



## Alberta Land Surveyors' Association

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# Memo

**To:** The Membership  
**From:** Council  
**Date:** December 18, 2009  
**Re:** Dual Plan Registration and the New Crown Lands Affidavit

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### Dual Plan Registration

The dual registration of survey plans at Land Titles and Sustainable Resource Development has been a difficult issue for Council and the entire membership for an extended period of time.

Legal opinions from the Government of Alberta and the Association's own legal counsel raised the same issues but reached different conclusions. In April 2008, Association solicitor David Jardine said, "I have noted that the existing legislation does not expressly address the question. ... Despite this ambiguity, it is my opinion that the best interpretation of the existing legislation is that the *Surveys Act* requires that where a statutory monument is placed by a land surveyor, it must be registered at the Land Titles Office. This applies to any statutory monument whether or not it is a statutory iron post."

In April 2009, the Government of Alberta issued its legal opinion that "the intent of the *Surveys Act* is to have survey plans be of public record. The Director of Surveys has the authority from the *Surveys Act* to determine how best to accomplish this. ... Except where it is specifically stated in the *Surveys Act* that a survey plan must be registered at the LTO, the Director has the authority to determine that the plan can be registered elsewhere."

Council was then left with the difficult task of trying to reconcile the two opinions. Which one should we follow? Council members spent plenty of time over several Council meetings trying to deal with these questions and searching for the right answers and a clear solution.

Council considered several alternatives to try to get clarity on this matter. Some alternatives included getting a court decision and approaching the Minister of Sustainable Resource Development. Involving the court for a declaratory judgement was eventually ruled out because of the significant expense and it is a technical issue in a specialized area that the court will not be familiar with, thusly there is a general tendency of the courts to defer to administrative policy in technical areas. An approach to the Minister was also eventually ruled out as it is a technical issue and ministers will generally defer to the experts in their department on technical issues unless there is a major political element involved. In this case, the Director of Surveys and Alberta Justice are the ones who would be asked for their input by the minister and their opinions were already available.

In the end, Council decided not to contest the Government of Alberta on the issue. It was apparent that the *Surveys Act* was not clear on this question and that the membership had differing interpretations of the Act and the intent of the Act. Possibly these could not be easily resolved even by amending the Act.

If Alberta Land Surveyors wish to continue to register plans at both Sustainable Resource Development and Land Titles, they may do so. However, Council is of the opinion that should you only file with Alberta Sustainable Resource Development, it will be deemed that you have met your legal obligations under the Act, as explained in the Government of Alberta opinion.

### **New Crown Lands Affidavit**

Council then dealt with concerns arising from the original proposed affidavit in which an Alberta Land Surveyor would certify that "...the survey represented by this plan is true and correct to the best of my knowledge, has been carried out in accordance with the *Surveys Act* and the Alberta Land Surveyors' Association Manual of Standard Practice...."

A significant number of members who work in this area wrote to Council indicating that they believed they would knowingly be signing a false affidavit if they signed that proposed affidavit because of concerns over how sections 10, 44, 45 and 46 of the *Surveys Act* applies or does not apply to wellsite surveys.

Council has made it clear that it does not condone any Alberta Land Surveyor signing a false affidavit.

Council representatives met with the Director of Surveys and his staff on several occasions to try to change the affidavit and understand the Director's rationale for his position. During these discussions between Council and the Director of Surveys, the Director agreed that the November 1, 2009 mandatory date for showing SRD's new

affidavit on Public Land disposition surveys would be postponed and, in the interim, surveys will not be rejected.

The Director of Surveys has stated that all public land surveys must use the following affidavit effective February 1, 2010.

**Alberta Land Surveyor's Affidavit**

*I, (name of surveyor), of the (place of residence), Alberta Land Surveyor, make oath and say:*

*1 that the survey represented by this plan was made under my personal supervision,*

*2 that the survey was made in accordance with good surveying practices and in accordance with the provisions of the Surveys Act, and*

*3 that the survey was performed between the dates of \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_, and that this plan is true and correct, and is prepared in accordance with the provisions of the Public Lands Act.*

*SWORN before me at*

\_\_\_\_\_ of \_\_\_\_\_  
in the \_\_\_\_\_ of \_\_\_\_\_  
this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
*Alberta Land Surveyor*

\_\_\_\_\_  
*A Commissioner for Oaths  
in and for the Province of Alberta  
Commission expires on \_\_\_\_\_, \_\_\_\_\_*

Council accepts the Director of Surveys policy dated December 18, 2009 and the use of this affidavit (“...in accordance with the provisions of the Surveys Act..”) with the understanding that statutory iron posts (Section 10(3) of the Surveys Act) do not need to be placed and that Sections 44(3), 45 and 46(3) of the Act do not apply to disposition surveys that are currently not monumented with statutory iron posts.(ie. wellsite surveys). Monumentation for disposition plans is as outlined in the Disposition Plan Requirements issued by Sustainable Resource Development.

What is Council’s rationale for this position?

Section 2 of the *Surveys Act* states, “This Act applies to surveys of any land within Alberta that is within the legislative competence of the Legislature.” Council believes that Section 2 of the *Surveys Act* was meant to include all surveys including wellsites. This is supported by PRB Bulletin 3/4-1999 which states, “the Practice Review Board

interprets this section [Part C, Section 1.5 of the Manual of Standard Practice] as requiring these surveys to be done in accordance with the Surveys Act but with a reduction in accuracy.” The PRB Interpretation is online at [www.alsa.ab.ca/uploads/files/PDF/4interpretation1999.pdf](http://www.alsa.ab.ca/uploads/files/PDF/4interpretation1999.pdf)

Section 10(1) of the *Surveys Act* states, “all surveys made under this Act shall be made... (c) in accordance with this Act.”

How can Council state that sections of the Act do not apply?

The Surveys Act only deals with certain types of surveys. Part 2 deals with township surveys. Part 3 deals with surveys that were intended to be registered at Land Titles or the Metis Settlements Land Registry as those sections (sections 39-48) consistently refer to surveys of land in municipalities and plans which are required to be registered at Land Titles. Wellsite surveys, real property reports and other types of legal surveys are not referenced within the Act but Council still believes that those surveys are done in accordance with the Act.

The Association’s solicitor indicated in his April 2008 opinion, “In the 1988 Act, surveys in unsurveyed territory and well location surveys were seen as something other than a Part 3 survey. They appeared in Part 4 and sections 45 and 47 of the 1988 Act authorized regulations that would set requirements for these surveys. Thus, these surveys were seen as different from the surveys conducted under the other parts of the Act.” Council believes there was no intent to incorporate wellsite surveys and surveys in unsurveyed territory under Part 3 of the Act when the Survey Regulation was repealed and the requirements were incorporated into the Manual of Standard Practice.

Council recognizes that the legislation is not clear and that this interpretation is a significant shift in the traditional way that the Surveys Act has been viewed. However, Council has spent a great deal of time and effort researching and analyzing different sections and different interpretations of the Act. It feels that this interpretation and the rationale for it is reasonable and, based on that, acquiesces and accepts the use of the affidavit and policy as put forward by the Director of Surveys.

### **Conclusion**

Council supports initiatives that work to improve survey standards for disposition surveys and continue to improve upon protecting the public’s interests. Effective May 1, 2011, this will mean the use of statutory iron posts on all disposition surveys and potentially changes to other standards which will strengthen and improve the overall requirements and better protect the public’s interests and the interests of rights holders. The Alberta Land Surveyors’ Association is committed to working with the Director of Surveys to develop these standards as well as other related standards such as those regarding georeferencing and integrated surveys.