The Driving Force

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Sharpline

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Deadline dates for submission of material to ensure printing are as follows: February 15th, June 1st, September 1st, and December 1st. Opinions expressed by the editor or individual writers are not necessarily endorsed by the Council of the Alberta Land Surveyors’ Association. Original articles may be reprinted with due credit given to the source and with permission of individual writers or where no writer is indicated, with the permission of the Editor. *ALS News* is published by the Alberta Land Surveyors’ Association for circulation to the Association Membership. Address all correspondence to:

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*ON THE COVER*
Lacombe Golf and Country Club

---

*What a team!*
Ensight
(repeat)

requested this page
The summer has come to a close. I hope everyone had an enjoyable and relaxing summer. Our committees are back to work after taking a much deserved break. I have just realized that I have already completed one-third of my term as your president. Many issues have been started but much is left to complete.

At the Annual General Meeting in Jasper in April, we passed the Professional Maintenance Program. One of the components of this was a resource center on our website. The Association staff have been hard at work putting this together. I hope you take the time to have a look at the center under member resources on the ALSA website at www.alsa.ab.ca. If you have any comments, please contact Brian at the Association office.

Through the continuing efforts of our Executive Director and based on a suggestion from former Public Member on Council Mark Hlady, we were given the opportunity to make an information presentation to various MLAs through the Standing Policy Committee on Agriculture, Environment and Rural Affairs on July 25th. There are various standing policy committees within Government that deal with different issues. These committees are made up of Government MLAs and the ministers responsible for the committee’s area of concern. The purpose of these policy committees is to allow for public, private and government departmental input into what effect government policy of the day has on society. We presented some information on Digital Plans, the Coordinate Based Cadastre Study, and the possible Statutory Boundary Tribunal. We were asked to keep them informed as to any issues we may have. This was an excellent opportunity for the ALSA to make contact with some high-level Government officials to inform them of who we are and what we do. I strongly recommend that this practice be continued in the future.

On August 10th, we made a similar presentation to the Executive Committee of AUMA (Alberta Urban Municipalities Association). AUMA is a lobby group and service provider to cities, towns, villages, summer villages and a couple of specialized municipalities in Alberta. It is very important that we converse with AUMA on a regular basis, as they are the first contact for the general public in regards to our services. Again we included some information on Digital Plan Submissions, the SPIN system, Real Property Reports and the Real Estate Transaction Committee. It was very refreshing to hear that AUMA is fully supportive of the Real Property Report. We have agreed to help wherever we can in their public relations program in support of the Real Property Report. Again, this was an excellent opportunity which needs to be continued on a regular basis. As an addition to this, we had a booth at the AUMA convention this year. This was another very important public relations initiative so the next time you receive that dreaded call to work the ALSA booth, please consider this request very carefully. Through this group, we will be able to continue to put forward our message to the members of the general public.

September has been an exciting month, we embarked on the President’s Tour with stops in Grande Prairie, Fort McMurray, and Lethbridge. The purpose of the tour is to make the Association available to all members equally. This gives members who are not able to travel to the major centers for the regional meetings, the opportunity to voice their concerns and provide input into the Association business. It also gives us the opportunity to discuss some of the current issues with other members to get more input.

The golf tournament was oversubscribed but arrangements were made to accommodate as many golfers as possible. The response has been excellent. Does this mean that we have a great amount of enthusiasm in our Association or does everyone just finally have time to golf? In spite of the windy weather, everyone had a wonderful time. Thank you to all our sponsors.

As many of you are aware, the University of Calgary continues to generate vast amounts of discussion. I do not see an easy resolution to the issues at hand. However, we will continue to push forward and attempt to look after our future educational requirements. The next meeting of the Geomatics Engineering Liaison Committee will be held in October. At this meeting, discussions will continue with regard to the content of the proposed Block Week Course and as well, I hope, other discussion regarding the overall Geomatics Program. I have not received many calls from you, the members, outlining your thoughts on the U of C program. Please take the time to do so.

I wish to pass on congratulations to Jim Sweeney who became one of two

...continued on page 16
Spectra Precision

*(deadline maker - repeat)*
The Professional Land Surveyor and Self-Government

Have you ever wondered whether the Alberta Land Surveyors’ Association is an effective self-governing profession? As a new Council member, I find that thought crossing my mind as I attend Council meetings and face learning new proceedings/knowledge or ponder the challenges that Council encounters.

First, it is important to examine the characteristics of a self-governing profession. A self-governing profession places the public’s interest above the interests of its membership because the public grants the profession the privilege of governing its membership. In return for this privilege, the professional members of a self-governing association are required to perform their duties in a competent and ethical manner based upon a high level of skill and educational achievement.

Another characteristic of self-governing professions is the exclusive right to practice in a defined sphere of activity. As land surveyors, it is our exclusive right to survey land to determine or establish boundaries. However, factors exist that serve to limit and guide our practice. Specifically, we are governed by legislation and self-imposed regulation. As professionals, we are granted control over our entrance requirements and establishment of practice standards. We also have the power to enforce both of these domains through a disciplinary process. Nevertheless, these powers pertain only to our right to determine and establish boundaries. With the exception of ethical conduct, the Association has no jurisdiction over members outside that sphere of exclusive practice.

The right to practice in a defined sphere of activity has been implemented more liberally on some occasions. For example, in an effort to expand their practice, many land survey companies are successfully competing in areas outside their exclusive sphere of practice, such as mapping, engineering, and geodesy. On the other hand, difficulties can arise when individuals who are not professional land surveyors attempt to practice as professionals. In particular, the Association cannot govern individuals who perform unauthorized practice in land surveying. The only recourse the Association has when dealing with such individuals is through legal measures. From time to time, the Association has been required to investigate allegations pertaining to unauthorized practice.

Council recently polled other professional organizations with regard to unauthorized practice. From the replies received it was reassuring to learn that we are not alone in dealing with this problem. However, it was also disturbing to find out that it is a fairly common problem facing other self-governing professions. Therefore, the Association must do everything within its power to investigate all allegations of unauthorized practice, because it is our responsibility as a self-governing profession to protect the public at large and uphold the integrity of our profession.

Most important, the key requirement of any self-governing profession is the active involvement of its members. To encourage the membership to be responsible for governing the profession, and I encourage all members to contribute to the building of our fine association.

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Land Measurement Systems
(repeat)
...tickets are still available for the 25th Anniversary Dinner of the J.H. Holloway Scholarship Foundation at the Red and White Club in Calgary on October 20th.

not a lot of people called the Association throughout July and August. That is not to say that the office was quiet or that nothing was done. I joked with anyone who did call me during the summer that it gave me the chance to get caught up on the projects that I had been putting off for the previous ten months.

One of the projects that I undertook was to look through the Report of Proceedings for the last forty years and write up short summaries of the issues the Association was tackling at that time and the initiatives being undertaken. The summaries intended to capture some of the Association history for the last forty years in much the same way that Jack Holloway had done for the first fifty years of the Alberta Land Surveyors’ Association.

Shameless plug: since I happened to mention Jack Holloway’s name, I would be remiss if I did not remind the membership that tickets are still available for the 25th Anniversary Dinner of the J.H. Holloway Scholarship Foundation at the Red and White Club in Calgary on October 20th.

It was a true education for me to look back at the last forty years of the Association. Some issues burst on to the scene and quickly faded as they were replaced by other hot topics. Some items would prompt heated debate for a time, seemingly disappear for a few years, and then re-emerge as strong as ever. Education is one such topic. The required education of future land surveyors predates the establishment of the University of Calgary program. Today, Council spends much time wrestling with what it feels are the appropriate education requirements. However, it is not only the education of future members that occupies the Association’s time but also the continuing education of existing members. For years, the membership had debated the relative merits of mandatory vs. voluntary continuing education programs and delved into point systems and appropriate activities. At the 2000 Annual General Meeting, the membership approved the Professional Maintenance Program. The members who spoke to the recommendation at the Annual Meeting spoke in favour of it and complimented the Professional Development Committee on its work. The Professional Maintenance Program consists of three components: self-assessment, a resource centre, and self-evaluation. The Professional Development Committee indicated that it would work on the resource centre first. The resource centre was envisioned as a web-based listing of links, articles, reports and seminars. Members could search the ALSA website for articles and reports of interest and links to any Alberta-based university or college to find courses of interest. The Professional Development Committee announced that the basic resource centre could be developed by August 2000 at minimal cost. On behalf of the Professional Development Committee, I am pleased to announce that the resource centre is available on the website www.alsa.ab.ca under “Member Resources.”

As the Professional Development Committee put a timeline on the development of the resource centre and told you that there would be minimal cost, the resource centre was developed internally by the Association office. The only cost incurred was a new pair of eyeglasses for myself after staring at the computer all day long. Just kidding!

We quickly encountered difficulties in trying to develop this resource centre. Where do you start? How is it organized? What is the focus? Can anything on the Internet be described as “comprehensive”? In looking at how to approach these questions, I looked at the broad subject areas listed in the PDC Questionnaire circulated to members each year. I also looked at the proposed categories from the defeated 1998 Mandatory Continuing Education Program. The result does not resemble either. There is a whole host of continuing education related links on the web. Many of these sites offer courses or have information available on many different subject areas. We have grouped the sites, I hope, into semi-logical categories.

The Association has not reviewed the websites and cannot vouch for their claims. The Professional Development Committee has asked, however, that if you have a comment on any of the sites listed within the resource centre that you send us an e-mail. In addition, if there are any sites that you feel the Association should list in the resource centre, please send us an e-mail about that too.
Business Management: This section in the resource centre lists a number of Canadian and international business related sites. Some focus on business plans, while others focus on leadership. There is the Small Business Knowledge Base as well as the Globe and Mail’s Report on Business. There are many sites that provide information on the stock market or larger companies. Our resource centre tries to promote those sites that could assist a survey business.

Computers: Type “computers” into a search engine on the web and you will get millions of hits. Rather than listing millions of websites, we chose to keep it simple. The resource centre lists several well-respected computer magazines as well as resource information on well-known specific products. We chose not to list every company that offers any type of computer instruction. Instead, you can go to one of the links on our resource centre and search from there.

Educational Institutions: This section lists every Alberta post-secondary educational institution, their continuing education page and their library page. This section also provides links to university and college survey programs throughout Canada and the world. While the Association does not anticipate that you would travel to New Mexico State University to take a survey course, the Department of Survey Engineering at that institution does offer a distance education course on survey ethics via the Internet and video.

Geomatics: There are a number of geomatics sites on the web. We have put those sites that appear to have a strong educational focus in the resource centre. The links do not only list cadastral surveying sites but also sites that feature information about GIS and GPS.

Legal: Alberta Land Surveyors are dealing with the implications of statutes and regulations every day. For this reason, we have devoted one section to legal issues. In this section, you can view the Queen’s Printer website, Law Now and Quick Law.

Libraries: Every community in Alberta has its own library and we have all of them listed. Some library websites allow you to search for books on-line while others list their hours of operation. Our resource centre also includes a listing of all of the publications in the ALSA library as well as links to the National Library of Canada, the U.S. Library of Congress and the Internet Public Library.

Media: I have been asked on more that one occasion why there would be a section on media in the resource centre. However, to know what is going on in the world on a daily basis is also educational. From the resource centre, you can read selected articles from ALS News and link to just about any Canadian daily or weekly newspaper. From the resource centre, you can listen to the BBC World Service online, read the Daily Oil Bulletin or visit Ananova, a computer generated news anchor.

Research Tools: In the research department, you can view the ALSA report on digging for pre-1912 wooden posts or one of Lyall Pratt’s SPR case studies from a previous issue of ALS News. If you need help with your grammar, there a couple of sites for you. But if you need other information, you may want to visit the Encyclopedia Britannica or Encyclopedia Smithsonian websites.

Safety: Safety is a hot topic wherever you go. This section of the website lists several organizations that offer safety information. We have deliberately chosen not to list private safety consulting firms for the reason that there are so many of them and so few focus on surveying.

Seminars: In addition to upcoming ALSA seminars and material from previous ALSA seminars, there are forty-four sites listed here. With some, you simply purchase the material and they send you the book or manual. In other cases, the course or presentation is conducted online in real time. There are so many subjects and so many training methods that it is impossible to categorize them.

We do hope to have a search feature on the website soon. In the meantime, we welcome your comments on the ALSA resource centre. With a little patience, you should be able to find information on any subject of your choice.

I Am

A Land Surveyor!

Hey, I am not an engineer or a labourer, and I don’t wear torn jeans.

I do know John and Jim and Connie and they are really really nice, even though they are my competition.

I have a university degree not a college diploma.

I make $98,851 per year and not minimum wage.

And I believe in “getting it right” every time not plus/minus 2.5% 19 times out of 20.

Not only can I calculate, integrate and formulate but I can also GPS, GIS, ATS, ASCM and NAD.

And it is pronounced “cadastre” not “cadaster.”

Land Surveying is the first in professionalism, and the best part of Geomatics.

My name is Joe, and I am a Land Surveyor.

Thank You.
LPP

(repeat)

requested this page
J.H. Holloway Scholarship Foundation

Albeit this is July 2000, but I have just had an opportunity to finish my bathroom or bedroom reading and I was very intrigued by an article in the ALS News of March 2000 providing notice of a celebration of the 25th anniversary of the J.H. Holloway Scholarship Foundation.

Jack Holloway held the comparable position in Alberta to that of this writer in B.C., however, starting when I was only five years old in 1941—in the days when you still had a secretary. I guess we are antiques in British Columbia. Tell Brian Munday we are not yet Executive Directors or CEOs or whatever. Some people think that for a Secretary I am not a very good typist, I make lousy coffee, but I can sure sweep up. There recently was a motion put forward by the British Columbia Professional Secretaries(y) and Registrars Association of which we are members, to change the name of that association to the British Columbia Executive Directors’ Association or some other modern connotation. The only objection was filed by this writer asking whether or not I could still be a member and be occasionally invited for lunch. Even the lawyers who recently had an Act amendment changing their treasurer to read president and their secretary to be a CEO, voted against the change (at least for now).

Getting back to the Jack Holloway Scholarship Foundation—the article in ALS News quoting his advice to the incoming secretary in 1967 or 1968 was very down to earth, sincere and homey. It made me chuckle a bit but I am sure sweep up. There recently was a motion put forward by the British Columbia Professional Secretaries(y) and Registrars Association of which we are members, to change the name of that association to the British Columbia Executive Directors’ Association or some other modern connotation. The only objection was filed by this writer asking whether or not I could still be a member and be occasionally invited for lunch. Even the lawyers who recently had an Act amendment changing their treasurer to read president and their secretary to be a CEO, voted against the change (at least for now).

As you may or may not know, I am currently Clerk of the British Columbia Land Surveyor’s Foundation which has only been in place since 1989 and has similar objects and aims as the J.H. Holloway Scholarship Foundation program in Alberta, but also involves the control and maintenance of the Corporation of B.C. Land Surveyors’ Library or research facilities.

Please find enclosed my personal cheque in the amount of $100 as a charitable donation to the J.H. Holloway Scholarship Foundation in Alberta. Thanks again.

