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First, I would like to apologize for the delay between the last issue of "The Surveyor" and this issue. Summer seems to be a difficult time to accomplish all that we would like to in the time available. Nevertheless, I think this issue will prove to be an informative and interesting one, and we welcome your comments.

In recent weeks the editorial staff of the Nova Scotian Surveyor has given serious consideration to changing the design and format of "The Surveyor". We are looking into more up-to-date publication methods (ie. Desktop Publishing) in the hope of providing our readers with a more professional looking journal. This represents a dramatic change in our current production methods, which have been in use for many years.

Of course, this will not be accomplished overnight as many factors such as cost, equipment, personnel training, etc. have to be considered. Perhaps within the next year, we will be able to achieve this modernization.

Any improvement in design and format should also be accompanied by an improvement in content. We hope that our readers will be encouraged to submit papers, articles, news items, photographs or any other item which may be of interest. The continued success of our publication depends on this. We look forward to the task that lies ahead and we look forward to receiving your ideas and suggestions.

Michael J. Crant  
Editor

\*\*\*\*\*

NOTICE  
TO  
COUNCILLORS AND COMMITTEE CHAIRMEN

Our next issue (Fall '88) is our "convention" issue. Would you please submit your annual reports to the Association office no later than September 30th to ensure that they are all included in "The Surveyor".

\*\*\*\*\*



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## letters to the editor

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Dear Sir,

I am somewhat bemused by Mr. Giovanetti's article in the Spring issue of the Nova Scotian Surveyor (volume 47 #130). I am equally amazed at the lack of editorial correction in a professional journal. While there are obvious problems with presentation and style that may be overlooked, the lack of logic and profusion of non sequiturs does deserve comment.

The statement that graduates of the College of Geographic Sciences have been unable to become NSLS's unless they receive further training is not correct. Indeed, you only have to look at one of your newest members, #596, to see what can be done with home study. In addition, the statement that many of these graduates will not further their education is also incorrect -- the September 1987 class of surveyors at UNB included 72% of the May 1987 graduating diploma class at COGS. This goes along with the beliefs of all concerned that sound graduates from COGS should use credits in place to transfer to UNB.

I would have preferred if Mr. Giovanetti had given a reasoned argument of the pros and cons of his statement "most work is done for the surveyor by survey technicians and technologists." Further, I am not clear what a semi-professional is -- generically I would suggest that such a creature is just as capable of existing as a half-pregnant woman -- one is either a professional or not. We have enough problems in this "profession" of ours with non professional acts without introducing the complicating parameter of semi-professionalism.

I am fascinated by the statement "most of the work is performed by the surveyor's support staff. Therefore in order to further protect the surveyor's position ..." What position? This must be a modern version of the well known philosophical argument of reductio ad absurdum. Is this protectionism à la Reagan, or is it an acknowledgement that there is something in need of protection, and if so, what can it be?

Why should one re-establish a survey using the original equipment (Section 1.1, page 47)? This statement cries of a lack of knowledge of the basic concepts of re-establishment itself. The line is not a function of the equipment used, it is a function of the monuments placed -- one is re-establishing the boundary, not the accuracy of the survey.

The paragraph on page 50 requires much more comment and thought, while figure 5 does little to convince me that this is a technological team.

The first paragraph of section 2.1.1 begs for expansion and elucidation -- after all, this is one of the major problems facing our profession -- who will take responsibility for land information management? Surveyors certainly have not declared themselves in this area. Again, why should "the land surveyor acquire a survey engineer to perform pre-engineering work"? What is wrong with engineers "acquiring" land surveyors to provide boundary services? And surely the concept of acquisition is not correct -- it is here the team should form. I am also not convinced that a survey engineer is legally entitled to practise design engineering -- it falls outside his "realm of expertise."

The statement (p. 54) that "at sea the boundary is ascertained by coordinates" shows a lack of understanding of what happens once a monument (the well) is placed at sea. See, for example, the Manual of Instructions for the Survey of Canada Lands.

11

I would suggest that the statement on page 55 -- "The technical support staff will be comprised of computer science specialists and surveying technologists. These individuals will provide the legal surveying profession with the engineering requirements for municipal subdivision design and construction techniques" -- goes against the thesis developed by the author earlier that such services will be supplied by a surveying engineer. It shows a basic lack of understanding of the statutory obligations of engineers and surveyors, and must come as poor consolation to member #279 who, it is indicated in the same volume, is having a slight problem with APENS.

I apologize for the brevity of my analysis. I know the editor has problems filling the journal with suitable material -- a careful reading of this presentation should provide incentive for members to fill the journal.

Yours faithfully,

Dr. D.F. Woolnough  
Head, Survey Department  
COGS

---

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## WHO REALLY "OWNS" THAT SURVEY PLAN?

by Rosalind C. Penfound, B.P.E., LL.B.\*

## I. OWNERSHIP OF COPYRIGHT

Copyright at common law no longer exists in Canada (since 1921) but this subject is governed by the provisions of the Copyright Act.<sup>1</sup> The definition of copyright is found in section 3:

s.3(1) For the purpose of this Act, "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform, or in the case of a lecture, to deliver the work or any substantial part thereof in public; if the work is unpublished, to publish the work or any substantial part thereof; ...

Plans prepared by surveyors fall within the definition of "artistic work":

s.1(1) "Artistic work" includes paintings, drawings, maps, charts, plans, photographs, engravings, sculptures, works of artistic craftsmanship, and architectural works of art. (Emphasis added).

The copyright in any work is owned by the author of that work (s.12(3)). However, section 12(3) also stipulates that "[W]here the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright." The question then boils down to the nature of the relationship between the surveyor and client. Is it an employee/employer contract of service, or a contract for services? Is the surveyor an employee or an independent contractor?

Robert J. Meisner, O.L.S., writes:

...Elements such as the degree of control by the employer, the place where the service is to be rendered and the obligation on the part of the employee to obey orders of the employer must all be taken into consideration.

It would appear that a Land Surveyor is engaged with little or no direct control by a client in the particulars of the preparation of a plan of survey once a client has requested such a plan. It may be concluded that the relationship between the surveyor and his client is that of an independent contractor, pursuant to a contract for services. Therefore, in the absence of an agreement to the contrary, and except where the work is being prepared for and under specific instructions of the Crown, the copyright in the plan and accompanying reports would subsist in the surveyor.<sup>2</sup>

This analysis seems accurate. It seems clear that conducting the survey under a contract for services makes the surveyor the first owner of the copyright in the plan subsequently produced, unless specifically agreed otherwise.

---

\* Rosalind C. Penfound is a solicitor employed with the Land Registration and Information Service, an agency of the Council of Maritime Premiers. Along with her other duties, she advises the Regional Offices on property problems and regularly presents, throughout the Maritimes, a course entitled, An Introduction to Property Law in the Maritime Provinces.

The passing of the plan to the client may arguably be interpreted as implying a transfer of the copyright, but this transaction is more likely to be classified by the Courts as the granting of a license to use the plan only, while copyright remains with the surveyor. In the 1970 case of Webb and Knapp (Canada) Ltd. et al v. City of Edmonton<sup>3</sup> the Supreme Court of Canada considered transfer of copyright versus license to use the plan. A land development corporation spent some \$138,000 of its own money developing a proposal for a new civic center for the City of Edmonton. They had an agreement with the City that if the proposal was accepted a large piece of the land would be made available for the project. If rejected, that proposal (including architectural and other plans) "automatically become the property of the City." The proposal was rejected and Webb and Knapp sued when their plans were used by municipal officials to formulate a replacement project. The development company successfully argued that although the "property" in the plans (the actual paper) did pass to the City, the copyright in them did not. The use of the plans by the City for purposes other than for which they were submitted was held to be an infringement of copyright. The damages awarded were measured as a fair charge for a license to use the plans.

The Association of Ontario Land Surveyors has for some time been concerned with the question of copyright in survey plans and the effect that surveyor/client relationships and practices may have on the surveyor's ownership of the copyright as "author" of the plan. The A.O.L.S. Bulletin (1984/24) contains a procedural guide for surveyors. At page 2 it reads:

The Copyright Act provides for agreements between employers and employees (surveyor/client) despite the fact of the relationship of an independent contractor. The delivery by a surveyor to his client, of a plan of survey and report, pursuant to his client's instructions may lead a court to conclude an implied transfer of copyright to the client.

In order to ensure that copyright remains with the surveyor, a contract, in the form included in these Guidelines, should be forwarded from the surveyor to the client at the time of engagement, setting out clearly the fact that copyright in such plan and report would continue to subsist in the surveyor. This contract would also give license to client to use the plan of survey solely for the purpose for which the plan was requested by the client.

The Association of Ontario Land Surveyors provides for its members a sample contract and recommends use of the universal copyright symbol together with the surveyor's name; e.g. c, N.S.E. West, O.L.S., 1989. In addition they suggest that all plans contain this statement located beneath the universal copyright symbol:

No person may copy, reproduce, distribute or alter this plan in whole or in part without the written permission of John Smith, O.L.S.

The A.O.L.S. approach is, "let's not wait for a judicial interpretation; let's make it very clear at the outset by contract and on our plans what the respective rights of the surveyor and client are." It is not a common practice to do so in the Maritime Provinces. In the event of a dispute the courts would be left to decide on the rights and obligations implicit in the surveyor/client relationship. In 1982 the New Brunswick Court of Queen's Bench, Trial Division gives us a hint of what might be expected.

In ADI Limited v. Destein, Hamilton and Leibe<sup>4</sup> infringement of copyright and implied licensing were considered in the context of architectural plans and specifications. ADI designed a retail store building and were successfully sued by the owner when the building settled. The owner hired another company to do repairs and gave that company the original ADI plans which they reproduced and used in the repair process. ADI sued for infringement of copyright. Stevenson, J., summarized the issue as "whether the reproduction of the ADI drawings by the defendants and the inclusion of those reproductions, the soils report, and the specifications in the tender package amounts to an infringement of copyright, or whether it was done within the scope of an implied license from ADI." In finding no infringements of copyright the court said there is an "implied license arising out of the engagement between an owner and an architect or design engineer." The court relied on Blair v. Osborne and Tompkins,<sup>5</sup> where Lord Denning said:

...the payment for sketch plans includes a permission or consent to use those sketch plans for the purpose for which they were brought into existence...

Stevenson, J., was also persuaded by the Supreme Court of New South Wales in Beck v. Montana Constructions Property Ltd.<sup>6</sup> He quoted from the headnote:

The engagement for reward of a person to produce materials of a nature which is capable of being the subject of copyright implies a permission OR consent OR license in the person making the engagement to use the material in the manner and for the purpose in which and for which it was contemplated between the parties that it would be used at the time of the engagement.

I am led by the provisions of the Copyright Act, *supra*, and these cases to the conclusion that, assuming copyright in a plan vests in the surveyor, provision of the plan to the client implies a license to use it in the generally accepted manner--financing approval, development approval, registration in the Registry of Deeds. This would include making required copies for these purposes. Also, when a plan is submitted to an official in the normal fashion, that official may use it for the purpose for which it was submitted (see Webb and Knapp, *supra*). In New Brunswick and Nova Scotia the landowner who seeks development approval (subdivision, etc.) is required to submit a number of duplicate plans in various combinations of linen, plastic, and paper (see III below). They are not copied, but the copies submitted are forwarded to various government offices including LRIS and the Registry of Deeds. The landowner is required to do this, and knows it is part of the process, as does the surveyor who prepared the plans which are submitted in compliance with the development process. I believe the landowner's license encompasses all of this.

