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president’s message
ron hall, als

I have whole-heartedly enjoyed the opportunity you, the membership have given me this year and I am truly honored by to have represented you as President of our Association. Thank you.

draft business plan has been developed as well as a backgrounder document on the subject. The respective professional jurisdictions are, or will be, reviewing these documents over the next couple months and providing feedback to the CCLS directors and the task force group as well as communicating to its members the strategy going forward. I personally believe there is still a fair bit of work to do with this initiative, but I also believe that a national body representing the overall profession is needed and the necessity for such a body will only increase in the future.

The speed of technology, global communication and a global economic perspective has made the world a “smaller” place, moving governments towards free trade, labour mobility, and so on. In this environment, it is vital that we maintain a united voice, ensuring the preservation of the profession and ongoing protection of the public. The issue of sustainability will be heightened the more we move globally and the more we promote freedom of movement between jurisdictions, causing costs to administer, regulate and monitor the profession to rise. Many parts or aspects of these tasks can be better served by a national body that can take advantage of economics of scale and leverage and optimize learning and knowledge. There are significant benefits in a national body providing components of such things as: continuing competency, speaking with a national voice, public relations, attracting individuals to the profession, promotion of the profession, and so on.

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It’s been a pretty exciting few months – travelling from coast to coast with visits to New Brunswick, Ontario and BC. We’ve conducted one round of four regional meetings, two Executive Committee meetings, two Council meetings, and continued to work on preparations for this year’s AGM – oh, and in between all this, I’ve occasionally managed to make an appearance at my office. With all of this on the go, Council, committees, Association staff and I have had no shortage of things to do.

During the visits to our three sister associations’ AGMs, the main national topics of concern are CBEPS, labour mobility and the transformation of CCLS / National Body Initiative.

CBEPS

Every province has signed on to CBEPS except Quebec who has elected to wait a year or two until they understand the concept better and can make the appropriate legislative changes that will allow them, if they see the value for their members, to join. Quebec has, however, been a very active participant in these discussions and has asked for an observer position on the board of CBEPS so that they can better understand its role and mandate and how it operates. Jacques Patenaude, the President of OAMQ, will be joining us at our AGM in April, and I encourage you all to take this opportunity to get together and chat with him – communication is the key to closing gaps and building relationships.

Labour Mobility

The new labour mobility provisions under the Agreement on Internal Trade (AIT) come into effect on April 1, 2009 and we really have no choice but to be ready. At this point it would appear, unofficially, that each province will likely settle on a similar singular professional examination that we have developed under TILMA; namely a three or four hour exam available to be written on demand.

National Body Initiative

This item is getting a lot of discussion these days and I am sure that, as it continues to move forward, the initiative and the concept will have the support of all the provinces and the ACLS. A
In this letter, we offered to be part of the solution in ensuring the letter of concern being sent by the Association to the Minister. We spent significant time in Council discussing it which resulted in one-day brainstorming session held last fall to make changes to the program. The changes are to ensure its sustainability and continued effectiveness. There is no doubt that as we move forward, somehow this program will have to be tied to continuing professional development. As well, we will likely have the added complexity of labor mobility to deal with, which I believe will increase the complexity of the program.

**Continuing Education**

As directed by the membership, Council has requested that the PDC develop a continuing education framework and a proposal for the membership for this AGM. This initiative is a complicated one with many interwoven pieces. We will be seeing the results of their efforts this year at the AGM, in the form of a proposed motion for voluntary continuing education reporting.

**Historical Display**

The Historical & Biographical Committee has put in an incredible amount of time and effort creating the display. We will all have the opportunity to see it in living colour at the AGM.

**Future of the Director of Surveys**

We conducted meetings with the Director on this issue and also spent significant time in Council discussing it and came to the decision to change the position. We concluded that the position of Director is currently unnecessary.

**TILMA**

The labour mobility agreement between BC and Alberta as it relates to land surveying is in place and up and running with at least one successful candidate receiving his commission in the host province under this agreement. Due in part to this agreement, the Board of Management of BC and the Council of Alberta held a joint meeting in November where the two organizations had much success in finding many areas where we can collaborate and work together for the joint interests of our members. Follow-up meetings have taken place relative to professional development, career awareness, newsletters and I am sure other joint discussions will follow.

As far as the next year goes, I have no concerns that there is going to be a shortage of things to tackle. Things such as the National Body Initiative, the Boundary Panel, SPR, the registration process, labor mobility, dual plan registration, the future of the Director of Surveys, budgeting are all issues or initiatives that will require more time and more resources as we move into the future.