GORDON M. THOMSON, BCLS
STILL SECRETARY, TREASURER AND REGISTRAR IN BRITISH COLUMBIA

Re-observation of EDM Calibration Baselines in Alberta

At the 2000 Canadian Geodetic Reference System Committee meeting in April, the Geodetic Survey Division (GSD - Geomatics Canada, NRCan) presented to the member agencies a position paper concerning the re-observation of the EDM calibration baselines in Canada. The paper recommends:

- The current 44 EDM calibration baselines in Canada being re-observed by GSD be reduced to 10. This results in one per province or region with the selection to be made by the province or region in consultation with GSD.
- If a province or region desires to have more than one EDM calibration baseline re-observed by GSD, that work will be done on a cost-share basis.
- GSD recognizes the importance of EDM calibration baselines, but sees them as a diminishing requirement for federal and provincial surveyor organizations. Consequently, I am writing to the ALSA Council to make them aware of this situation and the direction the Director of Surveys Branch is taking on these recommendations.

Within Alberta there are four EDM calibration baselines, one each near the cities of Grande Prairie, Edmonton, Calgary and Lethbridge. The Grande Prairie and Edmonton baselines have six EDM calibration baseline pillars each, Calgary has eight, and Lethbridge has five. The length of each baseline varies from approximately 100 metres to over two kilometres depending on which is being observed on. All four baselines have been re-measured as part of an ongoing program to determine accurate slope distances between the pillars and to monitor pillar stability. The re-measurement program is part of the current support provided to the Province of Alberta by GSD.

The Grande Prairie, Edmonton and Lethbridge EDM calibration baselines are considered to be stable at the millimetre level or better. However, the Calgary EDM calibration baseline is considered unstable at the millimetre level and re-measurement is not recommended by GSD. Movement has been identified at pillars 3, 4, 5, 6 and 8 of this baseline. Pillar 6 in particular has been declared unstable with movements in the 3 to 7 mm range based on measurements from 1988 to 1994. The Grande Prairie baseline was last measured in 1996, Edmonton in 1996, Calgary in 1995 and Lethbridge in 1998.

Based on the given information, it is the recommendation of the Director of Surveys Branch that the Edmonton EDM Calibration baseline be the designated maintained EDM baseline in Alberta. It is also pointed out that Edmonton is central to the province and (based on our records) has the highest number of users. In addition to this, the Grande Prairie and Lethbridge EDM baselines will be also maintained, but on a cost-share basis with GSD. Due to the instability...
of the Calgary EDM baseline, the Director of Surveys Branch is recommending against further re-observation of this baseline.

If you have any questions and/or comments regarding any of the information in this letter, please do not hesitate to contact me.

GEOFF BANHAM, P.ENG.  
GEODETEC CONTROL SECTION  
DIRECTOR OF SURVEYS BRANCH

SAIT Scholarship

Thank you. Your gift of $750 for the Alberta Land Surveyors’ Association Scholarship is a valued contribution. Your donation ensures SAIT’s scholarship program will continue to directly benefit students in the pursuit of higher learning in their chosen fields.

Your support makes a difference and helps fulfill SAIT’s mission to be an innovative organization equipping people to compete successfully in the changing world of work by providing relevant, skill-oriented education. It is through partnerships with donors such as you that SAIT was able to provide 1,300 students with a scholarship in 1998, to help them realize their individual goals. Our strong scholarship program helps SAIT attract top learners, and position them for prime employment opportunities. In 1998, 97% of our students found employment within months of their graduation. Please share our pride.

It is a pleasure to enclose your charitable tax receipt in the amount of $750 representing the value of your donation. Again, on behalf of SAIT students, faculty, staff, and Board of Governors, please accept our sincere thanks.

PAMELA SHANKS, CFRE  
DIRECTOR, FUND DEVELOPMENT  
SOUTHERN ALBERTA INSTITUTE OF TECHNOLOGY

Condominium Property Act

Thank you for your interest in the draft regulation for the Condominium Property Amendment Act 2000 (the Act) and for submitting your comments to our recent request for feedback. Your suggestions were passed on to the working committee responsible for developing the regulation for the Act due to come into effect September 1, 2000.

With your and the other feedback received from individuals and organizations, the department is confident that it will have a suitable regulation addressing the key issues relating to condominium ownership and development in Alberta.

The Condominium Property Amendment Act 2000 and regulation will be effective September 1, 2000. Following this, the Act and regulation may be obtained by viewing the Alberta Government Services website, at www.gov.ab.ca/gs or from the Queen’s Printer Bookstore, at (403) 297-6251 in Calgary or (780) 427-5952 in Edmonton.

Again, thank you for your response to this important legislation.

RICK SOLKOWSKI, EXECUTIVE DIRECTOR  
FAIR TRADING AND REGULATORY SERVICES  
ALBERTA GOVERNMENT SERVICES  
JULY 20, 2000

Employment Standards Regulation

We have now completed the review of the Employment Standards Regulation and a number of amendments have been made that will come into effect on July 1, 2000.

Included in the amendments is a revised definition of “land surveying” as recommended in your letter of July 7, 1999. For your information, the revised section in the regulation reads as follows:

18(c) “land surveying” means the practice of land surveying within the meaning of the Land Surveyors Act.

Your input into the process is most appreciated and has made a valuable contribution to the review and updating of this legislation.

Should you wish to discuss any aspect of the changes or have questions, please feel free to contact me at (780) 427-8548.

K.J. FRANS  
SENIOR TECHNICAL ADVISOR  
EMPLOYMENT STANDARDS  
JUNE 29, 2000

Section 43, Surveys Act . . .
Delayed Posting

I have heard a couple of different interpretations by land surveyors with respect to the delayed posting affidavit required to be presented to the Land Titles Office in accordance with Section 43 of the Surveys Act. These are:

• at the date of signing the affidavit; the surveyor is swearing that all monuments are intact at that moment.
• the surveyor is swearing in his affidavit that at some time since he started this project, all monuments were placed. That is to say, it might be possible at the time of signing the affidavit that none of the monuments are intact.

There may be other interpretations as well. In any regard, I would appreciate your review of this affidavit to obtain the correct interpretation based on the intent and spirit of this delayed posting legislation.

In addition, you might review this with our Director of Practice Review, Mr. Lyall H. Pratt, ALS, to determine how the contents of this affidavit are presently being applied in his systematic review process.

Thank you for your assistance in clarifying this matter.

W.R. HUNTER, ALS  
(LETTER ADDRESSED TO THE PRACTICE REVIEW BOARD)

Beef and Bun Reception

Thank you very much for your e-mail. The Beef and Bun Reception is a favorite of the students, and I’m pleased to hear that it will take place again next year.

Your continued support is greatly appreciated by the Geomatics Engineering Students’ Society. I will definitely be in contact with the Alberta Land Surveyors’ Association in the months to come.

Please feel free to contact me in the next year.

VICTORIA ANNE HOYLE  
BSC CANDIDATE  
PRESIDENT, GEOMATICS ENGINEERING STUDENT SOCIETY, UNIVERSITY OF CALGARY
New Members

#669 SWABEY, Kevin T.
Kevin Tyler Swabey was born in Calgary on September 28, 1973. He attended James Fowler High School, graduated in 1991 and went on to receive a B.Sc. in Geomatics Engineering from the University of Calgary in 1996.

Kevin’s principal during his term of articles was Doug Krempien, ALS. Evaluating Evidence and Re-establishment was the topic of the technical report submitted as part of the qualifying examination. Kevin received his commission as an Alberta Land Surveyor on May 23, 2000.

Midwest Surveys Inc. of Edmonton has been Kevin’s employer for the last four years. Hobbies include hockey, golfing and camping.

Kevin, his wife Paula, and their daughter Megan reside in Sherwood Park.

#670 BROWN, Tony A.
Tony was born in Trinity Bay, Newfoundland on December 29, 1958. He graduated from Labrador City Collegiate in 1975, the College of the North Atlantic in 1984, and attended the University of New Brunswick in 1989 for one year.

Brent A. Murray, ALS served as Tony’s principal from October 1997 to May 2000. The topic of the technical report submitted as part of the qualifying examination was “Hibernia Oil Platform Survey Control for the Gravity Based Structure.” Commission as an Alberta Land Surveyor was granted on July 4, 2000. Tony also holds a commission as a Newfoundland Land Surveyor.

Employment history includes three years in highway construction, five years in oilfield construction (offshore) and seven years legal surveying.

Hobbies and other interests include woodworking, golfing, hunting and welding. Tony and Anna Brown and their three children, Jennifer, Kevin, and Tony, reside in Fort McMurray.

Corrections and Changes to the Register

Tony Brown, ALS is now working as a sole practitioner. His address is 251 Signal Road, Fort McMurray T9H 3X2. He can be reached by phone at (780) 713-5990 or by e-mail at t.a.brown@home.com.

Challenger Surveys & Services Ltd. in Edmonton has moved to 10117 Jasper Avenue, Suite 1400 T5J 1W8.

The Focus Corporation Ltd. has moved its Calgary office to 630 - 4 Avenue SW, Suite 302 T2P 0J9. The Medicine Hat office has moved to 623 - 4 Street SE, Suite 302 T1A 0L4. Phone, fax and e-mail remain the same in both locations.

Robert Gliddon, ALS: e-mail address is rgliddon@vennercs.com

Frank Halahuric, ALS has moved to 21, 1600 Strachan Rd. SE, Medicine Hat T1B 4M3; Tel: (403) 580-3108.

Stan Hutchinson, ALS has a new employment address: PO Box 2380 Iqaluit, Nunavut X0A 0H0; Tel: (867) 975-4629; Fax: (867) 975-4630; E-mail: shutchin@nrcan.gc.ca

Kiriak Surveys Ltd. has taken over the files of Kiriak & Associates Ltd. under the supervision, direction and control of Lew Rodney, ALS. Walter Kiriak, ALS is employed by Kiriak Surveys Ltd. The address, phone and fax numbers remain the same for the new company. The e-mail address is now lbr@telusplanet.net.

Maidment Land Surveys Ltd. has a new e-mail address: maidment@telusplanet.net. Also, effective September 30th their address will change to #13, 4703 Bowness Road N.W., Calgary, Alberta T3B-0B5

Maltais Associates Surveyors Ltd. has closed its High Level branch office.

Natural Resources Canada e-mail addresses:
P. Sullivan: psulliva@nrcan.gc.ca
D. Strachan: dstracha@nrcan.gc.ca
G. Olsson: golsson@nrcan.gc.ca
B. Neeyk: bnecyk@nrcan.gc.ca
D. Lipinski: dlipinsk@nrcan.gc.ca
S. Howard: showard@nrcan.gc.ca
R. Beaumont: rbeaumont@nrcan.gc.ca

Connie Petersen, ALS has taken employment with Brown Okamura & Associates Ltd. in Lethbridge as of August 1, 2000.

Brad Pollard, ALS has taken employment with Midwest Surveys Inc. in LLOYDMINSTER effective August 17, 2000 (e-mail address is bradp@midwestsurveys.com).

Brian Ross, ALS has moved to 232 Sierra Morena Green SW, Calgary AB T3H 3E5. He can be reached by phone at (403) 249-7541 or e-mail at bdross@cadvision.com.

Schirrmacher Surveying Ltd. has ceased operations effective July 1, 2000.

Garry Schirrmacher, ALS has taken employment with Stewart, Weir & Co. Ltd.
John Sung, ALS: e-mail address is jsung@telusplanet.net.

Stewart, Weir & Co. Ltd. in Fort McMurray has moved to 12 Morrison Centre, 9914 Morrison Street T9H 4A4; Tel: (780) 799-4440; Toll Free: (877) 799-4440; Fax: (780) 799-4446; E-mail: info@swg.ca. Due to an error, they were not listed in the Annual Register.

Usher Canada Limited in Fort McMurray has moved to 10014B Franklin Avenue T9H 2C7. Usher Canada Limited has also moved its Calgary office to 6444 - 12 Street SE T2H 2X2. Phone, fax and e-mail remain the same in both locations.

Analysis of 2000 Professional Exams

Practical Surveying

The examination was structured similar to those given in the past, where the candidate was required to answer four of the five questions. The first three questions of the exam were mandatory, with the candidate being allowed to choose one of the remaining two questions.

The space allotted for this article doesn’t permit a detailed analysis of each question and answer. However, below is a brief outline of the questions and marks awarded. For those interested in a more detailed analysis of the exam, the Association will again be presenting an exam preparation seminar (March 3, 2001) prior to next year’s exam.

Question 1

This question was a wells site survey in unsurveyed territory utilizing GPS methodology. The question examined the candidates understanding of the requirements contained in the Manual of Standard Practice as they relate to the method of least squares, mapping to township convergence, scale factors, the layout of theoretical townships using Table X, total and section coordinates, interpreting raw field notes and using GPS derived heights.

Possible Mark: 25
High Mark: 25
Low Mark: 0
Average Mark: 14.9 (60%)

Question 2

This question related to Original Township Notes. The candidate was required to calculate a missing course over a body of water and display a general understanding of the field notes, Bulletin 38 and monument inscriptions.

Possible Mark: 20
High Mark: 20
Low Mark: 7
Average Mark: 13.8 (69%)

Question 3

This question dealt with the requirements and the pupil’s understanding of Section 43 plans. Candidates were tested on their understanding of the difference between a Section 43 and a conventionally posted Plan of Survey with respect to the field survey, registration requirements, the legend, coordinate tables, the endorsements required and some practical questions on the use of the plan prior to the monuments being placed.

Possible Mark: 20
High Mark: 20
Low Mark: 7
Average Mark: 14.4 (72%)

Question 4

This question revolved around a typical house stake-out in a municipal environment. From the information and plan provided, the candidate was required to establish the coordinates of the missing monuments through accepted survey logic and compute the missing side and rear yard distance for the house. The candidate was also required to provide in detail the field and office procedures they would employ to ensure that the layout was done correctly.

Possible Mark: 35
High Mark: 34
Low Mark: 6
Average Mark: 24.3 (70%)

The Surveying Profession

Answers for Questions Under 75%

2. a) Briefly describe the purpose of the Manual of Standard Practice.
Part A : Introduction to MSP
3 marks

b) Can a member deviate from the Manual of Standard Practice? Explain why or why not.
Part A : Introduction to MSP
4 marks

c) Briefly explain the procedure required to amend the Manual of Standard Practice.
Recommendation at AGM, vote approved by majority present at AGM.
3 marks

3. As of December 1, 1999, what specific new items (forms, documents, etc.) are required to be submitted to Land Titles Office in order to register the following types of plans.
a) utility right of way
Consent to register form, Surveyor’s Affidavit.
3 marks
b) subdivision plan
Consent to register form, Surveyor’s Affidavit, approval of subdivision approving authority, consent of affected interest holders, witness affidavit.

4 marks

4. Explain what a Descriptive Plan is and give the advantages and disadvantages of its use compared to a plan of survey.

A plan, generally prepared by an Alberta Land Surveyor, registerable at Land Titles graphically depicting a written land description.

Pros: ease of preparation, lower cost, simplicity, easier for layperson to understand.
Cons: no monuments planted, boundaries not necessarily laid out, no preservation of survey fabric, may become confusing if a water boundary is involved.

5 marks

5. Using only the Land Titles Survey Plan Index (SPIN) system can lead to problems. What are they and how can they be avoided? See article SPR Corner, June’99, ALS News. Also Part E, Section 4, MSP.

4 marks

7. If a firm does not have a written agreement with a client, does it have a binding agreement at all? Briefly discuss.

Without a written agreement a firm must be more diligent in its record keeping and paper trail, with respect to job particulars. However, verbal agreements are just as binding as written agreements on all parties involved.