I am, thankfully, not forced to rely solely on my reading of these authorities for the conclusion that once a government official receives a plan it may be used in legitimate government processes.

### III. PROVINCIAL LEGISLATION

Several pieces of provincial legislation impact on this issue.

#### a) Planning Legislation

The New Brunswick Community Planning Act<sup>7</sup> and the Nova Scotia Planning Act control the planning process in these provinces. In New Brunswick a landowner who seeks subdivision approval is required to submit a plan of subdivision to the development officer for the district in which the land is situate. A specified number of copies must be submitted (linen, plastic, paper). If the land is not in an integrated survey area, when the development officer approves the plan he must then return several of the submitted copies to the landowner (developer) who then files one of them in the Registry of Deeds. In an integrated survey area the development officer upon approval forwards copies to the Director of Surveys who files the plan in the Registry if it meets the survey requirements for the area. Land Registration and Information Service Regional Offices (Land Information Centers) react to these plans when they are filed in the Registry.



In Nova Scotia there are no integrated survey areas. The person seeking subdivision approval is required, in a similar fashion, to submit a number of copies of the plan to the development officer. Upon approval the officer forwards the plan to the Registry for filing. One of the copies is sent to IRIS. Plans are sent to IRIS at the same time as they are sent to the Registry of Deeds. Receiving a copy from the development officer is a mechanism which allows IRIS to react to the plans more quickly. In the absence of this practice a delay would occur, occasioned by microfilming, processing, etc.

In all of the above cases (New Brunswick and Nova Scotia) copies are not made by the development officer but are required to be submitted by the person seeking approval for use in the normal manner. IRIS reacts to these plans only when they are approved and filed in the Registry (albeit by receipt of a separate copy in Nova Scotia).

#### b) Public Records Legislation

Section 1 of the Public Records Acts<sup>9</sup> of both provinces reads as follows:

- s.1 The books, papers, and records kept by or in the custody of any provincial or municipal officer in pursuance of his duty as such officer are vested in Her Majesty the Queen and her successors.

A literal reading of this section would lead to the conclusion that once the plan was submitted to the development officer (who is a municipal or provincial employee) it becomes the property (is vested in) the Crown. An argument could be made, using Webb and Knapp, supra, that although the "property" in the plans vests in the Crown, the copyright does not automatically follow. Nonetheless, in the process outlined above, copies are not made, but are submitted by the landowner, the submission of which implies license to use them (likely including copying) for the purpose for which they were submitted. As well, the Registry of Deeds, various government departments (Health, Transportation, etc.) and even IRIS are the Crown; one arm of the Crown (development officer) passing a plan, which the legislation indicates is vested in the Crown, to another arm of the Crown for legitimate Crown purposes (public registry system, property mapping) hardly seems open to challenge. As well, IRIS provides maps and attribute files, etc., to those departments involved in the development process, supporting their effort and increasing their efficiency. This process is all part of legitimate government activity.

#### c) The Registry and Evidence Acts

Section 12(1) of the New Brunswick Registry Act<sup>10</sup> provides that the Registrar "shall...furnish copies and abstracts of or concerning all instruments or documents registered, recorded, or filed in his office" upon payment of any prescribed fees. Section 36 of the Evidence Act<sup>11</sup> also confirms by implication the right of a public official to copy public documents (including any "map, plan, record of survey") by providing that such copies, when certified, are admissible as evidence in a court of law.

The Nova Scotia Registry Act<sup>12</sup> is silent with respect to the provision of copies of registered or filed documents, plans, etc. However, section 11(11) allows the Governor-in-Council to make regulations. Section 2 of the Costs and Fees Act<sup>13</sup> provides that the setting of any fees under that Act is a regulation. Schedule A of the Costs and Fees Act, supra, among other things sets a fee to be charged by a Registrar of Deeds "for supplying copies of recorded or filed documents, plans, etc." Access fees for searching purposes are also prescribed. Therefore, by regulation it can be said the Registrar is empowered to make copies.

Section 12 of the Nova Scotia Evidence Act<sup>14</sup> is similar to section 36 of the New Brunswick Act as it also confirms the evidentiary status of certified copies of any "grant, map, plan, report, letter, or official or public document, belonging to or deposited in any department of the Government of Canada, of this Province, or any province of Canada..."

Hours of business are stipulated for Registry offices in New Brunswick by s.10(1) of the Registry Act, *supra* and in Nova Scotia by s.7 of the Registry Act, *supra* and s.9 of the Public Officers Act.<sup>15</sup> One of the bases of operation of a Registry System is that the recording of a document, etc., puts the public on notice of its existence. The public must therefore have access. Registries of Deeds must be public offices (as the prescribing of hours of business implies), and the document found in them (including plans) are necessarily public documents.

#### IV. CONCLUSIONS

1. The copyright in survey plans is vested in the surveyor.
2. The provision of plan(s) to the client by the surveyor implies a license to use them, including making copies, in the manner and for the purposes for which they were produced.
3. Submitting a survey plan to the development process passes the property in that plan (arguably the copyright as well) to the Crown. Even if the copyright is retained by the surveyor, the physical plan belongs to the Crown and a license is implied for them to be used in the generally accepted manner which includes filing in the Registry of Deeds and forwarding to LRIS. Submission of any plan directly to LRIS would similarly result in it becoming Crown property, or at the least imply a license for LRIS to use it.
4. A plan filed in the Registry of Deeds is a public document open to public view and a copy of which may be obtained by the public.

\* \* \*

#### FOOTNOTES

1. R.S.C. 1970, c.55.
2. Who Owns The Plan? Terravue. A publication of the Canadian Council of Land Surveyors, Summer 1986.
3. (1970), 11 D.L.R. (3d) 544.
4. (1982), 41 N.B.R. (2d) 518.
5. [1971], 2 Q.B. 78.
6. (1963), 5 F.L.R. 298.
7. R.S.N.B. 1973, c.C-12.
8. S.N.S. 1983, c.9.
9. R.S.N.B. 1973, c.P-24; R.S.N.S. 1967, c.253.
10. R.S.N.B. 1973, c.R-6.
11. R.S.N.B. 1973, c.E-11.
12. R.S.N.B. 1967, c.26.
13. R.S.N.S. 1967, c.63.
14. R.S.N.S. 1967, c.94.
15. R.S.N.S. 1967, c.251.

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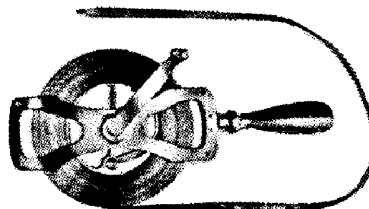
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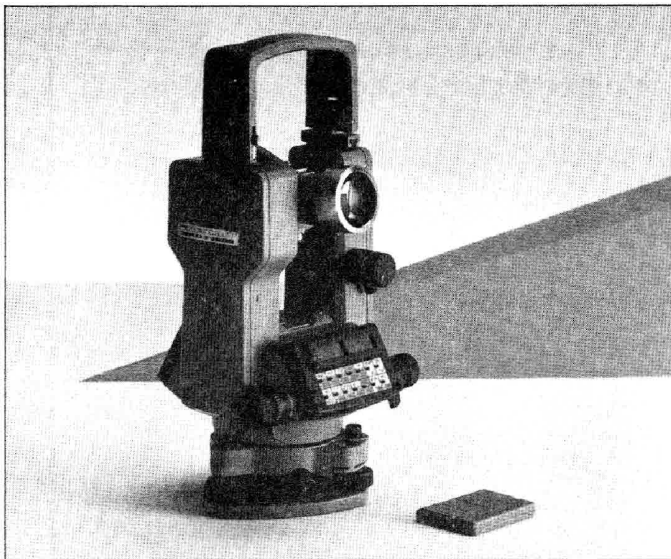
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During the 1940's provincial directors of survey, or senior members of their staff, presented papers on early surveys and the development of land within their respective provinces at the annual meetings of the Canadian Institute of Surveying. At that time (and until the 1960's) these meetings were always held in Ottawa.

In 1945 and 1946, R.J. Milgate presented two papers which described circumstances in Nova Scotia. Later on, in 1953, a paper written by R.E. Dickie on the same topic was presented before the same forum. Subsequent to their presentation, all three papers were published in *The Canadian Surveyor*. Dickie's was published, as well, in *The Nova Scotian Surveyor* in 1956.

The Editor believes it is appropriate to publish these three papers again so that the information in them will be readily available to all members of the Association of Nova Scotia Land Surveyors, and thus to all surveyors who are practising in the Province. The patterns of settlement and the practices surrounding early surveys are of no less interest and concern now than they were a generation ago.

In reviewing these papers -- more than forty years after two of them were written -- it seems appropriate to add a few notes to them here and there.

Mr. Milgate's 1945 paper is republished in this issue of our quarterly; his 1946 paper, and Mr. Dickie's paper, will appear in subsequent issues.

J.F. Doig

#### SURVEYS IN NOVA SCOTIA

R.J. Milgate  
Provincial Land Surveyor  
Department of Lands and Forests

In looking over past numbers of the *Journal of the Canadian Institute of Surveying*<sup>1</sup> it is noticeable that its readers have been well posted regarding surveying matters in many of the provinces of the Dominion, so perhaps it would be fitting to round out the picture by setting out in brief the situation in Nova Scotia some three hundred years after its first settlement.

This province has been described as Canada's wharf jutting out into the Atlantic - a fairly husky wharf some 400 miles long by 60 to 100 miles wide, almost entirely surrounded by water and joined to the mainland by an isthmus 67 miles wide, no portion being more than 50 miles from the salt water, the whole having an area of some 21,000 square miles.

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Reprinted with permission from *The Canadian Surveyor*, Ottawa, October, 1945.

The longitudinal axis runs roughly east and west magnetic and the Atlantic slope is featured by numerous lakes and waterways resulting from glacial action in the distant past. The terrain varies from rich valley lands to the rugged exposures of the granite bedrock, without a great range in elevation, the highest being some 1,700 feet in the extreme north east. The country is well wooded and the fifty inch annual rainfall ensures a good rate of timber growth.

Nova Scotia is reputed to be the Vinland and Markland of the Icelanders and Norsemen. John Cabot's report of his visit to the north-east coast of America in 1497, together with that of Jacques Cartier to the Gulf of St. Lawrence a few years later, attracted fishermen from western European shores who made summer trips in great numbers to the fishing grounds now known as the Grand Banks, using the nearby shores of Nova Scotia for their fishing stations. This continued for nearly a century until the first European settlement on the American continent north of Florida was made in 1605 by the French trading expedition of Demonts setting up its habitation near the present town of Annapolis Royal in western Nova Scotia. During the next 100 years the troublous times in Europe were reflected in the Province by numerous changes in its occupation between the French and the British, until it was finally ceded to the latter in 1713 by the Treaty of Utrecht.