I am hopeful that the membership is pleased with the efforts of Council this year as I am. I can assure you that Council put in a tremendous amount of time and effort on your behalf to ensure that the successful organization we have built thrives well into the future.

As I look back at this year and the opportunity I was given to participate as your Association’s president, I can’t help but reflect on the 100 years of our existence – past, present and future. For me, the past 100 years represents the efforts and commitment of all past and present members who built what is now an incredibly strong professional body. The present is a new world compared to our humble beginnings. Now we are not as concerned about building, so much as sustaining, our profession overall. As well, we will likely have increased the complexity of labor mobility to deal with, which I believe will increase the complexity of the program.

I can assure you that I have put in a tremendous amount of time and effort on your behalf to ensure that the successful organization we have built thrives well into the future.

Councillor’s forum

Connie Petersen, ALS

What we lack, in this Association, is the formal means for these surveyors to meet, to share their experiences and knowledge, and to assist other surveyors in reaching their full potential.

An informal mentoring program may be as simple as having members who wish to share their experience allowing their names to be posted on the ALSA website along with their areas of expertise.

An informal mentoring program may be as simple as having members who wish to share their experience allowing their names to be posted on the ALSA website along with their areas of expertise. Other members could access these names and make contact with the mentor that best suits their situation at the time.

However, developing a formal mentoring program would allow the members the best opportunity at achieving the greatest level of success. The development of a formal program does have some cost attached. The initial design of the program along with the necessary questionnaires which would enable the best possible match between mentor and mentee would have to be developed, likely by an outside agency. Once the program has been developed, there will need to be some administrative involvement to enter the necessary data to ensure a good match. There will also be a shortage of things to tackle. Things such as the National Body Initiative, the Boundary Panel, SPR, the registration process, labor mobility, dual plan registration, the future of the Director of Surveys, budgeting are all issues or initiatives that will require more time and more resources as we move into the future.

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...having a mentor would allow each of us to reach an even higher level of achievement.

I believe there are times in each of our careers, regardless of the number of years of practice or the level we have achieved in our profession, where having a mentor would allow each of us to reach an even higher level of achievement. We have a wealth of experience among our members and it would benefit all of us, as an association, to have that knowledge passed along. With the approaching exodus of the baby boomer generation over the next five years, it is more critical than ever. The benefits for the mentee are obvious; as for the benefits to the mentor, consider the personal satisfaction they will experience watching their protégé grow and succeed, knowing that they played a big part in that success.

The greatest good you can do for another is not just to share your riches but to reveal to him his own.

Benjamin Disraeli

The Alberta Land Surveyors’ Association is not immune from these economic times either. ...As the economy booms, the Association has the flexibility to undertake a number of new initiatives. When the economy turns south, the challenges are that much greater.

Be sure to attend!

HONOURING THE PAST at the 100th ALSA AGM

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GNSS SOLUTION

November 12th and 13th, 2008 with over 450 awards being presented.

The presentation took place during noon luncheons hosted by the College in the Garden Court Restaurant. All in attendance were welcomed by Zach Docs- hex, President of the College Students’ Association. Dr. Tracy Edwards, President and CEO, brought greetings on behalf of the College and congratulated the students on their achievements and hard work. The attending sponsors were recognized by those in attendance and thanked for their generous support.

Eleven awards were handed out under the Geomatics Engineering Technology program with Reena Grant capturing the Alberta Land Surveyors’ Association Scholarship. John Anderson was successful in adding both the J.H. Holloway Scholarship and the Alberta Society of Surveying & Mapping Technologies Scholarship to his list of achievements. The award recipients expressed their appreciation and commented that without the support of scholarships, many students would have difficulty furthering their education.

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New Members . . .

#806 MAHENDRU, Sachin
Sachin Mahendru came to Alberta from Vancouver, BC where he was born in 1981. He graduated from John Oliver Secondary High School in 1999, from BCIT in 2001 as a geomatics technician and went on to receive a B.Sc. in engineering from the University of Calgary in 2005. Articles were served under Jim Berry, ALS and David Marquardt, ALS from July 2005 to December 2008. Sachin received his commission as an Alberta Land Surveyor on December 3, 2008. He currently serves on the Public Relations Committee and served on the Future of the Association Ad Hoc Committee in 2007-2008. Sachin is also an engineer-in-training with APEGA.