3 marks

9. What is the CCLS? Discuss its purpose.


5 marks

12. Name the individuals that currently hold the following positions within the ALSA:

- Director of Systematic Practice
- Registrar: Lyall Pratt, ALS
- Vice President: Larry Pals, ALS
- President: Don Jaques, ALS
- Public member on Council: Ernie Isley, (former) MLA

5 marks

Statute Law

There were five areas of examination for Statute Law.

The exam was set with a view to asking questions different from previous years, yet to maintain a practical and theoretical testing of knowledge of all pertinent statutes. Fifteen articling students wrote the exam with three students receiving a passing grade.

The following summarizes the questions and response statistics.

Condominium Act
- 6 questions for a total of 18 marks (18% of total exam)
- Average mark - 12.4
- Highest mark - 18
- Lowest mark - 7

Surveys Act
- 10 questions for a total of 25 marks (25% of total exam)
- Average mark - 17.1
- Highest mark - 22
- Lowest mark - 11

Land Surveyors Act
- 5 questions for a total of 12 marks (12% of total exam)
- Average mark - 9.9
- Highest mark - 12
- Lowest mark - 6.5

Municipal Government Act
- 9 questions for a total of 27 marks (27% of total exam)
- Average mark - 17
- Highest mark - 27
- Lowest mark - 12

Land Titles Act
- 7 questions for a total of 18 marks (18% of total exam)
- Average mark - 9.8
- Highest mark - 12.5
- Lowest mark - 7

Total Exam
- 37 questions for a total of 100 marks (100% of total exam)
- Average mark - 66.2
- Highest mark - 88
- Lowest mark - 53

President’s Message continued........

new members of the Saskatchewan Land Surveyors Association at their conference in early June. Further congratulations need to be extended to Alberta Registries, as I understand that, as a result of the SPIN system, they have been nominated for a prestigious Canadian Information Productivity Award. Good luck on your nomination.

September will see Judy and I travelling to Winnipeg for the Manitoba Convention and October will take us to Nova Scotia. The role of President is a busy one but the experience has been second to none. I certainly urge anyone, as Past President Don Jaques comes calling in the near future, to let your name be put forward for nomination. We need your involvement and ideas.

As I travel across Canada and participate in the Presidents’ meetings and the conventions in each province, I continue to be thankful for the vibrant economy, the advanced system of Land Titles and the excellent system of monumentation that we have in Alberta. The issues in each locale are very similar to what we deal with in Alberta and other parts of the country. However, the lack of professional respect some members demonstrated for each other in one of the areas I visited this year is vastly different compared to what we have in Alberta. I certainly hope we will continue to work together to advance as an Association.
Further to discussions between the Registration Committee and the Practice Review Board, the following general statement could be made: that the current requirement of a technical paper be replaced by a series of project reports. This proposal will affect only Alberta article pupils who do not hold a commission in one of the four western provinces.

Some Background: The scope of the technical paper has been greatly enlarged since the original concept was introduced and implemented. The topic of the early technical papers was strictly limited to cadastral surveying. As time passed, the scope of these papers was gradually enlarged to the current level. Nearly all topics that are at least remotely related to surveying, be it an actual project or Association activity, are currently being approved. The driving force behind this proposed change is to ensure:

- that each candidate has been exposed to the complete process of various types of surveys;
- the candidate can communicate knowledge of these processes to the Registration Committee; and
- principal involvement.

Specific Reasons for the Change: The Practice Review Board has expressed a concern that new land surveyors are perhaps not fully acquainted with some of the fundamental procedures and processes that are required to complete a cadastral survey. Some examples are:

**Office work:**
- Basic job setup;
- The various information searches that must be conducted;
- The numerous sources of information;
- Project files and archiving;

**Field work:**
- Basic note keeping;
- Evidence evaluation;
- The use of governing evidence;

### The Proposal

The proposal put forth is that the current five thousand word technical paper be phased out and replaced by three project reports. Since the pupil shall be involved in the project from start to finish, the pupil should gain a greater understanding of the entire process. It was further concluded that the overall workload for the pupil will be less onerous than it appears to be for the full technical report.

**Pupil Involvement:** It is expected that the extent of the pupil’s involvement with the project will increase substantially with each project. For instance, the ‘hands on’ involvement with the first project will likely be confined to the field work and the pre-drafting computations, while playing a lesser role in the client liaison, job setup and final submission phases. Pupil involvement with the last project should be at the same level that a land surveyor would normally be involved, that is, in every aspect of the project, be it hands on or in a supervisory capacity.

**Principal Involvement:** The project is to be viewed as such—a project. The pupil shall complete each phase of the project under the supervision of the principal. The purpose of completing the project is to familiarize the pupil with each part of a survey project, from the initial inquiry by the client to the final product. One of the most fundamental reasons for doing a project is to provide an opportunity for the principal and the pupil to focus on each aspect of the project. It cannot be over-emphasized that principal involvement in each project is paramount.

**Project Categories:** Projects shall be in one of each of the following project categories:
1. A Parcel Survey/Subdivision (must be a plan of survey);
2. A stand-alone Right-of-Way or Road Survey;
3. Pupil selected, (the pupil may not repeat a project from group 1 or 2)

This option will require pre-approval from the Committee. Suggested projects include a Real Property Report, a condominium survey, a wells site survey, or a relevant engineering survey. It will be up to the pupil and the principal to determine the order in which these projects are completed. However, pupils may submit only one project in any one category.

### Project Submission

**Number of Projects:** The pupil shall complete three projects (one in each category) during the term of articles.

**The Project Returns:** The project returns are to include the following at a minimum:

**The Written Report**

The written portion of the returns should be from two to four (maximum) pages, but must at the same time, be complete. The written portion of the project returns shall cover the following topics:

- Introduction;
- Summary of work (i.e. scope of work);
- A discussion of any problems encountered during the survey;
- An explanation of any difference between the original assignment and the actual work completed;
- A cost justification (an explanation of what costs, in terms of items and times, went into the end cost of the project);
- Any other relevant comments;
- Attachments.

**The Attachments**

There will be instances where there will be a need for more information. The following attachments shall be included in the returns:

- A copy of the job order sheet;
- A copy of all search requests;
- A copy of the field notes;
- A copy of the final product;
- Principal ‘sign off’ form.
Report Submission Timing:
Project reports shall be submitted between June 1 and the end of September in each year of articles. Pupils who have not submitted acceptable projects on time, may be considered to be in breach of articles.

Submission of Project Reports:
A total of three projects shall be completed in order to qualify for the final qualifying examination. At least one project must be completed in each year of articles. Not more than two reports are to be submitted in any one year.

Involvement of the Principal:
To ensure that there is adequate involvement by the principal, the principal must complete the ‘Principal Sign-Off’ form, which must be part of the project returns.

Project Evaluation
Projects as represented by the project report will be evaluated in a manner similar to the method used to evaluate the technical reports. It must be emphasized that it is not the intention of the Registration Committee to duplicate the work of the Systematic Practice Review group during this evaluation process.

Transition Period
(Pilot Project)
It is recommended that a pilot project, consisting of three to five volunteers who have been in the system for less that six months, be instituted. The Project Report Process would be evaluated after the first set of reports have been reviewed.

Goals:
The Committee anticipates that as a result of this process, pupils will gain a greater appreciation of the importance of the basic elements of land surveying.
• The need for a full understanding of what is required. This is equally true whether the survey is an RPR, a wellsite, a subdivision or a major right of way project.
• The need to search for and obtain all the information that is available, and where to obtain it, for a particular project.
• The importance of neat, accurate and complete field notes.
• The increasing need for more comprehensive survey returns— including any number of drawings, reports and third party materials.
• A basic understanding of the various elements of the total invoice for each project.

Finally, the Committee is confident that pupils who follow this new program will make the transition from Articled Pupil to Land Surveyor better prepared to cope with the responsibilities of their new role in the Association and society.

The foregoing is a summary of the full paper presented to and approved by the ALSA council. The full version is available on the ALSA web site.

SUBMITTED BY THE
ALSA REGISTRATION COMMITTEE

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September 2000
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36th annual ALSA golf tournament

Texas Scramble Winners:

Hole-in-One Sponsors:

- HDF Insurance & Financial Group
  15th Hole—Sea-Doo Valued at $10,000

- Leica GeoSystems Ltd.
  16th Hole—Robotic Total Station System valued at $43,500 (open to ALSs and articulated students only)

- Spectra Precision of Canada Ltd.
  6th Hole—Geodimeter 600 DR200+ valued at $28,000 (open to ALSs and articulated students only)

Hole Prize Winners:

- Hole #1: ------------- Glenn Arnold
  Shortest Drive Men
- Hole #2: ------------ Mike Roesch
  Closest to Pin (2nd shot) Anyone
- Hole #3: ------------ Joyce Brown
  Closest to Pin Ladies
- Hole #4: --------- Derrick Hennessy
  Closest to Pin (2nd shot) Anyone
- Hole #5: ----------- Mary Campbell
  Longest Drive Ladies
- Hole #6: ------------ Dennis Clayton
  Closest to Pin Anyone
- Hole #7: ----------- Paul Westersund
  Longest Putt Men
- Hole #8: ----------- Lloyd Cridland
  Closest to Water Anyone
- Hole #9: ----------- Len Becker
  Longest Drive Men
- Hole #10: --------- Kate Schlachter
  Shortest Drive Ladies
- Hole #11: ------------ Carol Labine
  Longest Putt Ladies
- Hole #12: ----------- Colleen Smith
  Longest Putt Ladies
- Hole #13: ------------ Herb Kiel
  Closest to Target Anyone
- Hole #14: ------------ Brian Munday
  Ball in Sand (draw) Anyone
- Hole #15: ----------- Purdy Smith
  Closest to Pin Anyone
- Hole #16: ------------ Merv Borgeson
  Closest to Pin Anyone
- Hole #17: --------- Dennis Brunette
  Longest Putt Men
- Hole #18: ----------- Wade Heck
  Closest to Pin (2nd shot) Men

Thank you to Don and Linda Jaques for selling $1,120 worth of mulligans for the J.H. Holloway Scholarship Foundation
Critics described the film as “a stark and ironic tragedy” and as “one of the truest pictures of the lawless west.” It is also a cautionary tale about the law, for one of the characters identifies the law as “everything people have ever found out about justice and what’s right and wrong.”

So too is the case of Robertson v. Wallace (9701-10813; May 8, 2000)—a cautionary tale about an ox-bow incident and about survey law. It is a case which tells land surveyors a bunch of stuff: that sometimes a fence is just a fence, that ox-bow lakes or cut-offs are created suddenly, that expertise in surficial geology is useful, that clients should be assisted very carefully in amending title, that neighbours should be consulted, that the Land Titles Office cannot be relied upon to monitor the process. Although the only lynching is figurative, the case does serve as a morality play, in which exemplary principles and cautionary lessons are set out.

**Facts:**
The trial was heard between February 28 and March 10, 2000 in the Alberta Court of Queen’s Bench at Calgary before the Honourable Madam Justice Nation. The plaintiff was Phyllis Robertson (who owned a parcel of land south-east of the Highwood River), and the defendants were Donna Wallace (who had owned a parcel north-west of the river), the Registrar of the South Alberta Land Registration District, two land surveying companies, an Alberta Land Surveyor, and the Matwychuk-Goodmans (who purchased from Wallace the parcel of land north-west of the river). There was also a counter-claim by the Matwychuk-Goodmans.

The two parcels lie just north of the town of High River, within the NE1/4 of S7, T19, R28, W4M, through which flows the Highwood River. Township 19, R28, W4M was surveyed in 1890 by James MacMillan DLS, and the township plan was issued in 1893. MacMillan surveyed the westerly bank of the Highwood River. The Crown patent for the north-westerly parcel was issued in 1902, which was described as: All that portion of the North East quarter of Section Seven of the said Township which lies to the East and South of the West bank of the High River as shown on the 1893 township plan.

Title was issued in 1909 to Robertson’s ancestors. Robertson acquired title to a parcel described in the same manner, except for the inclusion of the clause “containing 48.22 acres more or less.” The next township plan was issued in 1917, based upon a 1917 survey, and showed that the course of the river had changed significantly between 1890 and 1917. Since 1917, there has been insignificant change in the location of the river.

In 1994, Wallace retained an Alberta Land Surveyor (ALS) to survey the boundaries of her parcel so
that she might sell it. The ALS was aware that:

- Wallace wanted to sell her parcel;
- there had existed for some time a disagreement between Wallace and Robertson as to the location of the boundary between their parcels;
- a fence existed through Wallace’s parcel which kept Wallace’s cattle to the north-west and Robertson’s cattle to the south-east.

The ALS concluded that the river had slowly and gradually shifted south-easterly and that, therefore, the present westerly bank of the Highwood River was the south-easterly boundary of Wallace’s parcel. He then registered his survey as Plan 9412624. Wallace’s parcel was shown to contain 132.87 acres, some 21 acres more than was described on her certificate of title. The ALS then assisted Wallace in getting a new certificate of title to the parcel which referenced Plan 9412624. Wallace then sold her interest in the parcel to the Matwychuk-Goodmans.

Meanwhile, Robertson continued to run cattle up to the fence. In 1997, a disagreement arose about the boundary with the Matwychuk-Goodmans. Robertson became aware of Plan 9412624 and of the change to the certificate of title for the north-westerly parcel so as to increase the area. She then brought the action.

Issues:
The court was asked to resolve seven issues:

- Did agreement to the fence constitute agreement to a conventional line boundary, and was such an agreement binding on a purchaser?
- If the west bank of the river is the boundary, then is its location ambulatory or is it fixed in place as of 1893?
- If the boundary is ambulatory, what is its present location?
- Was the ALS negligent in registering his plan or in assisting Wallace, without notice to Robertson?
- Can the Matwychuk-Goodmans retain all the land described in their certificate of title?
- Is the Registrar liable for registering the plan of survey and for issuing the new title, both without the consent of Robertson?
- Which party has trespassed on which land?

What follows is both a short answer and a longer analysis. The short answer to each of the questions is no; ambulatory; the pre-avulsion location; yes; no; perhaps; both parties.

Fence:
Justice Nation reviewed the law relating to conventional boundaries, the evidence of the parties, and the role of conventional boundaries within the land titles system. For our purposes, the two most significant cases cited were *Grasset v. Carter* (1883) and *Fielo v. Baird* (1999). The cases set out that the elements required to prove a conventional boundary are: “there must be adjoining land owners, they must have a dispute or uncertainty about the location of the dividing line between the properties, they must agree on a division line, and then recognize it as a common boundary” (para. 5).

The Court was concerned as to whether the doctrine of conventional lines could be imported into the land titles system in Alberta, because the “basic tenant [sic] of the Torrens system is that the title as registered is absolute” (para. 13). On the other hand, there were sound policy reasons for accepting conventional lines, just as adverse possession has been accepted, in that both doctrines serve to quiet title by recognizing in law what is being lived up to on the ground. The Court held, therefore, that a conventional line agreement could be established between two current land holders. If unregistered, however, the agreement cannot be enforced against a third party purchaser for value.