During the French occupation a number of seigneuries were set up along the coast but only one of these<sup>2</sup> survived the change of regime and it, too, lost its identity when purchased by the British. Very little information is found in Nova Scotia records regarding these seigneuries and none at all on the ground,<sup>3</sup> as such subdivisions as must have been made were superseded by the townships laid out under the British scheme of settlement following the landing in force and the founding of Halifax by Governor Cornwallis in 1749.

The first land surveys of which there is record were made by surveyors from the New England colonies in mapping the territory adjacent to the Bay of Fundy. The most important work done during the early period was the charting of the sea coast by Joseph Frederick Walleet des Barres and the survey of Cape Breton Island by Samuel Holland. Some work of this nature had been done under the direction of Mascarene, the Commander of the small British garrison at Annapolis, preceding the arrival of Cornwallis, as the British State papers include mention of surveying vessels being built at Boston for such use and a report of this survey by Charles Morris is still extant.

These early maps of Nova Scotia show a fairly accurate layout of the entire coast line and this served as control for the thirty or so townships which were erected during the fifty years following the founding of Halifax, and which constituted the method adopted by the British to settle the province.

The townships consisted of large blocks of land running from twenty to one hundred thousand acres each, composed of townsite, farm and wood lots, located along the sea coast, around a harbour or estuary of a river and along some river valleys. The larger townships extended back into the country for a considerable distance from the coast. Accompanying the erection of these townships came the setting up of ranges of large farm lots with side lines laid out at right angles to rivers or roads traversing some of the better quality land. These farm lots were generally 20 chains wide and ran back one or more miles to a common base line.

Counties were set up at an early date and the survey of these county lines, together with traverses of travelled roads, supplied additional control for the land maps which would thus gradually take form.

Following this first supervised settlement scheme, settlers located themselves in areas outside the townships by obtaining grants in favorable situations,<sup>4</sup> around and based on which other grants were made, mostly of rectangular shape. The settlements grew into districts and with successive granted lots gradually made contact with adjoining districts. Some of the larger unsettled areas of the timberland class were divided into square mile blocks, though this work was not extensive enough to be noted as a system.

Fishing settlements established at an early date along the rocky Atlantic coast did not expand to any great extent unless the immediate hinterland offered opportunity for farming.

All the surveys in connection with these layouts were made with the magnetic land compass. As the country was largely wooded, boundary lines were marked by blazing trees according to set rules. A tree standing directly on line was blazed "fore and aft" and the blazes were marked with three cuts made upward with the axe. Trees on each side of the boundary were variously blazed to indicate proximity thereto, while in barren areas flat stones were arranged in piles to mark the position of the line. Corner bounds, beside being blazed four-square on trees in wooded locations, were marked by stone mounds in the open places.

Knowledge of change in the declination of the magnetic needle was not generally understood in the early days but land surveyors were aware of it as instructions issued to local deputies required them to observe bearings of existing boundaries before proceeding to do work in any neighborhood.

Nova Scotia is interesting in that settlement and land development was largely accomplished by these local surveys and without benefit of basic control as furnished by a regular land system. Surveyors used to regular systems will imagine that trouble would eventually arise regarding identification, not only of boundaries but also of the lots themselves, but actually the difficulties are of minor character,<sup>5</sup> although they sometimes require considerable investigation of adjacent lots.

Doubt as regards location of a land grant sometimes arises in cases where it was laid out in a timberland area still remote from other granted lots and where it is difficult to positively identify the lake or stream with which it was connected. These cases, however, are rare, as most of the land grants bound on one previously given. The principal drawback that accompanies this method of land layout is the fact that it was of necessity made by the magnetic land compass and under pioneer conditions which did not allow great accuracy in measurement. Renewals, however, from time to time have prolonged the life of the blazed lines marking the boundaries in wooded areas, while in the settled districts loose stone and rock gathered by the first settlers in the course of clearing land was naturally assembled by them in the form of a stone fence or wall along portions of the side lines. Lots granted in the early period quite commonly overrun in area, it being apparently the custom to throw in a little extra measure for sag in the chain or because there was too much bog, barren or water

included with the lot.<sup>6</sup> These discrepancies soon become identified with the original surveyor concerned, and retracement work establishes his particular "personal equation" enabling later practitioners to anticipate the divergence from recorded measurements.

The matter of retracing the original compass line through an area where old marks have disappeared usually requires a trial line based on the estimated change in declination of the magnetic needle, thus allowing a close examination of the terrain through which the line must have passed, in the hope of disclosing the faint signs which the surveyor knows is all that can be found.

With such a layout it can readily be seen that detailed information should be available to present day surveyors for each individual lot lying outside of the townships and regular lot ranges and, except in a few cases, this can be supplied from the records of the Crown Land Office. The first hundred years of land surveying in Nova Scotia were supervised by members of the Morris family, the first of whom came from New England in charge of some Militia about 1746 and stayed to become Surveyor General. Charles Morris was a methodical man, keeping records of his and his deputies' work that are invaluable. These comprise book entries and also the original surveyors' plans arranged with a notation that permits ready reference. John Spry Morris, the last of the line, was in charge of the Land Office when the government was departmentalised, and set up the system of recording which is still in use today, under which correspondence, petition papers and original surveyors' plans for land grants are referenced and quickly found under the one grant number.

The actual field work of laying out granted lands in Nova Scotia was, until some thirty odd years ago, carried out by one or more deputy surveyors appointed for each county. In this way the probability of overlapping previously granted lots was avoided, a rather important feature in view of the method of development. In 1910 the Legislature passed an Act relating to Provincial Land Surveyors and present practice allows work to be done by such qualified men.

In the matter of land plans used by the Crown Land office, the first surveyed areas were soon plotted in their respective counties and the map sheets were separately constructed on this basis. Each county in Nova Scotia bounds on the sea coast, which together with road traverses and subsequent county line surveys provided the framework upon which the granted lands were plotted. The topography was inserted as it became available from the layout of individual tracts from time to time, supplemented by surveys of ungranted areas as the need arose. The plans thus compiled were fairly adequate as graphic indexes but had no pretensions to accuracy from the topographic angle. The revenues of the Province have not at any time permitted a comprehensive survey for an accurate set of cadastral plans and it is only since the work of the Federal geodetic and topographic surveys in Nova Scotia that such maps have in preliminary form become possible.<sup>7</sup> As previously mentioned, Nova Scotia has been plentifully endowed with natural monuments in the form of numerous water surfaces. The margins of the sea coast, lakes, rivers and streams are shown on the original survey plans and this has permitted the replotting of granted lands with a fair approach to accuracy over a large area of the province. This work has progressed as fast as the new maps became available and has



greatly facilitated the work of the Provincial survey parties presently engaged in retracing the boundaries of the two million odd acres of ungranted lands remaining under the jurisdiction of the Department of Lands and Forests.

Photographs are proving of great use in map making and the completion of the aerial survey of the Province is awaited with some interest.<sup>8</sup> Besides showing topography in great detail, the vertical photographs frequently indicate the position of land lines where timbered areas have been culled. It is expected that this feature will allow the reconstruction of the interior division of some of the older townships, plans of which were never recorded.

As reported from time to time in these pages, the Department of Lands and Forests has made considerable progress in retracing the boundaries of the public lands despite the curtailment due to the war. It is expected that with a return to more normal conditions the remaining areas will be run out and monumented within the next few years.

As the original boundaries were made with the magnetic land compass and the Crown Lands were, without exception, of the timberland or wilderness class and rapidity of work was a prime essential, it was decided to use the instrument with which the lines were originally set up and which was peculiarly adapted to retrace them. Extended work, however, with the magnetic compass requires control, and this has been afforded by the Federal surveyors in the form of bronze plaques set by them to mark their traverse stations as arranged by the Crown Lands Office in 1923. The information regarding these markers is given by the Surveyor General of Canada in the form of Monument Sheets containing the calculated latitudes and longitudes of the point, together with diagram of reference measurements. The provincial surveyors have experienced no difficulty in finding most of the stations so far, except in some cases where highway work has displaced or obliterated them.

For plan record the control stations are plotted in their respective positions on rolls of linen-mounted cartridge paper sixty-two inches wide, a width sufficient to cover thirty minutes of longitude when set up to the regular Crown Land office scale of forty chains to the inch. The retracement surveys made in any area are then laid down with a marginal tabulation giving post number, courses and distances. Declination of the magnetic needle as determined from Polaris is plotted with dates at the various points of observation. These plotted sheets will cover the whole province and will permit the addition of surveys made from year to year.

Tracings are made for the use of the public to a marginal size of 36 by 24 inches, issued under the name of Index Sheets and showing granted lots in addition to the retracement surveys.

1. The new name adopted for the quarterly publication of the Canadian Institute of Surveying and Mapping, beginning with the Spring issue 1988, is **CISM Journal ACSGC**.
2. Which one was this?
3. In recent years archaeological digs in the Bridgetown - Annapolis Royal district, under the supervision of the Nova Scotia Museum, have uncovered the foundation of at least one Acadian homestead.
4. Doubtless there were circumstances which led to some individuals getting rather better than average consideration when it came to land grants. It is unlikely, however, if anything approaching a situation which occurred in New Brunswick ever came about. There, a 1500-acre sale of Crown Lands was made up of thirteen tracts in different parts of the province; the 'lot' was made up of narrow strips, along substantial river frontages (often taking in both sides of the stream), together with three islands, some mill privileges, and other desirable sites. See G.A. Rawlyk, **Historical Essays on the Atlantic Provinces**, Toronto, 1967, p. 131.
5. Milgate's assessment of difficulties associated with retracing old lines is not that which will be seen in Dickie's paper.
6. None of these papers treat overrun as that regular feature of survey practice as is commonly supposed to have been the case during early surveys. That is to say, 10% being frequently added to sidelines in order to compensate for poor land, bog, waterbodies, sag, slope-chaining, etc. A resurvey at Greenwood, Kings County, turned up the rear line of a parcel (as witnessed by old strands of fence wire covered with leaves) which was precisely 10% further along the sideline than the distance called for in the description. The lot was on the Valley floor, flat and of good quality though still tree-covered at the time. Here, it would seem, is the subject of a good technical report awaiting an investigative author. Johnson (see Note 5 below at p. 251) reports "In 1936 some 20,000 acres in Cumberland County [mostly clearcut or burnt] were purchased at 30 cents an acre but when surveyed, it was found that, due to overrun in the grants, the actual cost was only 19 cents an acre."
7. Cadastral maps, or property maps, are still not available in Western Nova Scotia, apart from those produced through the notable efforts of the County of Annapolis and its Planning Department.
8. This, presumably, is the photography reported by R.S. Johnson, **Forests of Nova Scotia**, Halifax, 1986, pp. 251-252. The work was begun in the late 1920's or early 1930's.

**R.J. MILGATE** was born in England. The extent of his education and technical training is not known. He is reported to have been very knowledgeable in both astronomy and mathematics.

In Canada, Mr. Milgate was employed during at least part of the 1920's with R.W. MacKenzie, PLS, who had an extensive practice in the City of Halifax and environs. As early as 1928 Mr. Milgate's name appears as one of the members of the Board of Examiners for land surveyors.