Both Robertson and Wallace testified that the fence which contained each herd of cattle was very old. Robertson knew it existed when she moved onto her parcel in 1957; Wallace admitted that she crossed the fence as a child to pick berries and swim in the river. The fence does not follow the course of the river as it now flows or as it flowed in 1890. The area enclosed between the fence and the current west bank of the river is 32.39 acres. The fence is merely conveniently located both to keep cattle separated and so as not to be washed away in times of flood.
Although Justice Nation acknowledged that there was a disagreement about the boundary, she found no evidence of either an agreement or of conduct that the fence constituted the boundary. Even if such evidence were present, the unregistered agreement would have been lost to the Matwyuchuk-Goodmans, as bona fide purchasers for value.

Ambulatory or fixed location:
Robertson argued that the location of the boundary between the two parcels was fixed (or “frozen”) according to the 1893 plan which represented the 1890 survey. Both Rockland Holdings Ltd v. 309458 Alberta Ltd (1987) and Hawkes Estate v. Silver Campsites Ltd. (1991) were used to support this argument. Wallace argued that the river constituted a natural boundary between the two parcels, and relied upon Clarke v. City of Edmonton (1930) and Chuckry v. The Queen (1973). The Court failed to identify the role that specific legislation played in fixing the boundary in Hawkes Estate, alluded to the only slight persuasive value of Rockland, and observed that neither case considered the Clarke or Chuckry decisions.

The latter two were judgments of the Supreme Court of Canada, and both held that parcels bounded by watercourses are upland riparian parcels. Such parcels are subject to increase in area through accretion and to lose area through erosion, even if the parcels are defined by area, by reference to a plan, or by ascertainable boundaries. Justice Nation relied upon the judgments to hold that the westerly bank of the Highwood River was the boundary between the two parcels, and is thus ambulatory in fact.

Present location:
The boundary is only ambulatory in law if its movement is slow, gradual and imperceptible. Both parties agreed that avulsion (a quick change in the river course) would mean that the location of the boundary would not shift with the change in the river. There was agreement that in the south-westerly part of the quarter-section, the river represented the current boundary but dispute as to the river in the north-easterly part. An ox-bow lake now exists (west of the current river), and a large island had previously existed where the river had formed an east and a west channel. Various expert witnesses weighed in with their opinions and Justice Nation illustrated the risks of proffering such expertise.

Robertson’s expert was qualified in surficial geology, and his evidence was accepted as to the movement of the Highwood River since 1890. Thus Robertson’s expert was favoured over the expert of the ALS, “largely as his qualifications are more suited to the assessment” (para. 37). Justice Nation held in favour of the following two opinions:
• that the meander existed before 1890 and was so shown on the 1893 plan, and that as a result of avulsion the neck would have been quickly severed so as to allow the river to move close to its current location. The severing occurred between 1890 and 1917;
• that the large island existed before 1890, and that the west channel was abandoned and the east channel enlarged as the result of a flood between 1890 and 1917.
Thus the court held that the two processes were likely not slow and imperceptible.

From the perspective of riparian boundaries, paragraph 32 of the judgment is a wee bit confusing, owing to some ambiguity in the way the surficial geologist’s evidence is described. In the space of two sentences Justice Nation explained that the oxbow would have been “cut off” by an avulsive process before 1890, and that the river would have moved to its current location “as a result of a chute cutoff (an avulsive process)” after 1890. At the risk of being pedantic and of relying upon terminology from physical geography, the pre-1890 river contained a meander or incised meander, whereas the post-1890 event resulted in both a straighter river and an ox-bow lake or (cut-off).
An equally significant dispute was over the date at which to define the location of the river. Robertson argued that the principles of avulsion or accretion needed to be applied from 1890, so as to determine the current location. The ALS argued that the relevant time was when title was acquired from the Crown; 1902 for the Wallace parcel, 1909 for the Robertson parcel.

Justice Nation held that although the creation of the ox-bow lake and the loss of the island occurred between 1890 and 1917 (the dates of the two relevant surveys), the exact timing of the avulsion was irrelevant:

*The determination [of the location of the river] is not frozen at a particular time. The changes in the course of the river from 1890 may or may not affect the boundary, but the description is fluid and meant to continue so, whether or not a title is granted from the flat for patent. To rule otherwise would lead to an absurd situation where the Crown would own the neck cutoff area and possibly the island if the avulsions occurred before 1909. Also, from a social policy point of view, to rule otherwise would mean that at the time of the title being issued, a survey would be required to know where the natural boundary was at the time. This was and is not traditionally done, and does not accord with the underlying tenants [sic] of a Torrens land holding system (para. 39).

Thus, the Court held that because the meander existed in 1890, Wallace’s parcel was defined by the westerly bank of the meander. The river changed location owing to avulsion (likely during one of the many floods in that period), and thus Wallace’s parcel did not increase in area owing to accretion. The Wallace-Robertson boundary remains fixed in location as shown on the ground. Likewise, because the west channel dried up quickly, the island did not accrete to Wallace’s parcel.

Again, the westerly bank of what was the west channel remains the boundary between the Wallace and Robertson parcels, fixed in location owing to avulsion.

**Negligence of ALS:**

In the longest part of the judgment, Justice Nation clearly set out that actionable negligence requires that a duty of care exists, that the duty is breached, and that damages are caused as a result of the breach. The argument was not that the ALS was negligent in giving an opinion of the current location of the easterly boundary of Wallace’s parcel, but rather that he was negligent in registering the plan of survey and in assisting Wallace to change her certificate of title. Most significantly, it was alleged that the ALS had breached a duty of care to his client (Wallace), to the adjoining land owner (Robertson), and to the third-party purchasers (Matwychuk-Goodman).

The ALS acknowledged that the additional land which accrued to Wallace’s parcel as a result of his opinion as to the river having shifted gradually, was land in which Robertson might have had some interest. Despite this knowledge, the ALS asked Land Titles as to how to entitle his plan of survey, and then signed and registered the plan. He had contacted Alberta Environment, given their interest under s.3 of the *Public Lands Act* in the bed of the river, who indicated no objection to the registration of the plan. More problematic was that the ALS then submitted a request for an updated title, prepared a letter for Wallace’s signature, and submitted it to Land Titles. The new certificate of title, which reflected the information on the plan, was issued.

The ALS conceded that he owed a duty of care to Wallace, as she was his client. Justice Nation used the principle from *Donoghue v. Stevenson* (1932) to also find that the ALS owed a duty of care to Robertson:

A duty is owed to someone who is in a position that a duty should exist, in the sense a neighbour or someone with a proximity that there is a duty to take care to avoid causing foreseeable damage. It is that the omission or the act complained of is one which had so close or direct an affect on a person that the defendant should have thought of the plaintiff when contemplating the act or omission (para. 58). Robertson was in such close proximity by virtue of sharing the disputed boundary with Wallace.

The Court also found that the ALS owed a duty of care to the Matwychuk-Goodmans, because they were potential purchasers about whom the ALS knew. Reliance by such purchasers on the plan of survey and on the amended certificate of title was held to be reasonable. Justice Nation was clear that there were no public policy reasons to limit the duty of care; she did not suggest that the ALS was to “be exposed to liability in an indeterminate time to an indeterminate amount for an indeterminate class” (para. 61). The purchasers were not unknown members of the public.

In determining the appropriate standard of care which the ALS should have exhibited, the Court relied on legislation, the ALSA Manual of Standard Practice (at the time of the survey, the Manual of Good Practice was in force), and the evidence of three expert witnesses. The ALS relied upon the same expert witness for determining the present location of the river; Robertson relied upon an expert witness who was also a land surveyor. The Introduction, Code of Ethics, and commentary on Professional Judgment from the Manual were all referred to.

The Court found the evidence most compelling from Robertson’s expert witness, who testified that a prudent surveyor would have notified Robertson before registering the plan or amending the title. On the other hand, the Court was critical of the ALS’s expert witness, whose evidence appeared to be a wee bit
inconsistent. First, his evidence was that the ALS’s action were “totally without favour” to Wallace; then he acknowledged that the ALS had a duty not to take steps to unilaterally resolve a dispute; then he agreed that the ALS was “a little out of his element” in helping Wallace to amend her title (para. 74).

The Court spent much time interpreting s.90 of the Land Titles Act, and in criticizing the actions of the ALS (in not following the provisions of the section) and the opinions of the ALS’s expert witness (in reading the section as merely discretionary). Section 90 sets out the procedure for amending the title of a parcel of land to reflect the current location of a natural boundary. The application “shall” be accompanied by a few things, including “the consent of the registered owners of parcels that may be adversely affected by the amendment of the description” (para. 86). The Court held that the ALS:

“had a responsibility to make sure he was complying with proper procedure to have his opinion adopted. He directly contravened the legislative directive in assisting to change the description of Mrs. Wallace’s title” (para. 80).

The Court therefore found that the ALS had breached the duty of care owed to Wallace, by leading Wallace to believe that she could rely on his expertise to “fix” the boundary issue. Likewise, the ALS had breached the duty owed to Robertson, by registering the plan and helping to amend the title without seeking her consent.

“All red flag was up” for the ALS, and yet “he said nothing” (para. 84). Justice Nation did acknowledge that breach of a code of ethics and breach of a statute are pieces of evidence to be used in determining the standard of care owed by the ALS. She made the distinction between a mere error of judgment as to the location of the river, and the negligence of the ALS in registering the plan and helping to amend the title. Finally, in helping to get a certificate of title which he knew may be subject to challenge, the Court held that the

A cautionary tale is that expert witnesses must not be advocates for the client; they must be consistent in direct and cross examination; they must be consistent in written reports and oral testimony; they must be qualified to offer the opinions which are being proffered; and they must know the law.

ALS also broke a duty to the purchasers.

Purchaser’s position:

Justice Nation found that the Matwychuk-Goodmans were bona fide third party purchasers for value. However, there were two current titles, both of which included some of the same lands. Given the Court’s finding that the ox-bow and the former island were part of the Robertson parcel, could the purchasers rely upon the description in their certificate of title?

Sections 66(1) and 173(1) of the Land Titles Act were reviewed. The relevant bits of s.66(1) are that a certificate of title is conclusive proof of entitlement to land, except as to any land being claimed under a prior certificate of title. Section 173(1) sets out that land can be claimed against a certificate of title by anyone claiming under an earlier certificate. Robertson was claiming under a prior certificate of title, and thus had a better claim to the disputed lands than the purchasers from Wallace.

The Matwychuk-Goodmans were unsuccessful in their action against Wallace, both in contract and in tort. Any action had to be brought by the purchasers within one year, and was not done so. Because the warranty as to the “size/measurements of the land” was an express term of the contract, the tort of negligent misrepresentation could not run concurrently. Moreover, the Court held that any misrepresentation was innocent and not negligent.

Liability of Registrar:

The Registrar of the South Alberta Land Registration District admitted that it should have insisted on Robertson’s consent before amending Wallace’s certificate of title, as required by s.90 of the Land Titles Act. The Registrar’s liability is set out in sections 158, 161 and 162 of the Land Titles Act. Section 158 allows anyone who has sustained loss or damage, or who has been deprived of land through the actions of the Registrar may bring an action against the Registrar. Section 161 sets out that if the loss or damage arises jointly through the wrongful act of another person and the Registrar, then the action shall be brought against both parties. Section 162 sets out that in any such joint action, judgment shall not be entered against the Registrar until the other liable defendant cannot satisfy the judgment.

Any loss or damage sustained by Robertson had not been an issue at the trial. Even if loss or damage were to be proven by Robertson, recovery against the Registrar could only take place if the ALS could not satisfy the judgment (assuming that the loss or damage was jointly caused by the ALS). The purchasers had to be able to prove that they had been deprived of land by an error, omission or misdescription in a certificate of title. The Court held that the Matwychuk-Goodmans did not fall under that definition, because the Robertson’s prior certificate of title meant that the purchasers could not be deprived of land which they had never had title. That is, the statutory exception to the purchaser’s indefeasible title meant that they had suffered no loss of land.

Trespass:

In July 1995, Robertson’s husband ventured onto the Matwychuk-
Goodmans’ parcel in order to fetch a bull. In addition, there was evidence of trespass by Robertson’s cattle. Finally, the Court found that on a balance of probabilities, the Matwychuk-Goodmans had trespassed upon the former island portion of Robertson’s lands.

**Conclusion:**
The judgment is significant to land surveyors for three reasons. It explains well the law relating to the creation of ox-bow lakes; it clarifies the role of the land surveyor in terms of the duty of care owed and the responsibilities as an expert witness; and it describes the extent to which the Registrar can be held liable for maintaining the land title system.

On the first issue, the Court directed the Registrar to amend the certificates of title of the two parcels to reflect the location of the boundary as determined by the Court. In the south-west, the Highwood River continues to be the boundary, and thus both parcels are afforded riparian rights. However, in the north-east, the boundary is no longer the river, and thus only Robertson’s parcel has riparian rights attached to it. This judgment has significantly advanced the law relating to riparian rights and the creation of meanders and ox-bow lakes in Canada, where there have been few cases dealing with similar fact situations.

In the United States, there is a much larger body of case law on the creation of ox-bow lakes and the sudden straightening of watercourses. The Mississippi judgment of *Cox et al v. F-S Prestress Inc* (2000) dealt with a similar series of facts as on the Highwood River. The Court did “not accept that the important event was gradual.” Rather, the Court used the garden hose paradigm:

The distinction can be likened to a garden hose lying curved in the yard. Accretion would be the gradual straightening of the hose while it remains on the grass, uprooting dogs and cats, disturbing the grass, and otherwise touching everything between its old and new location.

Avulsion in the context of a new channel being dug while the old one remained flowing would be splicing in a new section of hose without disturbing any of the old.

Second, the Court found that the ALS and vicariously his employer, were negligent and breached a duty of care owed in law to Wallace, to Robertson, and to the Matwychuk-Goodmans. Land surveyors have long known (or at least suspected) that they have responsibilities outside the contractual agreement. This judgment describes those responsibilities in the context of the neighbour principle. In owing a duty of care to both the neighbouring land owner and to the third party purchaser, the ALS has been confirmed as one of the custodians of the cadastral framework and thus the land titles system, and not merely as an agent of the client.

More significantly, the Court described both the strengths and the failings of the four expert witnesses, three of whom were land surveyors. A cautionary tale is that expert witnesses must not be advocates for the client; they must be consistent in direct and cross examination; they must be consistent in written reports and oral testimony; they must be qualified to offer the opinions which are being proffered; and they must know the law. If the land surveyor and the expert witness go beyond expressing an opinion, then they become mere advocates for their clients.

Third, the Court held that the Registrar made a mistake in the execution of its duties, by failing to give notice to, and getting consent from Robertson before amending Wallace’s title. However, the purchasers were not deprived of land, and Robertson had not shown that she sustained any loss or damage. Even if Robertson is able to so show, the Registrar is only liable to the extent that any other defendant cannot pay.

It would thus appear that the vaunted insurance principle of the land title system (as represented by the assurance fund) is a bit illusory. Or at least very similar to how his Aunt’s wallet was described by Edmund Blackadder, early 17th century bon vivant: “More capacious than an elephant’s scrotum, and just as difficult to get your hands on.”

*Note: Dr. Brian Ballantyne is the professor in cadastral studies at the University of Calgary and voted professor of the year by the students.*
Leica
(new)
Low-pressure natural gas pipelines operate at a pressure of less than 700 kPa. The materials used for these pipes are primarily polyethylene (PE) in rural Alberta as well as some PVC and steel. The low-pressure pipelines are the distribution systems that provide services to customers.