About 1933 Mr. Milgate joined the Department of Lands and Forests as Chief Draftsman. As such, he had charge of the Crown Lands Office with responsibility not only for Crown Lands records, but for surveying and mapping as well. It was he who developed the maps known as the Crown Land Index Series.

Mr. Milgate retired from provincial service in 1947.

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## PATTERSON TOWNSHIP

By James D. Gunn, N.S.L.S.

As the Trans-Canada Highway winds its way along the shores of the Bras D'Or Lakes, it passes through a quiet stand of mature softwood at Baddeck Inlet that is no more distinguishable to the unwary traveller than any other property that makes up this tranquil, uninhabited landscape in the centre of Cape Breton. There is little evidence to suggest that this woody hillside is anything more than it appears to be, but to a few local lawyers, surveyors and assessors, these 280 acres of dwarf spruce trees keep more than one old filing cabinet smouldering in the corner of their offices.

These cabinets are entitled "Patterson Township or Lakeview Subdivision". They contain files dating back one hundred years or more, and together they represent the combined interests to more than three thousand parcels of land. Perhaps there is some poetic justice in that not a solitary house was ever constructed on this site, for the story of Patterson Township is a story of questionable motives and unusual business tactics.

In the late eighteen hundreds, when the Canadian Pacific Railway was making headlines as it pushed its way across western Canada, the Intercolonial Railway was drawing somewhat lesser attention as it extended towards its eastern extremity on the Island of Cape Breton. Sometime around 1880, a preliminary route was planned for the railway along the northern shores of the Bras D'Or Lakes. At this time, there was a lawyer in New Glasgow named George Patterson who was privy to these plans, and he cooked up a scheme with Donald MacKenzie, a poor farmer from Baddeck Inlet, to subdivide his farm into a three thousand lot township.

By no small coincidence, the railway would cut diagonally across this township, spoiling hundreds of lots and no doubt requiring huge amounts of compensation for the owners. Needless to say, for this and perhaps other reasons, the railway did not follow the proposed route, but chose instead a route that followed along the southern shore of the lakes, thereby avoiding altogether the problem with Patterson, and also the Village of Baddeck, which may well have been the City of Baddeck today.

The story of Patterson Township does not end with this foiled scheme, for it caused a great strain on the relationship between Patterson and MacKenzie. This was finally settled with a judgement against MacKenzie for \$130, and this judgement was later consigned to a lawyer from Baddeck named John A. MacDonald in 1895.

MacDonald took possession of the property to satisfy the judgement, and in 1915 he sold his interest to a barber from Sydney named Ben Williams. The plot thickened when Williams flipped the property over in six days to another lawyer, who was, by remarkable coincidence, a Patterson from Sydney. The new owner, Malcolm Patterson, must have had considerable influence over a Sydney engineer named Ross, because he loaned his signature to this thirty year old plan on the same day that Patterson acquired the property. The plan was now official, and it was placed on public record in the Village of Baddeck five days later.

Once again, this weary property was to become the brunt of another elaborate scheme cooked up by Patterson and his partner, Williams the barber, and a new player, Mr. Cuzner, a theatre owner from Sydney Mines. For some reason, Williams bailed out at this point, taking 928 lots with him.

The balance of the property, some two thousand lots, was to be raffled off with the purchase of theatre tickets. The prospect of winning a lot of land on the beautiful Bras D'Or Lakes filled Mr. Cuzner's theatre each day, while Mr. Patterson processed the winners' deeds at the going rate of \$5.00 each. The potential revenue to these two entrepreneurs was very large. Unfortunately, the odds against a winner ever finding his lot on the ground were equally as large. Many of the lots fell well offshore, and those on dry ground required such extensive surveying that none were ever laid out.

Such is the story of Patterson Township, pieced together as best I could. So if you ever have occasion to drive along this stretch of the Trans-Canada Highway in Cape Breton, and the driver ahead is rubbing his hands together, then perhaps he is an old lawyer, but if he is shaking his head and pounding the dash, then maybe he is an assessor, but you can be sure that the car that turns off and takes a back road around the property is a land surveyor.

\*\*\*\*\*

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**N.S. LAWYER FOUND NEGLIGENT FOR FAILING  
TO ADVISE THAT CLIENTS GET SURVEY DONE**

by  
Dean Jobb - Special to Lawyers Weekly

HALIFAX - Lawyers certifying title for a buyer in a property transaction must advise their clients to get a survey or a building location certificate before closing the deal, the appeal division of the Nova Scotia Supreme Court has ruled.

In a decision that reaffirms the practice that has prevailed in the province for at least 15 years, Nova Scotia's highest court has found a Halifax lawyer negligent for failure to do either: Ravina and A & R Properties Ltd. v. Kanigsberg, Cordon, Stern & Freeman et al.

Chief Justice Lorne Clarke of the appeal division ruled Alan J. Stern, a lawyer with 21 years' experience, was negligent when he acted for Amadeo Ravina in the 1983 purchase of a building that turned out to be sitting partly on land owned by Canadian National Railways.

Mr. Stern, now of the law firm Blois, Nickerson, acted for both Mr. Ravina and the seller in the transaction and advised Mr. Ravina he had good title to the property, which sold for \$30,000.

After renovations and improvements that gave the property an appraised value in excess of \$100,000, Mr. Ravina applied for a mortgage. The mortgage company insisted on a building location certificate, which showed that the boundary line of the adjacent railway passed through the centre of the building.

Mr. Ravina sued, but his action was dismissed at trial by Chief Justice Constance Glube of the Supreme Court's trial division, who found that Mr. Ravina had failed to prove he was not the owner of the portion of the property in question.

The appeal court, taking the rare step of overturning the trial judge's findings of fact, ruled Mr. Ravina has proven both lack of ownership and negligence and sent the case back to the trial level for assessment of damages.

"In all purchases of property, solicitors must advise their clients of the advisability of obtaining a survey or survey certificate", Mary O. Hebb, the Halifax lawyer who acted for Mr. Ravina on appeal, told THE LAWYERS WEEKLY.

"The solicitor is not a surveyor," she added. "We examine a paper title and there may be things on the ground that the solicitor may not be aware of."

Mr. Stern's title search gave no indication of the railway's encroachment onto the property Mr. Ravina was buying, but Chief Justice Clarke said an "objective assessment" of the information available to the lawyer suggested there was not enough land to meet the description.

"In my opinion it was negligent of Stern to fail to convey that doubt to Ravina", wrote Chief Justice Clarke. "He should have recommended that Mr. Ravina cause an on-site examination of the land by survey or whatever other course Ravina determined."

"Whether Ravina accepted the advice and did anything or nothing with it would not have been the concern of Stern."

As authority for the proposition that lawyers must advise clients to get a survey, Chief Justice Clarke pointed to a 1971 Nova Scotia appeal court ruling, **Marwood v. Charter Credit Corp.** (1971) 2 N.S.R. (2d) 743.

In **Marwood**, Mr. Justice Thomas Coffin held that "solicitors should always advise them [purchasers] in advance on this matter and make it clear that the certificate of title which will be issued is at all times subject to a survey."

"I find it difficult to conclude that making certificates subject to survey or discussing the matter of the location of land with a client is a newly discovered practice," wrote Chief Justice Clarke.

Two lawyers, William E. Kelleher, and W. Mark Penfound, testified at trial that it is the practice of Nova Scotia lawyers to advise purchasers to get a survey.

A third lawyer, Paul Murphy, gave the opinion that Mr. Stern had met the standard of a reasonable and diligent solicitor.

(Reasons in **Ravina and A & R Properties Ltd. v. Kanigsberg, Cordon, Stern et al.**, are available from FULL TEXT, Cite 703-007; 18 pp.).

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# 1987 Equipment Survey

Since 1982, *P.O.B.* has conducted an annual tracking survey to gather and evaluate basic information about the market for major types of surveying equipment. The survey obtains information about purchases made during the 12 months preceding the publication of the survey questionnaire and asks respondents to indicate their company's purchasing plans for the next 12 months. In addition, questions are asked regarding perceived quality of different manufacturers' products and the importance of various factors in determining which manufacturers' products would be purchased.

## Respondents

The current survey is based on data from 2036 completed and returned survey forms that were printed in the June-July 1987 issue of *P.O.B.* Respondents represented all 50 states, the District of Columbia, and the Virgin Islands. This is a statistically valid sample for analyzing trends in the surveying equipment market.

Respondents were grouped in three categories: firms providing Surveying Services

Printed courtesy of P.O.B. Publishing Company

## Top Three Surveying Equipment Manufacturers/Distributors

[illegible]



## Transits/Theodolites

<b>First</b>	Wild Topcon	Wild Topcon	Wild Lietz	Wild Lietz	Wild Topcon
<b>Second</b>	Topcon	Topcon	Topcon	Topcon	Topcon
<b>Third</b>	Lietz	Lietz	Lietz	Lietz	Lietz

## EDMs

<b>First</b>	Topcon	Topcon	Topcon	Topcon	Topcon
<b>Second</b>	Wild	Wild	Wild	Wild	Wild
<b>Third</b>	Lietz	Lietz	Lietz	Lietz	Lietz

## Total Stations

<b>First</b>	Topcon	Topcon	Topcon	Topcon	Topcon
<b>Second</b>	Lietz	Lietz	Wild	Wild	Lietz
<b>Third</b>	Wild	Wild	Lietz	Lietz	Wild

## Data Collectors

<b>First</b>	Topcon	Topcon	Wild	Wild	Topcon
<b>Second</b>	Wild	H-P	Lietz	Topcon	Lietz/Wild/H-P
<b>Third</b>	Lietz	Lietz	Topcon	Lietz	Wild

## Magnetic Locators

<b>First</b>	Schonstedt	Schonstedt	Schonstedt	N/A	Schonstedt
<b>Second</b>	Chi. Steel Tape	Chi. Steel Tape	Chi. Steel Tape	N/A	Chi. Steel Tape
<b>Third</b>	Fisher	Fisher	Fisher	N/A	Fisher

\* Number of instruments purchased in 12 months preceding survey.

† Perceived quality, which is based on a number of factors, many of them subjective. Total mentions as Best, Second-Best, and Third-Best.

‡ Number of instruments expected to be purchased during 12 months following survey.

By Marcellin Chiasson

From the book "TITLE WORK" by David Howlett, LL.B.

An easement is a right which the owner of a specific property enjoys with respect to an adjoining property, which he does not own. The property that enjoys (is benefitted by) this right is said to be the dominant tenement, and the property that is subject to (burden by) the easement is the servient tenement.

\* \* \*

In a recent Supreme Court (Appeals Division) decision, the N.S. Court discussed The Statute of Limitations and the manner it applied to a r.o.w.....(Young vs. Outhouse - S.C.A. 01857 - 83 N.S.R. (2d)).:

[8] The appellant commenced her action in 1986. There is ample evidence to support the finding of the trial judge that access to the dirt road had not been enjoyed by the appellant and those through whom she claimed without interruption for twenty years prior thereto. Confronted with uncertain evidence, even from the appellant, the trial judge found that she moved into the cabin in 1969. He also found that the appellant could not have used the dirt road before she moved into the cabin in 1969 and that, if there had been earlier adverse use, such occurred prior to or in 1967. The trial judge found the evidence of use alleged by the plaintiff during the period it was occupied by Orlando and Sydney Guier, from 1947 to 1967, was not persuasive and the break in the use of the dirt road terminated whatever, if any, use had been made of it by the Guiers.

[9] It cannot be said that the trial judge erred in his result when, for the purposes of the appellant's claim, the count of the years of adverse use does not come forward from when it is alleged to have started. Rather, the count is backward from the date the claim of the right is asserted.

\* \* \*

Thomas Hall, The President of Stora Forest Industries Limited, addressed the graduating class of Antigonish East Rural High School on June 23, 1988. Here is a part of the newspaper report of his talk:

Hall concluded by telling the graduates the "noblest contribution that any man can make for the benefit of posterity is that of good character."

"If there is right in the soul, there will be beauty in the person. If there is beauty in the person, there will be harmony in the home. If there is harmony in the home, there will be order in the nation. If there is order in the nation, there will be peace in the world," said Hall, quoting a sixth century B.C. philosopher.

\* \* \*

Cursed be he that removeth his neighbour's landmark. And all the people shall say, Amen.

\* \* \*

I often wonder why our members do not use our journal to voice their opinions on certain subjects pertinent to surveying and our association. Why not write a letter to "The Editor"?

\* \* \*

We are always grateful for the material forwarded by James Doig (#220). James recently forwarded a quote which is often found on the Nova Scotia Law Reports:

IGNORANCE OF THE LAW

"No attorney is bound to know all the law; God forbid that it should be imagined that an attorney, or a counsel, or even a judge is bound to know all the law."

ABBOTT, C.J., Montrieux v. Jefferys (1825), 2 C. & P. 113, 116.

\* \* \*

A PRESSING MATTER

---

While waiting at the car wash the other day, I heard the attendant say to the man ahead of me who was driving a battered car, "Sorry, we just wash cars--we don't iron them."

A group of friends was discussing the most frightening sounds they knew. "A groan in the dark," said one man, "when you think nobody is there."

"I'd say the sudden buzz of a rattlesnake at your feet when you don't have any boots on," said another.

An older man in the group grunted and topped them all, "A long, low whistle coming from an auto mechanic who is under the hood of your car!"

---

\* \* \*

Our thoughts and best wishes go to two of our members who have been fighting illness for some time now:

J. Gary Glenn (#407)  
Roy A. Dunbrack (#247)

Our prayers are with you.

\* \* \*

If you're all wrong and admit it when you are, then you're alright.

\* \* \*

CONGRATULATIONS!!

Congratulations to our Past President James D. Gunn who received his diploma in Land Management from the University of Waterloo. Jim is the second candidate to receive a diploma in this course which is prepared especially for Land Surveyors.

\* \* \*

**Forests of Nova Scotia: a history**, by Ralph S. Johnson, Four East Publications, Halifax, N.S., 1986, 407 pp., illus., ISBN 0-920427-09-X, \$50.00.

According to its author this book "is a history of the forests and their components, beginning with the recession of the last ice age and continuing to 1982."

This is really far too modest a claim. **Forests** is a veritable encyclopaedia about the native woods and wood products of Nova Scotia, the men who harvested the timber stands, those who organized and directed these operations through private companies, those who catalogued and assessed Crown and private lands, those who set government policies for good or for ill, the economics of forestry practices, and the inter-relation between the many organisms which make up the forest.

In its broadest sense the book is rather a primer. It begins with the forest being seen only as an exploitable resource, and takes the reader by stages to the point where the forest is perceived as a resource to be cared for, in order to ensure regeneration.

A little over a third of the volume deals with the forest from the beginnings to the end of the 19th century. Here are described some of the early land grants; something of the settlers' lives; the growing market for timber; ship-building; logging; log drives; life in the logging camps; early forestry and wildlife legislation (Nova Scotia had perhaps the first fish and game protective association in Canada); and the development of small railways, many of which served the forest industries. (The Railways Act is still on the statute books of our Province -- all 120 pages, 315 Sections, and 2 Schedules; some of its provisions make the Expropriation Act seem a veritable pussycat.)

The remainder of Johnson's work is devoted to events of the 20th century. It is significant, perhaps, that a chapter solely devoted to diseases and pests is found early on in this part of **Forests** (though there are two other chapters on this topic later on, as well). The new century saw the development of new technology in sawmills, an early survey of forest resources, the establishment of the Department of Lands and Forests, significant foreign ownership of woodlands, industrial expansion, mechanized logging, and better methods of silviculture, as well as tax implications, acid rain, and more forest legislation.

Throughout the book are dozens of short accounts which would make separate stories in their own right. Mention is made, for example, of one Edward Davison who was born in 1819 at Mill Village, Queens County, and whose parents died when he was a boy; "he was left in care of Catherine Doran, an astute maiden aunt. She conducted a lumbering and fisheries business at Port Medway until Edward, at the age of 18, took charge under her supervision." It may be confidently supposed that the mechanically-minded will want to know more about the "Alligator":

[P]robably the only boat of its kind seen in Nova Scotia. It was built for exceptional strength and could run, or pull itself, over stumps and rocks in the water at low speed with no damage. By means of a steam winch and 4,000 feet of half-inch steel cable it could also haul itself overland under its own power on rough rocky roads.

The author could have been better served by his editor. There are 53 chapters in the book; several are one- or two-pagers. That portion entitled "The Twentieth Century 1931 - 1950", for example, might better have been a single chapter with the eight chapters it now contains, re-grouped as sections of the single whole.

In a book of this length, containing so much information, there may well be matters of technical detail which others will dispute. As a non-forester, I found only two mis-statements of fact and these were not related to forestry practice. First, the staff-compass was never used in Crown land surveys; the tripod-compass was invariably employed. Second, regiments of the British Army, not New England colonists, took Louisbourg in 1758. (New England troops had taken the fortress -- an astounding feat for militia units -- in 1745). Louisbourg fell in '58 to the Royal Navy and to those same British battalions which, the next year, would clamber up the river bank early that September morning, to form line on the Plains of Abraham.

The author's very brief Preface and his Foreword both deal with the forests -- as does his book. One would have liked to hear something of the publication arrangements of the book itself. Aside from a note under the cataloguing data on the reverse of the title page, there is nothing to enlarge upon or explain the details of **Forests** as a project under the Canada-Nova Scotia Forest Resource Development Agreement. One would also have liked to hear something more of the author's sources and their worth, beyond the acknowledgement of individuals' assistance, the bibliography, and references (extensive as they are).

Ralph Johnson was an active forester in eastern Canada for over fifty years. Born in Atlantic City, N.J., in 1900, he took the degree of Bachelor of Science in Forestry at New York State College of Forestry. Timber cruising brought him to Nova Scotia initially in the early 1920's. He returned to the Province in 1928 and became chief forester for Bowater Mersey Paper Company, from which position he retired in 1965. Mr. Johnson lives in Liverpool, N.S. He has left fellow foresters -- and Nova Scotians at large -- an enviable legacy.

J.F. Doig

**REPORT TO COUNCIL**  
**CCLS and Quebec Annual Meetings**  
**By David C. Clark, NSLS**  
**President**

Howard and I, and our wives, travelled to Quebec City, June 8, 1988, to attend the Annual Meeting of the Canadian Council of Land Surveyors. This meeting lasted two days, then Deanna and I stayed on to attend the Annual Meeting of l'Ordre des arpenteurs-géomètres du Québec, held June 10 to 12, 1988.

CCLS has had an active year and is pursuing the interests of land surveyors across the country in a number of areas of concern. I must admit to having had misgivings the past several years on the benefits we derive from this organization, but as in most cases, when I became exposed to the actual workings and took the time to learn what is being done on our behalf, I came away with a whole new perspective about CCLS.

Howard, as the Director from Nova Scotia, will report on the proceedings of the meeting. I would however, like to pass comment on several items mentioned in the reports of the representatives from other provinces, which may be of interest here.

- NFLD. - A member of the Association was suspended for a year, as a result of a discipline case for gross negligence, but the suspension was nullified by the courts due to a flaw in the Act.
- P.E.I. - The recently announced amalgamation of the Registry, Mapping and Assessment Systems in P.E.I. places strong emphasis on a cooperative approach to the development of land information.
- N.B. - The Association has recently contracted a Land Surveyor to survey and prepare a plan of a line run by an unregistered person for a Woodlot Owners Co-op, in order to demonstrate the inaccuracies, and to lay charges against that person.
- QUEBEC - Quebec Land Surveyors have the right along with notaries, to set a professional fees schedule. They are the only professions so allowed because they are deemed to be public officers and their documents are open to public scrutiny.
- A Quebec Land Surveyor has been hired full-time to promote the interests and image of the profession.
- The Order has spent \$100,000 defending itself in a court action launched against it.
- ONTARIO - The fastest growing area within the Association is the implementation of an Advisory Service, which provides advice on particular problems, upgrading of surveyors or firms, and continuing education on a one-to-one basis.
- The Association is negotiating with the government regarding the land surveyor's role in the privatization of certain portions of the automation of the Registry System. This joint venture in planning the implementation of this

program continues to be an exciting venture for AOLS.

- The proposed dues for 1989 are \$850.

- MANITOBA - There is grave concern within the Association about the small membership and the dwindling number of candidates coming forward. There is a fear that the policy requiring a degree is survey engineering in the qualifying process will lead to the absorption of the Association into the Engineering profession.

- A discipline case concluded with a member being reprimanded and fined \$10,000 for failing to find monuments reported as being found.

- Efforts to place a new definition of land surveying in the "Land Surveyor's Act" are being hindered by the Engineer's Association.

- Council is concerned about lack of liability coverage for councillors and committee members, due to pending legal proceedings against the Discipline Committee, under the Human Rights Act.

- SASK. - This Association has also charged two of its members with professional misconduct. One pleaded guilty; the other was suspended and fined, appealed to the courts, and had the penalty reduced.

- ALTA. - The Association sponsored a second "Meet Your MLA" night in March, with approximately forty members and twenty MLA's in attendance.

- B.C. - The Corporation has an ongoing case where it has charged a member with undercutting the legal schedule of fees. The member has prepared a press release to TV and the newspapers on how he is being forced by the Corporation to "gouge the public". He has also written letters to MLA's and the Premier, so there is now concern that the Corporation will lose its right to set a scale of fees.

I believe that the most important achievement that came out of this meeting was the Policy Statement on Surveyor's Real Property Reports. A consensus was reached nationally on the minimum standards required in carrying out surveys for mortgage lenders. This Policy Statement will require some refinements due to its eleventh hour preparation, but at least it provides a base for a more standard format across the country.

Following the adjournment of the CCLS Annual Meeting, I was pleased to attend the Annual Meeting of the Quebec Land Surveyors as their guest. I brought greetings and best wishes (in French) to their meeting from the Association of Nova Scotia Land Surveyors. Congratulations were extended to the new President, Normand Lalanne and his wife, Michelle. Deanna and I enjoyed ourselves immensely, and thank the members of l'Ordre des arpenteurs-géomètres du Québec for their wonderful hospitality.