The Rural Utilities Branch (the Branch) of the Alberta Department of Resource Development manages as-built drawings for all the low-pressure natural gas pipelines in the rural areas of the province. The urban municipalities and their natural gas distributor handle the distribution systems within urban areas.

So how can an Alberta Land Surveyor obtain plans showing the location and key distributor contacts on this massive web of natural gas lines? There are several options available to obtain the information you need—whether it is for a smaller, streamlined operation or a complex, automated survey organization.

Option A:

Obtain from the Branch the provincial Franchise Area Map and a distributor contact list that will show the distributor areas and who to contact regarding low-pressure pipelines across the province.

- Maps are 22”x34” for $10 or 34”x55” for $30 (full colour);
- Distributor contact list is included.

Note: Not all LP gas distribution pipelines are operated by franchise holder.

Option B:

The 1:50 000 Mapping Series shows the general location of the rural low-pressure pipelines in the province (excluding federal lands) as well as distributor names and franchise boundaries. Based on the National Topographic Series grid, the set includes 377 plans and a key plan. The branch compiles these plans based on as-built submissions from the distributors of their previous year’s as-builts. Annual updates are normally available after July as follows:

- Individual map sheets are available from the Energy & Utilities Board (EUB) in hard copy;
- Complete hard copy sets (11”x17” half scales) are available from the Branch, for $100;
- Complete set of PDF files on CD are available from the Branch for $750;
- Complete set of digital merged files (excludes land base) in MicroStation DGN format on CD are available from the Branch for $2,500 (first order) and $1,000 (annual updates);
- Distributor contact lists are included with sets from the Branch.

Option C:

A more detailed 1:20 000 Mapping Series shows both high-pressure and low-pressure pipelines for the gas co-ops and counties under the Rural Gas Program. This mapping series is based on township drawings by the distributor and also contains the subdivision detail series for more congested areas. These are the plans used by the distributors for their operations and are the as-built files submitted to the Branch. The accuracy requirements for pipelines in this mapping series historically have varied. Lines surveyed since 1980 are surveyed to an accuracy of +/- 15m for low-pressure pipes and within 3m for high-pressure pipes. This mapping series contains over 4,000 files.

- Individual maps are available from the EUB (hard copies);
- Digital township files (excludes land) for the entire province are available from the Branch in MicroStation DGN format for $12,000;
- Digital subdivision files (includes land) for the entire province are available from the Branch in MicroStation DGN format for $3,000;
- Individual digital files are available from the Branch. Minimum charge is $200 and each file ordered after the first 10 are $20.

You can contact the EUB at (403) 297-8190 (Website: www.eub.gov.ab.ca).

Future plans for the Branch include having the mapping series available on the Department of Resource Development website at www.resdev.gov.ab.ca. The e-commerce site would allow clients to set up an account and download files as needed.

It is important to remember that as the work progresses from the drawing board to the field, the provincial Pipeline Act requires that field locates (Alberta One-Call, Distributor, etc.) are required for soil disturbances over 30 cm, this includes placement of survey monument in excess of 30 cm in length. All gas distributors in the province are members of Alberta One-Call (1-800-242-3447).

R. BRUCE PARTINGTON
SENIOR SAFETY TECHNICAL ADVISOR
RURAL UTILITIES BRANCH
ALBERTA RESOURCE DEVELOPMENT
Howard Douglas Farnell
(repeat)
Digital Earth 2001
Call for Papers
The Digital Earth 2001 Program Committee invites the submission of 200-400 word abstracts for presentations at the international conference to be held in Fredericton, New Brunswick, Canada, June 24-28, 2001.

We invite contributions from leading international experts who are willing to share their vision, knowledge and experiences. Papers are sought in, but not limited to, the following areas:

• Vision and Concepts of Digital Earth;
• Leveraging the Information Infrastructure;
• Conceptualization, Design, Operation and Acceptance of Publicly Accessible Information;
• Integration of Information for Improved Decision-Making;
• Public participatory GIS;
• Democratization of Information;
• Electronic Government and E-business;
• Internet/web GIS;
• Leveraging GIS/RS/GPS/Communications Technologies;
• Earth Observing Systems and Remote Sensing Technologies;
• Standards and Interoperability;
• Multi-dimensional Data Modeling;
• Spatial Data Warehousing and Mining;
• Virtual Reality;
• High Performance Computing and Communication;
• Using the Digital Earth Concept to Solve Real-world Problems in Environmental Protection, Disaster Management, Natural Resource Conservation or Improve Sustainable Economic and Social Development;
• Using the Digital Earth Concept to Improve the Quality of Life of the Humankind.

Digital Earth addresses the cultural, institutional, scientific and technical challenges that allow the citizen, scientists, planners and policy makers to visualize the Earth, and all places within it, to access information about it and to understand and influence the social, economic and environmental issues that affect their lives in their neighbourhoods, their countries and the Earth.

Abstract submission deadline is December 1, 2000. Submissions should be in a non-formatted ASCII text format, in English and/or French and be limited to 200-400 words.

All submissions must be sent to the attention of:

David Finley
Program Chair
E-mail: programchair@digitalearth.ca
Tel: 1-506-444-4644
Fax: 1-506-453-3898.

For a complete listing of suggested conference themes, abstract submission specifications or on the Conference, please visit the website www.digitalearth.ca.

SHERI FLANAGAN
PUBLIC RELATIONS COORDINATOR
DIGITAL EARTH 2001 ORGANIZING COMMITTEE

Special Guest Speaker
In 1986, Sharon Wood became the first North American woman to climb Mount Everest. Sharon has twenty years of experience as a professional and elite climber. In addition, she has climbed numerous 20,000 foot plus summits around the world. Since Everest, Sharon has addressed over five hundred organizations throughout North America as a keynote speaker. Sharon is a Canadian and resides with her husband and two sons in Canmore, Alberta.

Sharon Wood teaches, entertains and inspires with her personal story of the Mount Everest expedition. Her story is about an astonishing personal and team accomplishment under conditions of extreme physical and mental duress. The challenges her team faced closely parallel those of striving individuals and organizations.

Sharon has been appointed to the Honour Roll for Outstanding Achievement by Canada’s weekly news magazine—Maclean’s, awarded an Honourary Doctor of Laws Degree by the University of Calgary, and awarded a Meritorious Service Medal by the Governor General of Canada.

The Directors of the J.H. Holloway Scholarship Foundation, founded in 1975, invite you to join in a celebration dinner of the 25th Anniversary of the Foundation.
Friday, October 20, 2000
Red & White Club
1822 Crowchild Trail NW—Calgary

Tickets sell for $100 ea. or $800 per table and are available from the Alberta Land Surveyors’ Association at (780) 429-8805 or 1-800-665-2572.

Charitable donation receipts in the amount of $50/ticket (or $400/table) will be issued.
Net Notes

Here is a sampling of online learning websites that can be found in the Resource Centre http://www.alsa.ab.ca/member/resourcecentre.htm under “seminars.”

AvidLearn
http://www.avidlearn.com/
BrassRing.com
http://www.brassring.com/employers/hr/training.html
CareerTrack Seminars
http://www.pryor.com/
eCollege.com
http://www.ecollege.com/
Element K Press
http://www.elementkpress.com/
Jossey-Bass Pfeiffer
http://www.pfeiffer.com/
National Seminars Group
http://www.natsem.com/AboutNSG.htm
OnLearning Resource Network
http://www.onlearning.net/
Padgett-Thompson
http://www.amanet.org/seminars/public/

Petroleum Institute for Continuing Education
http://www.peice.com/
SeminarFinder
http://www.seminarfinder.com
Skillpath Seminars
http://www.skillpath.com/
Total Seminars
http://www.totalsem.com/
Training Central
http://www.centra.com/distance/
Training SuperStore
http://www.trainingsupersite.com/superstore/index.htm
VCampus
http://www.vcampus.com/webuol/index.cfm
VideoMedia
http://www.videomedia.net/

TDS Ranger Data Collection and Mapping

Built for surveyors like you - Tripod Data Systems created and staffed a new company, At Work Computers, to develop a field data collector using the most advanced handheld computing technology available. The TDS Ranger is rugged, reliable and productive. Available with your choice of Survey Pro CE surveying data collection software and/or SOLO CE GPS/GIS mapping software, Ranger provides powerful solutions for your data collection needs.

Bundles packages include: 133 Mhz or 200 Mhz unit 16, 32 or 128 Megabyte Memory (16 Mbyte version stores approximately 90,000 points) w/total station instrument cable, PC cable, Tripod Bracket, TDS Software, Case, LCD Covers, Nihm Battery and re-charger, Survey Link for Windows.

HP Handheld Data Collection

Tripod Data Systems has packed twelve years of experience making the world's most popular data collection software into three packages that run on the affordable Hewlett-Packard 48GX: the COGO card, Survey Standard card and Survey Pro card. The easy-to-master TDS user interface and your HP 48GX make a powerful team.

Packages Include: TDS-480 Data collector package, Includes: HP48GX calculator, Enviro Case, Tripod Bracket, Instrument cable, 512KB Ram Card (5200 points) , TDS-480 Survey Card, PC Cable, Orange nylon case for system.

FirstOrder Measurement Solutions Inc.
4441 - 99th Street, Edmonton, Alberta T6E 5B6
Tel: (780) 433-0258 Fax: (780) 432-0939 Toll Free: 1-877-433-0689
Email: 1storder@direct.ca

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Rein Sastok
April 12, 1921 - June 12, 2000

Rein Sastok was born on April 12, 1921 in Estonia. He passed away of cancer in Edmonton on June 12, 2000. He is survived by his loving wife Laine, daughters Tiina, Helve and Aime, and five grandchildren—Kilian, Rian, Leana, Nils and Rein.

Rein’s father, Julius Sastok, was a stationmaster in Estonia. After completing high school, Rein also went to work for the railway. Rein’s mother, Pauline, was a housewife and seamstress. Rein’s sister Eda, who is now 88 years of age, still lives in Estonia.

After the hard war years and occupation of Estonia by Russians, Germans and Russians again, Rein escaped to a Displaced Persons Camp in West Germany. Meanwhile, Rein’s wife Laine escaped Russian-occupied Estonia to live in East Germany. They were introduced by letter through a mutual friend. Rein and Laine were married in Holzminden, Germany on June 25, 1946. They lived in Bradford, Yorkshire in England and immigrated to Edmonton in 1953.

Rein was employed by Stewart Weir until his retirement in 1986. He was articled to C.H. Weir from 1956 to 1968 and obtained his commission as an Alberta Land surveyor on May 31, 1968. He obtained his Dominion Land Surveyor’s commission on April 4, 1967.

Rein was proud to be an Alberta Land Surveyor and took great pride in his work. He was a surveyor who helped develop Alberta’s oil and gas industry in the 1950s, 1960s and 1970s. Rein was a loyal employee who pursued a career doing what he loved to do best—being in the outdoors.

Following his retirement, Rein and Laine travelled far in their Volkswagen van. The America Southwest and Mexico were easily within range and overseas trips to Europe and Costa Rica were also included.

Rein was a dedicated family man who was very proud of his daughters and grandchildren. He was a person you could call a friend and he will be sadly missed by his family and friends.

BRIAN J. DIXON, ALS
Land Surveyors and Alternate Dispute Resolution

Last year, I had the privilege of attending the South East Asia Survey Congress in Perth, Australia. The keynote paper was delivered by Clarissa Fourie, a brilliant young woman from the University of Natal who has shown a remarkable insight into land related issues in recent years. The topic of her paper was “Land and Conflict Resolution in the New Millennium.”

Although her topic was focussed primarily on land management problems in developing countries, I could not help but reflect on the role of the land surveyor in conflict resolution here at home.

By and large, land surveyors are not aware of their role in conflict resolution because of the superb job that our forefathers have done in creating systems that, either by design or by chance, avoid conflict. The simple concept of “survey before settlement” in itself has sheltered us from many potential problems.

If you reflect back on the homesteading days, the first thing that our homesteading grandparents did was locate their quarter section by finding the survey monuments and reading the inscription thereon to verify their claim. Another priority was to fence the property locating other survey monuments; in all likelihood sharing the task of running the lines and building fences with their neighbours. These simple acts have done a great deal to preserve the peaceful enjoyment of property over several generations and are a good tradition for surveyors to ponder when attempting to reestablish boundaries that do not agree with ancient landmarks.

But all has not been a bed of roses when we observe past settlement practices in Western Canada. The very initiation of the largest land management project in history was disrupted by the simple act of Metis leader Louis Riel stepping on the surveyor’s chain when running the principal meridian when it appeared to the Metis that their tenure might be disrupted by the surveyors from Ottawa. Ultimately, this act led to the Northwest Rebellion of 1885 - one of the few major land conflicts in the West.

Many conflicts in the end are disputes over land and the resources that form part of land. Even though on the surface, it may appear that conflicts are based on religious, racial, social or political differences, the conflict is fundamentally a dispute over the allocation of land, and who gets possession and use of it. Think of the water wars in the southwestern states that were fought over land - arable land in particular. Similarly, the ongoing Israeli war is essentially a land dispute. Land is the most basic need of society, for without land it is not possible to provide those other basic necessities - food, water and shelter.

Conflict resolution begins with the sharing of reliable, comprehensive and accessible information, a product that we have an abundance of in western society, and, I would suggest is a major reason for the fact that very few land disputes result in major conflict.

The area that seems to create the most conflict these days is the subject of native land claims, an area that is clouded by the lack of accurate information, and is composed mostly of unwritten evidence of events that precede the establishment of our modern land management practices. These disputes also reflect the “settlement before survey” concept.

Perhaps today’s surveyors take their role in dispute resolution for granted when, in dealing with difficult problems of conflicting evidence, the first step is to seek out all of the available information, whether it is physical, documentary or oral evidence. I would surmise that it is because of the practice of seeking out all of the evidence and sharing it with all interested parties that we have so few disputes that go on to the courts for resolution. Land surveyors play a useful role in the process of alternate dispute resolution.

G.K. ALLRED, ALS
By the time you read this article, I will have completed three years as Director of Practice Review. During the course of this employment, I have constantly tried to keep the original aims and objectives of the Systematic Practice Review program in mind. Now is a good time to review the history of the program, its aims and objectives, and to report on the status of Phase 2 reviews.

Program History

In January 1987, the Director of Surveys announced a major reduction in the survey plan examination services provided by the Province of Alberta – to take effect on March 9, 1987. While this was a continuation of a trend started in 1978 when minor service reductions were introduced for some plans, the 1987 reduction was in response to government downsizing and budget reduction measures. The Director of Surveys office had been doing survey plan examination for 31 years. In 1987, there was also a deregulation movement within the provincial government and towards decreased involvement in the affairs of professional groups. It was said that individual Alberta Land Surveyors should assume full responsibility for the quality of their services, and that the Alberta Land Surveyors’ Association (ALSA) could play a stronger role in the enforcement of professional standards. In an address to the 1987 Annual General meeting, the Honorable Don Sparrow, Minister of Forestry Lands and Wildlife said:

I favour an increased role by the Alberta Land Surveyors’ Association in monitoring the quality of survey work and have asked Mr. Kennedy (then Director of Surveys) to work with your Council of Management to develop a process for this to occur.

In April, May and June of 1987, the Director of Surveys office and the ALSA co-sponsored plan examination seminars in Edmonton and Calgary, attended by 35 participants representing about 14 percent of the survey firms in the province. Additional seminars were held in October and November of 1987. As it turns out, these seminars were the precursors of the current Getting it Right seminars.