\*\*\*\*\*

How many readers know what an ecclesiastical terrier is?

It will be confidently supposed by the vast majority, that dog lovers, dog breeders, owners of dogs, and dog-racing aficionados will have the inside track on this one. They will be thought to stand a much better chance of responding to the challenge than those of us who lead more prosaic lives.

But this is really not so, strange as it may seem. Accordingly, church members (who may of course be dog lovers, etc. -- but not for this reason) will have the best prospects.

For those few who must confess defeat, the answer is at the bottom of page 41.

\*\*\*\*\*

#### N O T I C E

Nominations for Vice President or anyone who wishes to run for this office should be made known to James Gunn, Past President and Chairman of the Nominating Committee for 1988.

It is in the Association's interest that nominees be either a member of Council or a member active in Association affairs.

Nominations for Councillors in Zones 1, 4, 5 and 6 (two), should be submitted with photos and write-ups to the Association office prior to September 15, 1988.

\*\*\*\*\*



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## REPORT TO COUNCIL

Alberta Land Surveyors Association  
Annual Meeting in EdmontonBy David C. Clark, NSLS  
President

Deanna and I attended the Annual Meeting of the Alberta Land Surveyors Association, held April 20 to 23, 1988, at the West Edmonton Mall. The Alberta Association is perhaps the most similar Association to our own in Canada, as we are almost the same size and share many of the same problems.

The ALS Convention was well attended by the members and had guest representatives from all other provinces but two. The CCLS held an executive meeting at the same time and location, so visiting provincial presidents had a good opportunity to share ideas and discuss common concerns. I must emphasize again how valuable these visits are to other Associations, not only to gain a better insight into new trends in the profession, but to learn from the experiences of others in order to make better decisions in one's own home Association. I would suggest that in the future, the President share some of the travel with the Vice President in order to give him the benefit of this learning experience before he becomes President.

I brought back a lot of information and material from the Alberta Association which I will be passing on to Murray, but I will summarize some of the major activities and issues for the information of Council.

- An Inspector of Surveys has been retained just recently to implement a system of post registration audits of survey plans, including field inspections. The professional Audit Branch will operate under the direction and authority of the Practice Review Committee and will serve as a guarantor to the public of the continuing competence of the surveying profession in Alberta. In establishing this new arm of the Association, the funding will come from the sale of survey markers by the Association and from a \$100,000 start-up grant from the Alberta Government. Mr. Bill Wolley-Dod, hired March 1, as the first Inspector of Surveys, holds to the philosophy that it is better to cure the problems through consultation and education rather than by discipline. He feels all members and the public will receive a greater and more immediate benefit from the program.

- An interesting aspect of the ALS Association is the election of Auditors and members of Council. A list of nominations is prepared prior to the annual meeting as we do, but additional nominations may be added from the floor of the meeting. Potential candidates are each given two minutes of the meeting to give their reasons for running for office and their goals if elected. The election is then conducted by secret ballot during the course of the meeting.

- The ALS Association during 1987 moved to eliminate all so-called mortgage certifications and replace them in the future with Real Property Reports. As I understand it, a Real Property

Report is basically a full survey, and the plan and report of survey are incorporated into one document. Despite initial adverse reaction by some lawyers, lenders and members of the public, the professional stature of the Land Surveyor has been enhanced considerably. A large amount of work by the Public Relations Committee was required during the transition period with over 7500 copies of an information brochure being distributed to lawyers, mortgage lenders, realtors, development officers, land surveyors and the public.

- During the Annual Meeting, the membership of the ALS Association voted to give Council the authority to set membership dues for Alberta Land Surveyors up to a maximum of \$700 per year.

- The Committee on an Integrated Survey Profession prepared and presented a draft Act and Regulations designed to implement an integrated survey profession in Alberta. The draft Act and Regulations were approved in principle by the membership at the Annual Meeting permitting Council to proceed with the detailed discussion at the political level. Under the proposed new system, the "practice of cadastral surveying" will remain the exclusive field of practice to members licensed to practise cadastral surveying and entitled to use the designation Alberta Land Surveyor, (ALS). The practice of surveying is not exclusive and is open to members who have been issued a "Permit" to practise surveying and are entitled to use the designation Professional Surveyor, or "P.Sur.". Present Alberta Land Surveyors are eligible for both classes of membership. The new classification will allow Association membership to qualified applicants now engaged at the professional level in the profession of surveying.

- In fulfillment of Association goals, two briefs were submitted to the Minister of Forestry and to the Attorney General, on the need to restrict subdivision by description, and for the need for more positions for Land Surveyors to be established in the Land Titles hierarchy. (Sound familiar?) Unfortunately, efforts to convince the Ministers on both issues met with little success.

To conclude, I would congratulate the new President, Gordon Olsson, and his wife, Sheila, and wish them the best in the coming year. I would also express our thanks to Past President, Lou Breton, and his wife, Vivian, and the other members of the Alberta Land Surveyors Association for the hospitality they provided us.

\*\*\*\*\*

**ANSWER:** An ecclesiastical terrier is a list of the temporal possessions of a parish church.

\*\*\*\*\*

by Howard K. Wedlock, N.S.L.S.

A Director and Members Meeting was held in Quebec City on June 8 and 9, 1988. Among the provincial reports given the New Brunswick Association show that they have made many changes to their operation. One change being that New Brunswick Technicians are now included in the Land Surveyors Association. A plan checking procedure is now in place operated by the New Brunswick Association.

Alberta has hired an Inspector of Surveys to supervise the plan checking procedure in their province.

In British Columbia two surveyors have been charged by the Association with under-charging for survey work performed.

The Ontario Association reported that their Survey Review Department is working well for both the public and the surveyors.

A Surveyors Real Property Report form was developed at the meeting to replace Certificates of Location prepared for mortgage purposes. It is suggested that this new form be used to assist companies and their head offices in interpreting this proposed national format.

A motion was passed to have the C.C.L.S. Executive approach the national body of the Professional Engineers regarding recent charges made against our members for practicing engineering and to establish jurisdictions of each professional body in the subdivision of land.

A Survey Law Textbook will be ready for distribution early in 1989.

The Professional Liability Insurance Committee of C.C.L.S. headed by Gordon Webster reported that many provinces were visited and it was recommended that an actuarial study be carried out.

Terravue will not be published until a new editor is available.

A position paper distributed by Vice President, Doug MacDonald, flags the C.C.L.S. as a body taking the leadership role for the surveying profession to be the principle professional consultancy body with respect to geographic land information systems.

The C.C.L.S. 1988/89 levy from provincial members was not changed from the previous amount of \$20.

The next Directors Meeting was set for November 4 & 5, 1988 in Winnipeg in conjunction with the Manitoba Annual Meeting.

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## GRADUATION

May 13th, 1988

Graduation exercises were held on Friday, May 13th for the Planning Technology, Survey Assistant, Survey Office Technician and Surveying programs.

The valedictory address was given by Curtis J. Langille, Planning Technology.

Hugh J. O'Donnell, Assistant Deputy Minister of the Surveys, Mapping and Remote Sensing Sector, Department of Energy, Mines & Resources, Government of Canada, was guest speaker. The theme of his address was the need for continuing technical education during one's career.

Mr. Joseph H. Clarke, Deputy Minister, Department of Advanced Education and Job Training, brought greetings to the graduates from the Province of Nova Scotia. He expressed the regrets of the Minister, the Honourable Edmund L. Morris, at not being able to be present. Departmental estimates were being debated in the Legislative Assembly that afternoon.

Association Prizes and Scholarships were awarded and presented, as follows:

Graduate  
in the  
Survey Office Technician Program  
with  
Highest Academic Standing  
**Clayton James Venner**  
Middle Musquodoboit, N.S.

George T. Bates Scholarship  
First-year Surveying Student  
with  
Highest Standing  
**Andrew Edward Wootton**  
Charlottetown, P.E.I.

James A.H. Church Prize  
First-year Surveying Student  
Making the Most Progress

**Wayne Ray Waldron**  
Mahone Bay, N.S.

J.E.R. March Prize  
First-year Surveying Student  
with the  
Best Kept Field Notes

**Arnold Alan Shaw**  
Moncton, N.B.

Certificates and diplomas were presented to the graduates by Mr. James D. Anthony, Area Director, Valley-South Shore, Department of Advanced Education and Job Training.

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It is with regret that we report the passing of C. Edwin (Ed) Anderson of East Longmeadow, Massachusetts on June 21st, 1988.

At the time of his death, Mr. Anderson was the Executive Director-Treasurer of the Massachusetts Association of Land Surveyors and Civil Engineers, Inc. (MALSCE), as well as editor and founder of "The Massachusetts Surveyor". Ed was also a charter member of MALSCE, Surveyor of the Year in 1964, life member of MALSCE in 1973, life member of the Connecticut Valley Association of Civil Engineers and Land Surveyors, member of C.I.S.M. and an honorary member of the Association of Nova Scotia Land Surveyors.

Ed was a familiar face to many of our members as he regularly attended our annual meetings over the years.

With Mr. Anderson's passing, the land surveying and civil engineering professions have indeed lost a dedicated and respected gentleman.

Memorial contributions may be made to the Charles Anderson Memorial Scholarship Fund in care of MALSCE.

Mike Crant, N.S.L.S.

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#### NOTICE

##### PROFESSIONALISM. A "POINTE" OF VIEW.

The Western Federation of Professional Surveyors  
5th Biennial Conference

Pointe Tapatio Cliffs Resort Hotel  
Phoenix, Arizona  
June 14 - 17, 1989

WFPS 5th Biennial Conference promotional poster on photographic print paper suitable for framing, depicts a survey party in a desert mountain setting at sunset with giant saguaro cactus near the focal point. This art quality poster by a professional photographer is available for \$25.00 per copy, post paid. Send cheque or money order payable to WFPS '89 Conference, c/o Jeff Andrews, P.O. Box 35161, Phoenix, AZ 85069.

\*\*\*\*\*

BLESSED are those who attend meetings regularly and on time, and who remind or invite others to attend.

BLESSED are those who speak up at meetings to bring out points and to contribute their own experiences.

BLESSED are the brief, because they win the goodwill of others.

BLESSED are those whose participation is goodhumored, for they brighten up the meeting and prevent disruption, despite any differences of opinion.

BLESSED are those who can face opposition without taking offense or feeling a personal criticism where none was intended.

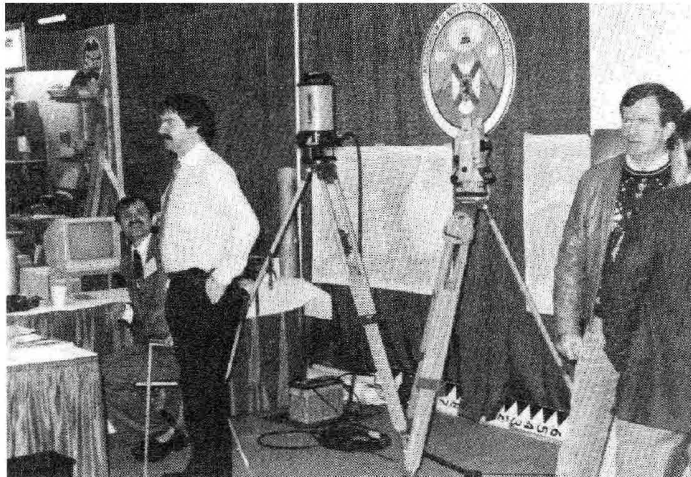
BLESSED are those who volunteer willingly, for they gain in influence and position with each added service.

BLESSED are those who, having accepted a responsibility, discharge it promptly and give a good accounting of their performance.

BLESSED are those who voice appreciation in front of their fellow members, so those who have earned approval may enjoy it in good season and feel rewarded.

— Reprinted from The Michigan Surveyor 1985, Vol. 20, No. 2

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OUR ASSOCIATION'S DISPLAY BOOTH  
AT  
THE 1988 HOME SHOW  
EXHIBITION PARK, HALIFAX

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IN THE SUPREME COURT OF NOVA SCOTIATRIAL DIVISION

B E T W E E N:

ROBERT B. ASHLEY and GLENN  
M. CREWS

PLAINTIFFS

- and -

THE ASSOCIATION OF NOVA SCO-  
TIA LAND SURVEYORS and THE  
BOARD OF EXAMINERS OF THE  
ASSOCIATION OF NOVA SCOTIA  
LAND SURVEYORS

DEFENDANTS

HEARD in Chambers at Halifax, Nova Scotia before the  
Honourable Mr. Justice Nathanson, Trial  
Division, on June 4, 1987.

Submission received dated June 29, 1987.

DECISION August 19, 1987

COUNSEL T.F.T. Degen, Esq. - for the plaintiffs  
J.A. Gregg, Esq. - for the defendants

IN THE SUPREME COURT OF NOVA SCOTIATRIAL DIVISION

B E T W E E N:

ROBERT B. ASHLEY and GLENN  
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PLAINTIFFS

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TIA LAND SURVEYORS and THE  
BOARD OF EXAMINERS OF THE  
ASSOCIATION OF NOVA SCOTIA  
LAND SURVEYORS

DEFENDANTS

NATHANSON, J.:

Wishing to practice surveying in Nova Scotia, Robert B. Ashley entered into articles of apprenticeship with Glenn M. Crews, a Nova Scotia Land Surveyor and submitted it to the Board of Examiners of the Association of Nova Scotia Land Surveyors for registration. The Board of Examiners declined the application on the ground that Crews did not have 5 years' experience or its equivalent as a Nova Scotia Land Surveyor as required by a policy of the Board. Ashley and Crews submit that neither the provisions of the Nova Scotia Land Surveyors Act, S.N.S. 1977, Ch.13, nor the regulations thereunder, nor any by-law of the Association of Nova Scotia Land Surveyors made pursuant thereto authorizes such a policy which, therefore, is without any foundation in law. They now claim an order in the nature of certiorari quashing the decision of the Board of Examiners and an order in the nature of mandamus requiring the Board to re-consider its decision.

1. FACTS

Robert B. Ashley is a surveying engineer. He has a Bachelor of Science degree in Surveying Engineering from the University of New Brunswick, is a member of the Association of Professional Engineers of Nova Scotia, and holds a commission as a Canada Lands Surveyor. Between March and July, 1985, he articted with one Frank Longstaff, N.S.L.S., the contract of articles for which was approved by the Board of Examiners. On September 15, 1986, he entered into articles of apprenticeship with Crews; those articles

are in a form which has been prescribed by the Board of Examiners. At that time, Crews had been a Nova Scotia Land Surveyor only 15 months, having received his certificate of qualification on June 28, 1985.

By letter dated October 10, Howard K. Wedlock, Executive Secretary of the Association and Secretary of the Board of Examiners, wrote to Mr. Crews as follows:

"The Board of Examiners have a ruling that normally a surveyor must have 5 years experience before taking on a student.

I suggest that you send me a letter stating your reasons why you consider your experience, etc. suitable to article a student, even though you have just received your license to practice within the past year...."

In reply, Crews pointed out that there was no authority for such a ruling but, nevertheless, he was complying with the request. He then outlined his training and experience, and concluded by stating that he had completed 3 years 9 months of continuous, challenging land surveying problems, and asked the Board of Examiners to consider that the amount of work he had completed to date was equal to what the average surveyor takes 5 years to complete.

By letter dated January 19, 1987, Mr. Wedlock, as Executive Secretary of the Association, set out the decision of the Board of Examiners:

"The Board members, after due consideration, declined the application on the basis that you have not in their opinion demonstrated sufficient reasons to take on a student for articling purposes...."

Mr. Ashley and Mr. Crews replied by separate letters dated January 28. Mr. Ashley stated that he could find nothing in the Act, the regulations, or the by-laws that gives the Association or the Board authority to have or implement such a policy without passage of a regulation; he requested that the Board review his application and, if it was not accepted, advise the authority for its decision. Mrs Crews stated that he would not accept a ruling of the Board for which there was no authority in the Act or the regulations, and he insisted upon a re-consideration of the Board's decision.

In a letter to Ashley of February 3, Mr. Wedlock stated:

"... the Board's ruling was published in the Board of Examiners Report, October 1981 issue of the Nova Scotian Surveyor. This policy has been in force since that time and as well has the approval of Council. The ruling is in accordance with Section 98(h) of our present regulations."

Mr. Wedlock also sent a copy of that letter to Mr. Crews and, in a covering letter dated February 6, added:

"For additional reference you should read 3(b), page 26, Board of Examiners, Instructions to Candidates."

Pursuant to the requests of Ashley and Crews for re-consideration, the Board met on May 7 to re-consider Ashley's application. It decided to decline the application on the ground that Crews did not have experience equivalent to that of a surveyor of 5 years' standing.

Both Ashley and Crews say that they had not previous knowledge of the existence of a ruling of the Board. The position of the Board of Examiners is that the ruling originated with, and was approved by, the Board; that reference to it was made in the publication of the Board's reports in 1981 and subsequent years; that the ruling has been approved by the Council of the Association; and that the policy has been in effect since it was adopted.

With respect to the first point, it is noted that the minutes of the meeting of the Board of Examiners held on October 1, 1981, contain the following:

"3.2.2 The Board approved a motion by Roy Dunbrack, seconded by Bruce Gillis, that 'to be eligible to sign an indenture with a student a surveyor ordinarily must have at least five years' experience as a Nova Scotia Land Surveyor', and that this requirement should be effective 1 Nov 81. The gist of this requirement is to be part of the Board's report at the Annual Meeting, and details are to be included in the Board's new Handbook. Also, the indenture document is to include a certificate that the surveyor has five years' experience as a N.S.L.S. and that he has no other indentured student in his employ. The indenture document is to be received by the Board within 30 days of the date of the beginning of the articles."

With respect to the second point, The Nova Scotian Surveyor published reports for the annual meeting, Summer, 1981, including a report of the Board of Examiners by its Chairman, A.F. Chisholm, which contains only one

"... your Board will supervise and rule on the terms and times of articles and other conditions relating to articulated students...."

An extract of minutes of a meeting of the members of the Association held in 1981, tendered as an exhibit, contains a summary of a discussion as to why the Board of Examiners had recently ruled that a surveyor could not have an articulated student under him unless he had 5 years' experience as a Nova Scotia Land Surveyor. The discussion ended in the following manner:

"Jim Gillis	- I move that we table this report until such time as our solicitor has checked into the legality of the Board's recent ruling and then bring it back to an annual meeting.
Russell MacKinnon	- Seconded.
Vote	- Motion carried."

Mr. Chisholm's report as Chairman of the Board of Examiners for the following year contained this relevant paragraph:

"A new booklet 'Instructions to Candidates' was completed this year becoming effective May 1, 1982. It also contains revised application forms and minimum percentage of articling time for field and office functions. Your Board spent much time at each of the seven meetings discussing the five-year ruling recently passed on October 1, 1981. It reads '...to be eligible to sign an indenture with a student a surveyor ordinarily must have at least five years' experience as a Nova Scotia Land Surveyor...'. The last meeting of the year the Board proposed to Council that if a decision by the Board re the above was felt unfair by any surveyor, it could be appealed to Council."

Mr. Chisholm's report as Chairman for the year 1983 contained only one brief mention of the matter:

"The Board held lengthy discussions on the 'five year policy' and has made suggestions to Council regarding the handling of this matter."

It should be noted that neither side in this proceeding disclosed to the Court any minutes of a meeting of the Council of the Association indicating that the Board's policy in this regard was approved by the Council, nor any copy of the Board's new handbook mentioned in the

minutes of the meeting of October 1, 1981, nor any minutes of an annual meeting of the Board approving the report tabled at the 1981 meeting of the Association.

It should also be noted that page 26 of the Board's booklet, Instructions to Candidates, dated April, 1982, contains a section dealing with a surveyor's responsibility to articling students. Mr. Ashley swore in his affidavit on file that the copy originally provided to him by the Association did not mention the so-called 5-year policy but, after the decision by the Board, he obtained another copy and found that two new sub-paragraphs had been added to s.3. One of those new sub-paragraphs stated as follows:

"Surveyor's Responsibility  
to Articled Students

3. ...

...

- c. A student may article only with a N.S.L.S. who has held that commission for a period of at least five years."

With respect to the fourth point, the applicants tendered the affidavit of one Rodney E. Humphreys, N.S.L.S., who swore that he articulated with one Michael Tanner, who at the time of such articles had not been a Nova Scotia Land Surveyor for a period of 5 years. The Board characterized that case as a mere slip.

## 2. ISSUES

The amended originating notice (application inter partes) in this proceeding claims that the Board of Examiners exceeded its jurisdiction and breached the rules of natural justice in not informing Ashley or Crews of its ruling before they entered into articles of apprenticeship so that it ought to re-consider Ashley's application. For its part, the Board and the Association claim that the Board, being an administrative and not a judicial body, was exercising its discretion in the performance of its administrative duties which is not reviewable by the Court; that the Board, in making the 5-year ruling, was exercising powers vested in it by statute or by regulations; and that neither the Board nor the Association owes a statutory imperative duty to Ashley or Crews which can be enforced by way of mandamus.

Counsel are agreed upon the following issues:

1. Is the decision of the Board of Examiners dated January 29, 1987, reviewable by the Court?
2. If it is, has the Board authority under the Act, regulations or otherwise to implement and maintain the 5-year rule?
3. Does mandamus lie against the Board?

### 3. LAW

The objects of the Association are stated in s.3(4) of the Act to include:

#### "Association Continued

3 ...

#### Objects of Association

(4) ...

(b) to regulate the practice of professional land surveying and to govern the profession in accordance with this Act, the regulations and the by-laws; ..."

The object in s-s.(b) authorizes the Association to regulate the practice of surveying and to govern the profession of surveying. That is to be done in accordance with the Act, the regulations and any by-laws adopted by the Association.