After the 1987 reduction of the survey plan examination program, the Director of Surveys office conducted post-registration monitoring of survey plans, including 13 field inspections, and reported the results of nearly 1,100 examinations in the Winter 1988 issue of ALS News.

Professional Audit Branch

The Summer 1987 issue of ALS News reported Council’s five-point goal towards establishing a “Professional Audit Branch,” namely:
1. to establish a system for acquiring and distributing monuments;
2. to acquire seed money;
3. to hire an Inspector of Surveys;
4. to establish auditing procedures;
5. to educate members about the program.

W. A. Wolley-Dod, ALS, was appointed Inspector of Surveys for the Association on March 1, 1988. The role of the Inspector of Surveys was to implement a system of post-registration audits of survey plans including field inspections and to manage the Professional Audit Branch under the direction and authority of the Practice Review Board (PRB). The ALSA received a $100,000 start up grant from the Alberta Government in March 1988 to establish and operate the Professional Audit Branch until sufficient revenue could be generated from the sale of survey monuments to maintain the operating costs of the program. The ongoing funding of the program had been established through a ministerial order granting the ALSA the right to surcharge, sell and distribute statutory iron posts. Effective June 24, 1988, the ALSA became responsible for the manufacture, sale and distribution of survey monuments.

Initially the Professional Audit Branch envisioned that the Inspector of Surveys would conduct a post-registration review of one or more plans registered by each ALS in each calendar year, and a field inspection of each ALS at least once every five years. The Inspector of Surveys continued in this role until July 27, 1992.

Systematic Practice Review

The Practice Review Board submitted an interim report to Council in October 1992 proposing a formal system of practice review. The PRB believed that many of the problems that resulted in plan deficiencies were not being solved by the spot-checking of plans and that a more in-depth review, including an examination of all aspects of the survey practice, might get to the root of a problem and deal with it more effectively. Council expressed support for the initiative in October 1992; the concept was
explored further and a final proposal was adopted by Council in March 1993. A.W. Nelson, ALS, assumed the position of Director of Practice Review on November 1, 1993. In January 1994, Donald R. George, ALS, was hired as the Assistant to the Director of Practice Review.

SPR Phase 1
The objectives of the program included:
1. to examine and evaluate surveying services and products being prepared by practitioners to assess compliance with the various statutes, regulations, and standards of practice adopted by the ALSA;
2. to examine and evaluate the operations of practitioners to ensure the interests of the public and the profession are maintained at the highest possible level;
3. to evaluate a practice as to demonstrate adequacy of expertise/knowledge;
4. to assess the professional competence of practitioners and provide encouragement for professional development;
5. to conduct a systematic, comprehensive review of the survey practices of each practitioner at least once every three year period.

The Systematic Practice Review program is managed by the Director of Practice Review and administered by the Practice Review Board within the parameters of Council policy. The Executive Summary laid out the program, process, objectives and authority for conducting Phase 1 reviews, commencing in January 1994. On September 2, 1997, I was appointed Director of Practice Review.

In mid-1997, the PRB was directed to conduct an evaluation of Phase 1 of the SPR process. The Phase 1 Evaluation Report was adopted by the Board in February 1998 and formed the basis for development of a model for Phase 2. This evaluation also assembled benchmark data for future comparison of Phase 2 statistics. The Phase 1 Evaluation Report was presented to the membership at the 1998 Annual General Meeting and the Phase 2 Framework Document—essentially a model for Phase 2—was adopted by Council on August 27, 1998.

SPR Phase 2
The aims and objectives of Phase 2 are similar to those outlined in the Executive Summary for Phase 1. Phase 2 differences occur in the review and reporting processes. Phase 1 reports are used to assess whether a practitioner has adhered to prior undertakings and whether prior deficiencies in practice have been addressed where applicable. A formal weighting system has been assigned to each component of the External Audit checklists, as outlined in the June 2000 issue of ALS News, and an overall ‘practice rating’ is published. The report itself has been streamlined and consolidated for Phase 2, with any identified deficiencies reported in order of most to least serious. Deficiencies common to more than one product are summarized and only need to be addressed once rather than for each product.

The first review under Phase 2 was conducted in January 1999, even though not all Phase 1 reviews were complete and closed at that point. As I write, all Phase 1 reviews are now complete and have been considered by the Practice Review Board.

Fifty-five Phase 2 reviews have been conducted to date, with eight more currently scheduled. As noted in the Phase 1 Evaluation Report, nearly 30% of the Phase 1 reviews required a follow up review. Only two follow-up reviews have been deemed necessary in Phase 2 to date. Also as reported in the Phase 1 Evaluation Report, approximately 7% of Phase 1 reviews resulted in a hearing before the Board. To date in Phase 2, there has been one hearing before the Board.

I believe these findings demonstrate improved compliance with legislative requirements and the Manual of Standard Practice, as well as adherence to Phase 1 undertakings. As noted previously in this column, the goal of the SPR program is to improve the quality of services and products produced by members of the Alberta Land Surveyors’ Association. Our findings in Phase 2 to date would indicate that we are moving steadily towards that goal.

Crowne Plaza Offers Corporate Rates

The Crowne Plaza—Chateau Lacombe in Edmonton is offering ALSA members a corporate rate of $119 per night for a standard room and $149 per night for a club executive floor room. To take advantage of this offer all you have to do, when you make your reservation, is indicate that you are with the Alberta Land Surveyors’ Association and request the corporate rate.

Articled Students

If you are interested in volunteering for the Project Report Pilot Project, please contact:

Hugo C. Engler, ALS
Chairman,
Registration Committee (2000/2001)
Case Study No. 5: Found No Mark
What does it really mean?

This is the fifth in a series of articles featuring problems commonly encountered in Systematic Practice Review. The purpose of these articles is purely educational and, although the material is taken from an actual practice review, no names or identifying legal descriptions are included. Opinions expressed in this article are those of the author.

The Problem: Field inspections conducted by SPR staff find too many instances where practitioners overlook original survey evidence because of poor search techniques.

The Project: The practitioner conducted a subdivision survey to reconfigure two lots within two existing subdivisions in an industrial area. The property abutted a service road adjacent to a major highway on the southwesterly side, with existing industrial subdivisions on the east, north and northwesterly sides. Many of the initial subdivision surveys in the area were registered in the mid to late 1950s, including the highway survey. The industrial subdivision on the east side of this project was registered in 1977 and this plan showed that the surveyor found all the original evidence along the line and placed additional monuments at the new lot corners.

The Plan Examination: Upon examining the registered plan of subdivision, the survey showed finding only the northerly two of the six monuments found or placed by the 1977 subdivision survey on the coincident boundary. The intersection of the west limit (east limit of project) of the 1977 subdivision and the service road adjacent to the highway was re-established by a bearing/bearing intersection. While the angle at this re-established point agreed exactly with the service road survey of 1958 and very nearly with the 1977 subdivision survey, the methodology appeared to be a last resort approach. The dates of survey shown in the field notes and in the surveyor’s affidavit were between March and October of 1998—essentially frost-free conditions. The field notes showed no mark along the east limit of the project at the four locations indicated on the plan as Fd. No Mk. The notes also show a metal fence along part of this limit.

The Legislation: Section 42(1) of the Surveys Act says:
When a surveyor is required to re-establish the position of a monument placed pursuant to this Part that cannot be found, the surveyor shall do so from the best available evidence respecting the position of the monument.

Section 42(2) goes on to say: If the position of the monument cannot be satisfactorily re-established under subsection (1), the surveyor shall re-establish it relative to those monuments that can be found, in a manner that carries out the evident intention of the survey as it is shown on the plan of survey registered at the Land Titles Office or filed at the Metis Settlements Land Registry.

The hierarchy of evidence established through numerous judicial decisions over the years places original monuments or traces of original monuments higher in the hierarchy than measurements shown on plans of previous surveys. All practicing land surveyors likely recognize the fundamental legal principle that the original surveyor’s statement of the mathematical position of a monument is not conclusive evidence of its position. The original monument itself or traces of physical evidence on the ground govern the monument position.

Before declaring a monument lost, the surveyor must make an exhaustive search for the original monument marking a boundary or for any other physical evidence of its position. This search for evidence should not be abandoned until the surveyor is personally convinced that no other land surveyor might subsequently find better survey evidence that might invalidate all or part of the work. Remember that any land surveyor’s re-establishment is only that surveyor’s opinion as to the location of the original monument and that opinion may be refuted by future surveys or the judicial process. In this regard, it is important that the surveyor govern his actions by the same rules that would apply to any subsequent judicial process.

The Field Inspection: A field inspection was conducted on the project in September 1999. In general, field inspections examine the survey evidence found or placed by the practitioner under review. Our field inspection found statutory iron posts at three of the four locations shown on the registered plan as Fd. No Mk. We found an iron post 0.70 metres below ground level at the intersection of the service road and the east limit of the project—likely placed by the 1958 service road survey. At the two other locations, we found what appeared to be original monuments from the 1977 subdivision survey—both were in good condition, about 0.3 metres west of a chain link fence and approximately 0.18 metres below existing ground level.

The Plan Corrections: Because of our findings, the practitioner conducted additional fieldwork and...
amended the registered plan. Four bearings and eight distances were either revised or added to the plan. It appears that at least two monuments were moved based on the changes shown on the revised plan.

The Message: This subsequent discovery of what appears to be original evidence called into question the search for evidence conducted by the practitioner.

It would appear that the proximity of the chain link fence and the depth of one of the monuments impacted the practitioner’s decision to abandon his search for original monuments or traces of them. Reliance on a metal detector without the use of the shovel

A shovel may be the most important piece of equipment that any land surveyor has. Without digging for evidence, it is impossible to locate rust holes, post holes or traces of wooden posts.

in a search for survey evidence or traces of the evidence is not an exhaustive search. SPR reviews and field inspections often find survey evidence missed along chain link fences due to reliance on metal detecting pin locators. Don’t assume a monument is lost based entirely on the scream of the metal detector near metal objects, or the lack of a response in an open area. A shovel may be the most important piece of equipment that any land surveyor has. Without digging for evidence, it is impossible to locate rust holes, post holes or traces of wooden posts. In this case, statutory iron posts were not located where they actually existed in three out of four locations. If evidence missed by a poor search affects the limits of the property being surveyed, the land surveyor has not done the job properly.
I am presently in my third year as a member of the Practice Review Board, and would like to take this opportunity to present some of my observations of the Systematic Practice Review process.

The Practice Review Board (PRB) usually meets for one full day each month. The final report for each review, including the practitioner’s response and the recommendations from the Director of Practice Review is presented to the PRB at these meetings. Every attempt is made to sanitize the report before it goes before the PRB so that the PRB members do not know the identity of the practitioner being reviewed. Each review is assigned to one PRB member who looks into the report in detail and leads the discussion for that review. Each review is discussed in detail and action is taken by way of a motion. One of the interesting aspects of being a PRB member is taking part in these discussions. On numerous occasions we have discussed in great detail a particular evidence situation or debated the practical application of a particular section of the Manual of Standard Practice and I have come to realize that there is a great deal of education to be obtained through interaction with one’s peers. It should be noted that a practitioner is welcome to attend the PRB meeting during the discussion of their review.

The reviews conducted in Phase 1 identified many deficiencies common to many practitioners. Some of the common ones that I recall are incomplete assessment of evidence, lack of an exhaustive search, incomplete field notes, and disregard for the Manual of Standard Practice. One frustration that was expressed by many PRB members, during the Phase 1 reviews, was the poor turnaround time by some practitioners in their responses to the Board or to the Director of Practice Review. It is encouraging to note that this has improved greatly in Phase 2 and there is an obvious improvement in the majority of the products and practices reviewed to date in Phase 2. Judging from my observations and the comments received from many practitioners, it is my opinion that the SPR process is improving the quality of the products and services that are provided by members of the Alberta Land Surveyors’ Association.

In conclusion, I can say that the experience as a member of the PRB has been challenging and enjoyable for me. It also has certainly been an eye-opener and has contributed to my education as an Alberta Land Surveyor.

Robert Radovanovic and Sam Ryan
Awarded Izaak Walton Killam Scholarships

The Department is pleased to announce that Robert Radovanovic and Sam Ryan, PhD candidates in the Department, have been awarded Izaak Walton Killam Scholarships. Mr. Radovanovic holds a BSc in Geomatics Engineering from the University of Calgary and was the top 1998 University graduate. Mr. Ryan holds a BSc in Electrical Engineering from Memorial University and is on educational leave from the Canadian Coast Guard. Both have won numerous awards during their studies. Mr. Radovanovic is studying under the supervision of Dr. W.F. Teskey and Mr. Ryan, under the supervision of Dr. G.Lachapelle.

Georgia Fotopoulos
Wins Amelia Earhart Fellowship Award

The Department is pleased to announce that Ms. Georgia Fotopoulos, MSc candidate in Geomatics Engineering, won an Amelia Earhart Fellowship award in recognition of her excellent performance in her graduate studies in positioning and navigation.

The awards are presented based on an international competition of women pursuing graduate studies in aerospace-related sciences and engineering. The Amelia Earhart Fund is sustained by voluntary contributions from the Zonta International Foundation, a worldwide service organization of executives in business and the professions working together to advance the status of women.

Brad Parkinson to Receive Honorary Degree from the University of Calgary

The Chancellor’s Office of the University of Calgary has announced that Dr. Brad Parkinson will be conferred an Honorary Degree at the June 16, 2001, Convocation, in recognition of his great leadership, inspiration, and scientific skill as Program Director of the Global Positioning System, a satellite-based system that has revolutionized the navigation for the global community.

As a Colonel in the U.S. Air Force, he spearheaded GPS as Program Director from 1973-78, the critical period that saw conception, design and early deployment of the system. He has continued to make outstanding contributions to the field ever since.
Land Administration Division

The following are updates to initiatives underway within the Land Administration Division of Alberta Environment.

1) Administrative consolidation of the Surveys Act is scheduled for 2000.

Every ten to twenty years, the Legislative Council of Alberta Justice performs an administrative consolidation of all provincial statutes. This revision process can only make editorial changes that do not change the meaning of a provision within the legislation. Alberta Environment recently reviewed its legislation and several minor changes are scheduled for the Surveys Act. The Director of Surveys Branch and the Legislation Committee of the Alberta Land Surveyors’ Association provided comments on the proposed changes to Alberta Justice.

One change anticipated will involve re-numbering appropriate sections of the Act. If this change is implemented, it would mean amending several parts of the Manual of Standard Practice and becoming familiar with the new section numbers.

An additional change expected will be to replace “shall” with “must” in several cases throughout the Act. Only revisions of the passive voice of the verb form “shall be” will be replaced. In these cases, the plain language equivalents, “is”, “is to be”, and “must be” will be used. The revision will not replace all usages of “shall” with “must”, and as noted above this revision will not change the meaning of any provision within the Act.

Legislative Council has informed us that changes to the Surveys Act will come into effect on January 1, 2001.

2) Monumentation Certificate form added to the regulations under the Land Titles Act.

Work continues with Alberta Registrars to add the form required by surveyors to certify that monuments have been placed, in accordance with section 43 of the Surveys Act (non-monumented plans), to the forms regulation under the Land Titles Act.

3) Survey Plan Index (SPIN) access to survey control data.

On August 27, 2000, enhanced access to survey control data was made available through the SPIN system. Subject to user acceptance, access to this data through the Data Distribution Unit of Resource Data Division will cease on December 31, 2000 at which time SPIN will become the sole point of access.

Also, subject to user acceptance, access to the data through the on-line MASCOT Data Distribution (MADD) system will cease on October 31, 2000.

Land Surveyors are encouraged to use the system during the first few months of SPIN access and provide the Director of Surveys Branch with comments on possible enhancements.

4) SPIN access to township plans.

Work continues with Alberta Registrars to provide SPIN access to current and historical township plans. SPIN access is scheduled for December 31, 2000.

5) Scanning township plan field notes.

Work continues on preparing a request for proposal to scan all township survey field notes deposited with the Director of Surveys. Scanning is scheduled for completion by March 31, 2001. Indexing and collecting meta-data on the field notes will take a significant amount of work and SPIN access is not expected until sometime in 2002.

6) Website list of deficient township plans.

The website of the Director of Surveys Branch was updated with the list of deficient township plans on June 7, 2000. Several land surveyors have provided feedback on the Township Records Revision Project (TRRP), which is greatly appreciated and will help as we proceed with this initiative.

7) Enhanced survey and plan standards for Public Land dispositions.

At their August 24, 2000 meeting, Council recommended the standards for License of Occupation (LOC) access roads go to the next Annual General Meeting. The recommendation would be to replace these standards with the existing ones found in the Manual of Standard Practice. Mr. Marv Weiss, Branch Head, Technical Services Branch, plans to implement these updated standards on October 1, 2000.

As part of the October 1, 2000 implementation, LOC clients will be required to submit a preliminary plan upon application, followed by an as-built survey within 90 days of the road being constructed.

8) Scanned activity plans/townships.

This initiative is still in the review and planning stage. Technical Services Branch is considering scanning the compiled township plots and making them available through IHS Energy Canada Ltd. A client survey will be conducted to assist in determining future client requirements and client satisfaction with the present delivery system. Anticipated date for the client survey is fall of 2000.

9) Land Administration Division website.

A contractor is busy building the Land Administration Division website. The site will include general information about dispositions on public land, provide digital access to forms and policy and procedure documents, including plan standards, and is scheduled for completion in the fall of 2000.

MARV WEISS AND MIKE MICHAUD, ALS
Notice to All Users of Alberta Survey Control Marker (ASCM) Information

Users of ASCM information can now access this information directly via the Survey Plan Index (SPIN) system on the Alberta Government Services web-site at http://www.gov.ab.ca/gs.

Starting August 27, 2000 users will be able to download North American Datum 1983 (NAD83) ASCM ID cards for all published survey control markers within Alberta. This service is available at no cost.

The SPIN ASCM interface is based on the current MASCOT Data Distribution (MADD) dial-up service with enhanced search capabilities not previously possible with MADD. Users can now search for, select and download ASCM ID cards by using any of the following search criteria:

- ASCM-Number (NO);
- Tablet-Marking(s);
- Adjacent Markers – this feature works by allowing the user to select the “from” ASCM to obtain the six adjacent ASCMs as listed on the “from” ASCM ID card;
- National Topographic System (NTS) mapsheet number for rural ASCMs and 1:20 000 mapsheet name for urban ASCMs;
- Rectangular area search using geographic or Transverse Mercator (3TM, UTM, 10TM) co-ordinates;
- Radius search by selecting an ASCM as a centre point and distance or by entering an Alberta Township System (ATS) legal description and distance;
- Map search using the SPIN interactive map search facility.

Subject to acceptance of SPIN distribution of ASCM data by users, the following changes will be implemented:

- MADD will no longer be available to users on October 31, 2000;
- Data Distribution Unit of Resource Data Division will cease distribution of ASCM ID card information on December 31, 2000.

To facilitate those users who still require integrated North American Datum 1927 (NAD27) co-ordinate values for ASCMs, an MS-Excel format data file containing all published NAD27 ASCMs will be made available on the Director of Surveys web-site in the fall of 2000. Users should note that NAD27 co-ordinate data has not been maintained since the implementation of NAD83 in Alberta in June 1994.

Integrated co-ordinate values for data referenced to the Canadian Spatial Reference System (CSRS) determination of NAD83 will still be available from the Data Distribution Unit and the Director of Surveys Branch. Approximately 1,000 ASCMs make up the NAD83(CSRS) published data set.

In other Director of Surveys Branch news, an interpolation grid for transforming NAD83 (CSRS) geographic and Transverse Mercator co-ordinate values to and from NAD83 (Adopted) is now available to users in Alberta. This grid works with the existing National Transformation version 2.0 (NTv2.0) software. Contact the Data Distribution Unit or Director of Surveys Branch for further information.

Any questions and/or comments regarding this information or SPIN ASCM distribution can be forwarded to:

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Project Leader,
Geodetic Control Section
Director of Surveys Branch
Alberta Environment
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Geomatics Award of Excellence

What Is It?
An award, which recognizes all members of the Alberta Land Surveyors’ Association, Surveyors Corporations, and Surveyors Partnerships for their contributions to the advancement of geomatics.

Who Is Eligible?
The award is open to all members of the Alberta Land Surveyors’ Association who, along with their co-workers, have advanced the field of geomatics.

What Do I Have To Have Done?
Contributed to the advancement of geomatics in one of the following areas:
1. Use of technology;
2. New methods or procedures;
3. New software;
4. Innovations and inventions;
5. Anything else unique to the field of geomatics.

How Do I Get Nominated?
Submissions must be made to the Association office by February 2001.

What Do I Win?
The award will be presented at the Annual General Meeting and the papers will be published in ALS News. A notice of the winner of the award, and the honorable mentions, will be published in the Calgary Herald and the Edmonton Journal.
When is the last time you visited a trade show in your local community? If you have recently, you were probably amazed by the incredible turnout of your neighbours. They are very well attended and most get larger every year. The trade show in Leduc has over 3,000 visitors; others are similarly well attended. These are the people that we want to do business with.

The Public Relations Committee strongly recommends that Alberta Land Surveyors participate in these events as exhibitors. We are not proposing that you represent the ALSA but rather that you represent your own firm and your own business.

Your first response may be that “you don’t have a display” to set up. You don’t need one. You could borrow the new ALSA booth, but the easiest way to participate is by teaming up with one of our marketing partners, such as a realtor, who has a booth. You could share the cost, share the time in the booth and create a joint presence that would be better than you may be able to do on your own. It would also solidify your relationship with the local real estate companies. If there is more than one, you may consider switching either during the event or at the next trade fair.

We know from participation that the high-tech equipment that the land surveyor uses is of real interest to the public. When we placed a total station at our ALSA display in the AUMA trade show, we had hundreds of people look through it and try to guess the distance to a reflector on the far wall. It was a great conversation starter.

Obviously you will have the full support of the ALSA in terms of brochures. Brochures about Real Property Reports, Title Insurance, Subdivision and Surveying Careers are available to you free of charge.

If you do accept our advice and attend, please call the ALSA office and give a brief verbal report about how you made out, what you heard, and how other Association members could gain from your experience.

You will find it is good for business and good for our Association. Good luck and good exhibiting!
Availability of Continuing Education Courses

There is always a need to keep abreast with changing technology or simply refresh one’s existing knowledge in all aspects of the day-to-day operations of a surveying/geomatics company. This not only applies to the professional but to all personnel within the company. It is often difficult to find time for this activity, especially when our economy is active. The intent of this article is to examine some options in taking continuing education courses.

The traditional method is to look at evening and weekend courses offered through post secondary educational institutes. Many courses are offered and outlined in a calendar that institutions publish once or twice a year. These continuing education calendars can be received by mail, or now most calendars can be viewed on the Internet by going to the faculty or department of continuing education. Registration can also be done via the Internet. It must be noted that these courses are offered on a cost recovery basis and may not run if there is an insufficient number of registrants.

Most post-secondary educational institutes will also provide customized training. Courses are designed in consultation with the needs of the client. A client may be a single company, several companies or an organization such as the ALSA. Courses can be offered in a variety of time frames at the facilities of educational institutes, or onsite throughout the province. Advancing technology now provides the opportunity to deliver courses by video conferencing at post secondary institutes throughout the province. Not all courses, however, lend themselves to this type of delivery. The Professional Development Committee has held a meeting by video conferencing and it was shown that there were good possibilities to offer some courses by this method. Again, these courses, such as the recent BOMA Seminar, would be offered on a cost recovery basis.

The Internet now provides an endless opportunity to take all types of continuing education courses. These can be obtained free or for a registration fee. Courses may offer interactive communication with an instructor or professor, or may be passive with no help except for the written material (online or a textbook). An example of a free short course with 6 tutorials on programming the HP48 calculator can be found at the following website: http://www.plas.bee.qut.edu.au/hp48/tut.htm. This website is from Australia and has links to other interesting surveying applications. SAIT offers a variety of distance delivery courses that require a registration fee. These can be found at the following website: http://progdev.sait.ab.ca/atech/default.htm.

The Alberta Learning Information Services has a website that provides links to 28 educational institutes in Alberta. This web site is: http://www.alis.gov.ab.ca/learning/institutes

The American Congress on Surveying & Mapping has a website that lists many colleges and universities in the United States, Canada and Australia that offer courses on surveying/geomatics. Some of these educational institutes may offer distance delivery courses. The ASCM web site is: http://www.acsm.net/college.html

As can be seen by the above two web sites, there are countless educational institutes and courses available. The Professional Development Committee has compiled a list of websites that have surveying/geomatics related courses or related topics. If you have come across a website that is of interest to the ALSA members, please forward the websites to munday@alsa.ab.ca.
PERSONAL PROPERTY

POSSESSORY RIGHTS—Defendant company claimed a possessory lien over survey plans it prepared for plaintiff company and for which plaintiff failed to pay. Absent a common intention that defendant would be entitled to a lien claim on the survey plans upon non-payment of its services, defendant could not claim possession of the plans.

In September 1996, plaintiff company authorized defendant company to perform survey and engineering services as “specified from time to time” in connection with a land development project. Defendant completed the survey plans and delivered them to plaintiff, who then returned the plans to defendant for corrections. Finally, defendant refused to deliver the corrected survey plans to plaintiff until it (plaintiff) paid up its outstanding account in respect of this service. Defendant also claimed copyright over the plans. Plaintiff sought an order of replevin to recover from defendant the survey plans.

Held: plaintiff entitled to possession of the survey plans. Defendant had copyright in the plans; but it impliedly consented to plaintiff’s use of them and it did not withdraw its consent. Here, there was no common intention that at any time defendant would have the right to a lien claim on the survey plans upon non-payment of its services. Defendant did not have a possessory lien over the plans.


In the Supreme Court of British Columbia
Between
Island View Beach Estates Corporation
(plaintiff)
and
J.E. Anderson & Associates (a firm)
(defendant)

Counsel for the Plaintiff:
Hans J. Doehring
Counsel for the Defendant:
Robert T.C. Johnston, Q.C.
Date and Place of Hearing/Trial:
June 20 & 22, 2000
Victoria, BC

[1] The plaintiff seeks an order of replevin pursuant to s. 57 of the Law and Equity Act, R.S.B.C. 1996, c. 253 and Rule 46(4) of the Rules of Court, to recover from the defendant certain survey plans.
[2] Briefly the history is that in September 1996, John Koren, one of the principals of the plaintiff company, signed a "Work Authorization Form" which authorized the defendant to perform survey and engineering services as "specified from time to time" in connection with a land development project. Defendant completed the survey plans and delivered them to plaintiff, who then returned the plans to defendant for corrections. Finally, defendant refused to deliver the corrected survey plans to plaintiff until it (plaintiff) paid up its outstanding account in respect of this service. Defendant also claimed copyright over the plans. Plaintiff sought an order of replevin to recover from defendant the survey plans.

[3] Pursuant to the Work Authorization Form, Anderson & Associates provided engineering and survey services to Island View Beach Estates. In June or July 1998, Anderson & Associates produced and delivered to the plaintiff survey plans on the understanding that the plans were to be registered in the Land Title Office as a part of the project.

[4] The survey plans had to be approved by the Municipality of Central Saanich before they could be registered at the Land Title Office. The Municipality imposed certain conditions upon the approval of the plans before they could be registered in the Land Title Office. The plaintiff objected to certain of the conditions and the matter was not ultimately resolved until December of 1999, at which point the plans were approved by the municipality and submitted to the Land Title Office. The Land Title Office required certain amendments to be made to the plans and supporting documents before accepting them for registration.

[5] In mid-March 2000, the plans were submitted to the Land Title Office for registration and they were registered March 23, 2000, conditional on certain corrections being made, failing which they would be de-registered within 31 days. At that time, the plaintiff asked Anderson & Associates to correct the survey plans in accordance with the requirements of the Land Title office.

[6] Throughout the two year period between the delivery of the plans and the request for correction, Anderson & Associates had made demands for payment of their outstanding account for survey and engineering services. In fact, in 1999 Anderson & Associates commenced an action against John Koren personally and Island View Beach Estates Corporation seeking payment of their outstanding account for the engineering and survey work provided in relation to the plaintiff's project on Island View Road. The total amount claimed to be
due and owing, including interest in accordance with the interest provisions of the work authorization form, exceeds $60,000.

[7] The defendant says that when the plaintiff requested that they correct the plans they told the plaintiff that no further work would be provided until their outstanding accounts were paid in full.

[8] The plaintiff says that arrangements were made with Anderson & Associates in March 2000 to do the required corrections provided that the cost for doing the corrections was paid in advance. While Anderson & Associates denies that there was any agreement that the plans would be delivered upon payment of the fees for the corrections, the cost for the corrections, $500, was paid directly by Mr. Radvan on April 17, 2000 and the modifications and corrections were completed on April 18, 2000. Anderson & Associates refused to deliver the corrected plans to the plaintiff until their outstanding account had been paid.

[9] Anderson & Associates claims copyright over the plans and says that the plaintiff has no right to the use of the plans without Anderson & Associates' consent. Alternatively, Anderson & Associates claims a possessory lien over the plans until their account has been paid in full.

[10] The plaintiff denies that the defendant has any copyright over the plans, denies the defendant's right to a possessory lien and says that it owns the survey plans and the plaintiff must return them.

[11] In the alternative, the plaintiff says that, notwithstanding that Mr. Koren signed a single work authorization for both engineering and survey services, the engineering and survey services are two separate accounts and the amount owing for survey services is the only amount relevant to a determination of the question as to whether the plans are to be delivered up. Anderson & Associates takes the position that the engineering and survey services are interrelated. Therefore there is only one account, although it may be broken down into the two areas of service. Therefore, they say, it is the whole of the amount outstanding which is relevant to this application.

[12] In submissions on behalf of the plaintiff, I was told that the plaintiff disputes the amount owing. It was implicit in those submissions that the dispute was with respect to a significant portion of the amount claimed by the defendant to be owing for services rendered. However, in the material filed on behalf of the defendant is a copy of a typewritten memorandum from Mr. Radvan of Island View to Mr. Gericke, of Anderson & Associates, confirming a meeting which took place between Mr. Radvan and representatives of Anderson Engineering on April 12, 2000 regarding the payment of Anderson's outstanding account and the work remaining to be performed to achieve the subdivision registration. In that memorandum, the defendant acknowledges that the balance owed on the account, including all outstanding work to complete, is $60,000 and that the survey work required to be completed to obtain registration will be provided upon receipt by Anderson of certain security documents which would provide Anderson with the comfort of knowing that eventually it would receive its $60,000.