The Act creates two bodies of authority no doubt to breathe life into the objects. Section 4(1) creates a Council of the Association which, by s.8(1), is authorized to make regulations and, by s.9(1), is authorized to make by-laws. Section 11(1) creates a Board for -

#### "Board of Examiners

11 (1) ... the examination of students and applicants wishing to qualify as Nova Scotia Land Surveyors, the issuing of certificates of qualification, and the admission as members of the Association, ..."

Of the several subjects with respect to which the Council is authorized to make regulations, two are particularly relevant to the present circumstances. Subject to a requirement that all regulations must be approved by the members of the Association and by the Governor in Council, the Council may make regulations:

**"Regulations**

8 (1) ...

(a) respecting the government and discipline of any person entitled to practise as a Nova Scotia Land Surveyor including any person who is a member, student member or a holder of a certificate of authorization;

(b) respecting the examination of applicants for admission as students, fixing the terms of articles and providing for the reduction of such terms by reason of educational standing or experience and respecting the examination of students and applicants for membership in the Association and prescribing examination fees[.]"

The Council is also authorized to pass by-laws relating to administration and domestic affairs of the Association. The subject matter of such by-laws is enumerated in s.9(1), none of which are relevant to the present proceeding, and all by-laws are required to be approved by the members of the Association.

One of the principal duties of the Board appears to concern the admission of members to the Association. By s.12(1), the Board is required to admit certain persons to membership:

**"Admission of Members**

12 (1) The Board shall, upon application, admit as a member of the Association any natural person who furnishes satisfactory proof that the person

(a) is twenty-one or more years of age;

(b) has paid the prescribed fees;

(c) is of good moral character;

(d) has successfully passed such examinations and served such articles as determined by the regulations;

(e) has complied with all the provisions of the Act and regulations; and

(f) has taken the prescribed oaths as set out in the by-laws of the Association." (emphasis added)

The Act does not provide for an appeal except with respect to decisions of the Discipline Committee of the Association. The applicants say that their only recourse is an application for a review of the jurisdiction of the Board.

At this point, some summarization may be helpful. Section 3(4) of the Act indicates the intention of the Legislature that the Association's authority to regulate the



practice and profession of surveying shall be exercised in accordance with the Act and the regulations. Section 8(1)(a) and (b) of the Act indicates the intention that the Council has the power to make regulations governing a student member and fixing the terms of a student's articles. Section 12(1) of the Act indicates the intention that the Board shall admit into membership a natural person who proves, inter alia, that he has served articles determined by the regulations. The scheme of the Act relative to the subject of articling appears to be that the Council makes the regulations and the Board ensures that the regulations are obeyed.

Let us examine the relevant regulations, which are those numbered 87, 93, 94, 95, 96, 97 and 98.

The relevant portion of Regulation 87 states:

#### "QUALIFICATIONS OF APPLICANTS

87 An applicant for admission as a member of the Association shall

...

(b) article for such period of not less than three months nor more than three years as is prescribed by the Board; ..."

Regulations 93 to 97 inclusive are as follows:

#### "ARTICLES

...

93 Where a surveyor and a student enter into articles, the articles shall be registered with the Board within thirty days of the signing date.

94. Where an application to be registered as a student is approved by the Board, the Secretary shall register the applicant as a student and notify the parties by mail of such registration.

95 Following the Board meeting next after an approval of an application to be registered as a student, the Secretary shall advise the student as to the terms of articles which will be required in respect of him.

96 A member of the Association who is a party to articles may, with the consent of the student and the approval of the Board, transfer the articles to another member of the Association.

97 Upon cause being shown to the Board, the Board may transfer articles from one member of the Association to another member."

The relevant portion of Regulation 98 states:

98 The Board shall

...

(h) publish requirements for terms of articles and make such publication available upon request[.]"

Regulation 87(b) is concerned with the period of articling; it authorizes the Board to prescribe what period of time, within the limits stated, a particular applicant is required to article. It has no relevance to the question of whether an applicant may article with a member of less than 5 years' standing, a question which is properly categorized as one dealing with the terms of articles. That subject is dealt with explicitly in Regulations 95 and 98(h).

Regulation 95 directs the Secretary of the Board to advise the student about the terms of articles required of him. It is submitted that that regulation implies that it is the Board that prescribes the terms of articles. I do not accept that submission.

Regulation 98(h) directs the Board to publish requirements for terms of articles. It is submitted that this implies that it is the Board that prescribes the requirements or the terms. I do not accept that submission.

Section 8(1)(b) of the Act clearly and explicitly authorizes the Council of the Association to make regulations fixing the terms of articles. Section 12 of the Act clearly and explicitly directs the Board to satisfy itself that an applicant has served articles as determined by those regulations.

No provision of the Act authorizes the Board to fix a term of articles except by way of a regulation. No regulation permits the Board to fix a term of articles that limits a student or applicant for membership to articling with members of the Association who have been members for 5 years or more. Regulations 96 and 97 authorize the transfer of articles between two parties, each of whom is a member of the Association; no particular length of membership is required. These two regulations appear to give support to an argument that the regulations do not indicate any intention of restricting articling to members of 5 years' standing.

The regulations are silent as to any such restriction. The Council, although it has the statutory

power to make regulations on the subject, has not exercised that power. There is a void. It can be filled at any time by the Council properly exercising its power to make a regulation. It cannot be filled by the Board purporting to set rules which it is not authorized by statute or by regulation to do. The authority of the Board is limited to ensuring that the regulations duly enacted by the Council are carried out and fulfilled.

#### 4. ANALYSIS

When Mr. Ashley sent his articles of apprenticeship to the Board of Examiners, he did it pursuant to Regulation 93. The Board was empowered to deal with the matter because the Council had exercised its power to make regulations fixing the terms of articles arising from s.8(1)(b) of the Act by making Regulations 87 and 93 to 98 inclusive.

Note that Ashley was not applying for membership in the Association; he was merely applying for registration of his articles. Therefore, the fact that he may not have fulfilled all requirements for membership (in that he did not file an affidavit as to his character) is irrelevant.

When the Board informed Ashley that it declined his application, it believed it was acting with power implied from Regulation 94. It did have power to decline his application for registration of his articles, but not for either of the reasons it gave. The first reason given -- that Crews did not have 5 years' experience normally required of a surveyor taking on an articulated student -- was a rule that was beyond the power of the Board to impose. Neither the Act nor the regulations authorized the Board to create such a rule. Neither the Act nor the regulations authorized the Board to impose a requirement for equivalent experience. The power to do that is vested in the Council to exercise by way of regulation "fixing the terms of articles and providing for the reduction of such terms", and the Council has not made any regulation creating a 5-year rule so-called. If the Board wished to have that power, it should have requested the Council to pass an appropriate regulation and, if Council acceded to that request, it could then have passed a regulation which had to be approved by the members of the Association and by the Governor in Council in order to become effective.

The Board is a statutory body deriving its

powers from the statute that created it. Here, the Board purported to give itself powers. It made rulings and policies, gave instructions to candidates, ignored a resolution of the membership of the Association asking for a legal and opinion as to the legality of what the Board purported to have done. In other words, it acted as if it were a power unto itself and did not need authority or the approval of the Association, its members, or the Governor in Council.

Nothing that I have said is intended to reflect upon the wisdom of the so-called 5-year rule. Indeed, one can perceive that it may be a wise and perceptive requirement to impose on students who intend to become qualified as Nova Scotia Land Surveyors. But that is not enough. The Court has the duty of ensuring that a statutory body does not try to impose wisdom and thereby exceed its statutory jurisdiction.

The Association and the Board of Examiners are statutory bodies. The Board exceeded its jurisdiction, and there is no indication that the Association took any steps to change its course. It is necessary for the Court to intervene. In Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Association et al., [1975] 1 S.C.R. 382, Dickson, J. stated at p.388:

"... There can be no doubt that a statutory tribunal cannot, with impunity, ignore the requisites of its constituent statute and decide questions any way it sees fit. If it does so, it acts beyond the ambit of its powers, fails to discharge its public duty and departs from legally permissible conduct. Judicial intervention is then not only permissible but requisite in the public interest...."

The decision of the Board of Examiners dated January 19, 1987, is reviewable by the Court.

Having reviewed that decision, I find that the Board of Examiners did not have authority under the Act, the regulations or otherwise to implement and maintain the so-called 5-year rule so that, therefore, its decision of January 19 was made without lawful authority. Certiorari will issue to quash that decision and the ruling of the Board upon which the decision was purported to be based.

Mandamus does not lie in these circumstances against the Board of Examiners. In DeWolf et al. v. City of Halifax et al. (1979), 37 N.S.R. (2d) 259; 67 A.P.R. 259,

Morrison, J. cited with approval a passage from Karavos v. Toronto and Gillies, [1948] 3 D.L.R. 294 (Ont. C.A.) where, at p.297, Laidlaw, J.A. set out four prerequisites for mandamus:

59

".. Before the remedy can be given the applicant for it must show (1) 'a clear, legal right to have the thing sought by it done, and done in the manner and by the person sought to be coerced': High op. cit., p.13, art.9; p.15, art.10. (2) 'The duty whose performance it is sought to coerce my mandamus must be actually due and incumbent upon the officer at the time of seeking the relief, and the writ will not lie to compel the doing of an act which he is not yet under obligation to perform'; ibid., supra, p.44, art.36. (3) That duty must be purely ministerial in nature, 'plainly incumbent upon an officer by operation of law or by virtue of his office, and concerning which he possesses no discretionary powers': ibid., supra, p.92, art.80. (4) There must be a demand and refusal to perform the act which it is sought to coerce by legal remedy; ibid., supra, p.18, art.13."

Here, the applicant does not have a clear right to have his articles registered; the duty to register is not incumbent on the Board, and it is not purely ministerial in nature. Note Regulation 94 which directs the secretary of the Board to register an applicant where the application is approved by the Board. Criteria for such approval are not set out so that there is some room for the exercise of discretion. In a proper case, the Board has the ability not to approve an application. The application submitted by Ashley was not a proper case.

##### 5. CONCLUSION

In the result, certiorari will issue quashing the ruling and the decision of the Board of Examiners. Mandamus will not issue against the Board.

The applicants will have their costs of the application to be taxed in the usual manner.

J.

Halifax, Nova Scotia  
August 19, 1987

## Call For Volunteers

At the beginning of each year, it is the policy of Council to review the Organizational Chart of the Association, and appoint members to fill Committees and to work on various projects. In order to simplify the search for dedicated volunteers to fill these positions, we ask each member to consider the list below, and if you are willing to commit time to the activities of our Association, please indicate in order of choice the areas in which you would volunteer to work.

### Areas of Particular Interest:

Council	_____
Board of Examiners	_____
Atlantic Board	_____
Complaints	_____
Discipline	_____
Standards	_____
Survey Profession	_____
Continuing Education	_____
Public Awareness	_____
· Nova Scotian Surveyor	_____
ByLaws	_____
Statutes	_____
Regulations	_____
Political Action	_____
Annual Meeting	_____
Land Court	_____
Errors and Omissions	_____
Liaison - Engineers	_____
Barristers	_____
Architects	_____
Dept. of Transportation	_____
C.O.G.S.	_____
Technicians	_____
Municipal Affairs	_____
Other - Expanded Profession	_____
Land Information	_____
Practice Development	_____
Etc.	_____

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