[13] I conclude, therefore, for the purposes of this application, that the plaintiff acknowledges that it does owe the defendant $60,000.

**ISSUES**

[14] A number of issues are raised on this application.

1. Does the defendant have copyright over the plans and, if so, has the defendant consented to the plaintiff's use of the plans or was that consent withdrawn.
2. Whether the delivery of the survey plans to the plaintiff in the spring of 1996 terminated the possessory lien and thereafter the return of those plans to the defendant did not revive the lien but rather put the defendant in the position of a bailee, on the basis that it received the plans for the sole purpose of completing the modifications and corrections required to satisfy the Land Title Office.

**ANALYSIS**

**Copyright:**


**Definitions**

2. in this Act, . . . "artistic work" <<oeuvre artistique>> "artistic work" includes paintings, drawings, maps, charts, plans, photographs, engravings, sculptures, works of artistic craftsmanship, architectural works and compilations of artistic works;

[16] There is no question that the plans in question are original works and that "plans" are covered by copyright. Therefore the defendant has the copyright over the plans as the creator of them.

[17] It is apparent that when the defendant delivered the plans to the plaintiff in June or July of 1998 it was on the understanding that the plaintiff would be using the plans for the purposes of its subdivision project and therefore the inference to be drawn is that the defendant consented to the plaintiff's use of those plans. The issue is whether that consent amounts to consent to use of the corrected plans, if so, whether consent can be withdrawn in the circumstances and, if so, was it withdrawn.

[18] As I have said, there is no question that the defendant has copyright in the plans and that it impliedly consented to the plaintiff's use of the plans when they were first delivered in June or July or 1998. The plans were returned by the plaintiff to the defendant earlier this year with a request that the defendant correct the plans in order to satisfy the requirements of the Land Title Office. To that time, there is no evidence that the defendant gave notice to the plaintiff of any withdrawal of consent to the use of the plans. The defendant says that it has the right to withdraw its
consent to the use of the plans, and that the withdrawal of consent is implicit in their refusal to return the plans to the plaintiff.

[19] According to the case of Koch v. Lloyd (22 April 1985), Vancouver Registry CA002093 (B.C.C.A.) the consent can be withdrawn only if there has been no consideration for the consent given in the first place.

[20] When the plans were returned to the defendant for the correction services, an agreement was reached whereby the defendant would correct the plans to the satisfaction of the Land Title Office provided the cost for doing so was paid in advance. That cost was paid in advance and I conclude that it was a logical inference from those arrangements that once the plans were corrected the plaintiff would be entitled to file them with the Land Title Office, with the consent of the defendant.

**POSSESSORY LIEN**

[21] Having concluded that the consent was not withdrawn, it is necessary to consider whether the defendant’s claim of possessory lien can be maintained.

[22] On an application for replevin, the onus is on the applicant to establish that it has a better right to the goods than does the person in possession. (See Penner v. Simpson, [1941 Vol. 31 W.W.R. 235.)

[23] The defendant argues that because the plaintiff has not paid the outstanding account for engineering and survey services in full, it has a continuing entitlement to a possessory lien over the plans and, therefore, it has a better right to the plans than does the plaintiff. The plaintiff says that any right to a possessory lien which the defendant may have had was relinquished when the plans were delivered to the plaintiff in June or July of 1998.


> At common law the defendant had a lien for the labour, skill and expense he bestowed upon the truck until the charges for the same were satisfied. Continuous possession in the person who claims the lien is, however, essential to the continued existence of the lien, and the possession must be uninterrupted, and it appears that a temporary, voluntary relinquishment of possession and the subsequent resumption of it constitutes an abandonment of the lien.

[25] The defendant says that it did not abandon the lien by delivery up of the plans in 1998 because it intended that the right of lien should continue. In support of that position, I was referred to the decision of Macdonald J. in Industrial Acceptance Corporation Ltd. v. Tompkins Contracting Ltd. (1967), 60 W.W.R. 546. In that decision, Macdonald J. referred to a number of earlier authorities in which the question was whether the possessory lien survived the delivery up of the subject goods.

[26] Macdonald J. found that a feature common to those cases in which the lien was found to have survived or revived was that in each case there was an agreement between the claimant and the debtor which made it clear and obvious that it was the intention of the parties that by delivery up of possession the lien was not intended to be waived.

[27] In this case, the defendant delivered up the plans to the plaintiff in 1998 without any apparent agreement with the plaintiff that the plans were delivered subject to the defendant's common law right to a possessory lien pending payment of its account in full. The outstanding account is the balance of a much larger account, the remainder of which has been paid. The plans remained in the possession of the plaintiff from the middle of 1998 until the plans were handed back to the defendant in April 2000. When the plans were handed back to the defendant in April 2000, it was pursuant to an agreement between the plaintiff and defendant that the defendant would provide the corrections required if the plaintiff paid the $500 cost of the corrections in advance. The plaintiff paid the $500, delivered the plans to the defendant and the defendant did the work.

[28] I cannot find on these facts that the possessory lien which the defendant may have had to the plans in 1998 survived the delivery of the plans at that time. Nor can I find any evidence to support a conclusion that it was the obvious intention of the parties that the lien was to continue when possession was delivered up in 1998. Nor is there any evidence that there was a common intention that upon the return of the plans to the defendant the defendant would have the right to claim of lien on them until the account was paid in full.

[29] I conclude that the defendant does not have a continuing possessory lien over the plans.

[30] I am satisfied, therefore, that the defendant must return the plans to the plaintiff.

“G.M. QUIJANO, J.”

**THE HONOURABLE MADAM JUSTICE G.M. QUIJANO**

**Planning and Land Use**

**SUBDIVISION OF LAND—**

Corporate land owner purporting to grant 35-year leases for parcels located on one unsubdivided parcel of land—Leases were invalid and illegal, as they contained sufficient characteristics of a sale and thwarted purposes of Land Titles Act (Alta.) and Municipal Government Act (Alta.).

Respondents had entered into 35-year leases with respect to 50 parcels of land and proposed to enter into leases with respect to 179 remaining parcels out of a 139-acre parcel of land. Applicant was the county in which the land was located. It alleged that respondent was effectively selling land that was unsubdivided in contravention of the provisions of the Land Titles Act (Alta.) and the Municipal Government Act (Alta.). The purposes of those two acts were to enhance security of title and to...
promote orderly and efficient development of land. Two previous attempts by respondents to sell parcels of the unsubdivided land had been declared invalid by the court. Respondents alleged that there was no statutory provision preventing the leasing of unsubdivided parcels and that the leases avoided the effects of the acts. Applicant applied to have the leases declared invalid, void and illegal.

**HELD:** application granted. The scheme proposed by respondents thwarted the purposes of the acts. The leases contemplated payment in full upon payment of all rents due under the terms of the lease. If respondents declared bankruptcy, the leases would have no right to continued occupation of the land. They were receiving no security of title. The leases expressly contemplated development of the leased property. The proposed developments would raise issues that would potentially impact upon matters normally dealt with during the course of subdivision approval. The proposed leases included sufficient characteristics of a sale so as to constitute a sale within the meaning of s.95(1) of the Land Titles Act. That Act prohibited the sale of unsubdivided land and the leases in question must then be void for illegality. Respondents were to return any monies received under the leases and refrain from entering into any new leases.

**Strathcona (County) v. Half Moon Lake Resort Ltd., Alta. Q.B., Ritter J., May 26/00. Full Text Order No. 2010-002 (10 pp.)**

**ZONING BYLAWS—Non-conforming use—Where cottage property had been vacant for several years and re-designated as “hazard lands” by the municipality, new owners could not rebuild a cottage and assert non-conforming use of the property - The legal non-conforming-use as cottage property ended when previous owners vacated the land.**

Defendants owned a lakefront property and appealed from a judgment restraining them from using the property for cottage purposes. The original owners of the property left the property in 1985 after severe storms damaged their cottage. The property remained vacant until defendants rebuilt the cottage in 1995. In 1985, the municipality rezoned the lands as “hazard lands” and prohibited cottage use. Defendants contended that they had legal non-conforming use as cottage property which existed before the rezoning. They appealed the decision of the trial judge granting an interlocutory injunction against the use of the property as a cottage dwelling.

**HELD:** appeal dismissed. Section 34(9) of the Planning Act (Ont.) provided that a bylaw did not affect the current use of land “so long as it continues to be used for that purpose.” The original owners abandoned using the property for cottage purposes in 1985. Their conduct and expressed intentions clearly established a discontinuance of the use by them. That broke the chain of continuance required by the statute both as to the fact of use and as to intention deferred by some external cause. This was no longer a property usable for cottage purposes.

**Fagundes vs. Haldimand-Norfolk (Regional Municipality of), Ont. C.A., per Cathy J.A. Laskin and Rosenberg J.J.A. concurring, June 15/00. Full Text Order No. 2010-013 (7 pp.)**

**Real Property**

**QUIETING TITLE—Parking garage owner asserting possessor claim to land over which it had use for more than 10 years—Owner of abutting property building steps on part of garage property seven years after garage owner acquired property—Possessor claim failed, as building of steps by owner of abutting property had interrupted the period of open, notorious and exclusive possession.**

Applicant purchased a parking garage that abutted an office building. Both the office building and the parking garage had been owned by the same party and then conveyed to different parties. Title to part of the parking garage (“the disputed property”) was conveyed in both deeds. A dispute arose between the neighbours with respect to ownership of the disputed property. The owners of the office building built a set of steps on part of the disputed property. Applicant brought an application to quiet the title to the property. Applicant claimed that it owned the disputed property by a 1984 deed and by adverse possession since 1970. The owner of the office building (“the adverse claimant”) claimed that the possessor claim by applicant commenced in 1983, not in 1970, and that it ended in 1990 when it constructed steps on the disputed property.

**HELD:** applicant’s claim dismissed. Because the properties were owned by one party prior to 1983, there was no adverse possession prior to that date. Applicant did use the disputed property from 1983 until 1999. The 16-year period was sufficient to establish its legal title. (The Limitations Act (Nfld.) required a 10-year-possesssion to establish adverse possession.) However, where the holder of the legal title used any part of the land subject to a possessor claim, that interrupted the period of open, notorious and exclusive possession for the parcel of land subject to the claim. By building the steps on part of the disputed property in 1990, applicant’s period of adverse possession was terminated before the expiration of the 10-year limitation period.

**Matchless Group Inc. (Re), Nfld. T.D., Rower J., May 26/00. Full Text Order No. 2008-007 (15 pp.)**

**EASEMENTS—Damages—Respondents’ building encroaching on petitioner’s land by less than four inches—Petitioner seeking compensation and dam-
ages for impact of encroachment on plan to build on his property. Respondents awarded easement on property in return for $1,000 in compensation to Petitioner—Petitioner had failed to establish that proposed property plan would suffer loss in value because of the encroachment.

Petitioner and respondents owned adjacent property. Petitioner formulated plans to build a condominium complex on his property. A survey of the property revealed that the building belonging to respondents encroached on petitioner’s property by slightly less than four inches. Petitioner sought equitable relief for encroachment pursuant to s. 36 of the Property Law Act (B.C.). The section provided for the court to declare an easement for an encroachment and award compensation to the party whose land had been diminished. Petitioner sought compensation of over $100,000 based on a calculation of the total sale value of his premises upon completion. He also claimed for monies required to shore up his property in order to facilitate construction. Respondents had refused to allow petitioner to underpin their property. Respondents alleged that the claim advanced by petitioner was flawed in that it did not prove that the condominium units would sell for less because of the encroachment.

Held: easement granted to respondents upon payment of $1,000 in compensation. The purpose of s.36 of the Act was to provide a basis, on equitable grounds, for resolving disputes over encroachments. Relief was discretionary and based on a balance of convenience. Compensation for encroachment was not to be treated as equal to compensation for expropriation. In a given situation, inches of land could have a substantial value, but that was not demonstrated by petitioner. The diminishing inches would probably not affect the rental or sale value of the condominium building once completed. Compensation was fixed at $1,000, as the use of the land by respondents must have some value in law. Respondents were not responsible for any of the other claims of petitioner as they were entitled to refuse to allow petitioner to underpin their property.


BOUNDARIES—Plaintiff planted trees on his property which were later discovered to be on his neighbour's property—Trees passed with sale of neighbouring property—Plaintiff knew of the sale and did not move the trees or purchase half of the lot—Plaintiff was not the owner of the trees.

Plaintiff sought a declaration that he was the owner of a cedar hedge now located on defendants' property. Plaintiff planted a cedar hedge on one side of his property in 1991. He alleged that he believed the trees to be on his property. His then neighbour applied to sever his property. Surveys prepared indicated that the hedge was on the neighbour's property. The neighbour advised plaintiff that he could either move the trees or purchase one-half of the now severed lot. Plaintiff did neither. The neighbour sold the lot to defendants who believed that the trees formed part of their property. Defendants erected a fence on the actual lot line that enclosed the hedge on their property. Plaintiff sought to move the trees or to be compensated for their value.

Held: action dismissed. Section 15 of the Conveyancing and Law of Property Act (Ont.) provided that every conveyance of land included all trees and hedges belonging to such land. In order to refute the section, plaintiff had to show that he had an honest belief that the land was his own. Plaintiff had failed to take any reasonable steps when planting the hedge to locate the boundaries between the properties. He mistakenly or negligently planted the hedge. In any event, any claim that plaintiff could have had to the trees was abandoned by him when he failed to move the trees or purchase half of the lot. He not only demonstrated an intention to abandon the trees, but carried that intention into effect when he stood by and watched while the property was developed and sold to uninformed third parties.

Another ALSA golf tournament has just passed. I enjoyed a good day with Brian Dixon, Kevin Laiss, and Kevin Petty. Where has the summer gone? I hope that it has all gone well with you and that you are ready to tackle the fall season.

Our Council reconvenes on September 14th. Our operations have been “on the boil” in July and August. A new roster has been prepared by Janet Rose and it will be sent to the membership in September with the Link. We are registered for SAIT’s Career Directions 2000 on Wednesday, November 8th. On July 24th, around twenty members and guests enjoyed an illustrated lecture by Park Interpreter Hilary Tarrant on Dinosaur Provincial Park near Brooks at the Danish Canadian Club. It is fascinating country, full of fossils, strange flora and fauna. Hilary is an excellent guide and you can reach her by phone at (403) 378-4342 if you are headed that way.

Our Public Relations Committee has been busy over the summer planning updates to our brochures and applications. There are three applicants awaiting certification.

I am sure you all received your notice of the joint ALSA/ASSMT regional meetings in Calgary and Edmonton in September. All members were encouraged to attend. Thanks to Barry Bleay for arranging for Ken Berg of NAIT and Paul Delorme of SAIT to address the meetings. This is a tremendous opportunity for us to learn from each other.

Our Calgary office has moved and is now at #5, 1936 - 25 Avenue NE T2E 6Z4. The phone number remains the same at (403) 250-1278 and fax at (403) 291-0399. I can best be reached at home at (403) 244-3732. Leave a message and I will get back to you. My e-mail is stuttpottruff@hotmail.com.

That is all for now. I will fill you in with all our fall activities in my next column. With all of the tremendous activity going on in Alberta, it should be hectic. I enjoyed seeing you at the golf tournament and the regional meetings. Remember to encourage your staff to consider certification.

STUTT POTTRUFF
EXECUTIVE MANAGER

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