#808 LARSEN, Carl
Carl Larsen was born in Vancouver, BC in 1961. He graduated from North Survey School High in 1979, received a diploma in Surveying Technology from BCIT in 1982 and a B.Sc.Eng. from the University of New Brunswick in 1991. Articles were served under Steve Vanish, ALS from April 2002 to December 2008. Carl received his commission as an Alberta Land Surveyor on December 15, 2008. He also holds a commission as a Namibian Land Surveyor and has had his P.Eng. since 2000. Carl served on the Professional Development Committee from 2002 to 2004, the Future of the Association Ad Hoc Committee in 2007-2008 as well as participating in a GPS workshop in 2008. Surveying experience includes working for BC Rail from 1982 to 1984 and Geodetic Survey Canada in 1986. He worked in Namibia from 1993 to 1998 and has been employed with McNally Land Surveys (Alta.) Ltd. of Edmonton since 1988.

Carl enjoys golf, stamp collecting, weightlifting and skiing. He is married to Murugi and they have one child, Mathangani, who is 17 years of age.

#809 KONCAN, Mark J.
Mark Koncos was born in Sudbury, Ontario in 1957. He graduated from high school in 1976 and received a B.Sc. from McMaster University in 1979 and a B.Sc. in Engineering from the University of Calgary in 1996. He also has a B.Sc. in Biology. Al Zaver (1997-1999) and Rod Buchko (2003-2009) served as Mark’s principal.

Mark received his commission as an Alberta Land Surveyor on January 12, 2009. He also holds a designation as a P.Eng.

Mark was has been involved in industrial surveying, control surveys at the Alberta Bureau of Surveying and Mapping as well as pipeline construction surveying. Mark is married to Noreen Vanderburch and he is currently employed with Challenging Geomatics Ltd. of Edmonton.

#810 HALL, Andrew
Andrew was born in Halifax, Nova Scotia in 1981. In 1999, he graduated from Hants East Rural High School and went on to graduate from the College of Geographic Sciences in 2001 and the University of New Brunswick with a B.Sc.Eng. in 2005.

Philippe Breau, ALS served as Andrew’s principal from September 2005 to January 2009. Surveying experience includes municipal and mining surveys with Sub-Arctic Surveys in Yellowknife as well as oil and gas surveying with Waberski Darrow Survey Group in Fort St. John, BC.

Andrew enjoys hunting, fishing and a variety of sports.

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Jeff was in born in Mississauga, ON in 1973. He graduated from the University of Alberta in 1995 and went on to graduate from the University of Calgary in 2005 with a B.Sc. in Geomatics Engineering.

Alberta Land Surveyor on February 24, 2009. Mr. Clapperton is employed with Altus Geomatics Limited Partnership in Calgary.

Real Comeau ceased to be employed with Altus Geomatics Limited Partnership (Medicine Hat) as of December 1, 2008. He is now listed as a sole practitioner at 33 -11418 Eagle BUTE RD Dumfries, AB T0J 1A0 Tel: 403/504-5044; E-mail: rmcomeau@hotmail.com.

Wayne Fawcett—new e-mail address: wayne.fawcett@betasurveys.ca.

Andrey Hall was commissioned as ALS #800 on December 3, 2008. Mr. Hall is employed with Altus Geomatics Limited Partnership in Grande Prairie.

Leanne James is now listed as a sole practitioner. She can be reached at 656-41148 Eagle BUTE RD Dumfries, AB T0J 1A0 Tel: 403/586-2852, FAX: 403/586-2853; E-mail: pcoon26@telus.net.

Drake Geomatics Ltd. (#204) was established as a surveyor’s corporation on February 17, 2009 under the supervision, direction and control of Bruce Drake, ALS. The contact information is 1133 Goodview Circle, Ed- monton, AB T7G 6V6; Tel: 780/218-8496; E-mail: B_drake@telusplanet.net.

GEOSPARK Surveys Inc.—Fax: 780/665-7471.

Global Oilfield Surveys Inc.—Fax: 403/249-5788.

Interprovincial Surveys Ltd. has changed its name to Meridian Surveys (Alta.) Ltd. as of January 19, 2009. Their street address is now 1627 - 51 Avenue, Suite 101 but all other mailing as well as phone and fax information is unchanged. The e-mail address has been changed to info@meridiansurveys.com and the website address is now www.meridiansurveys.com. The e-mail address for all staff at Meridian Surveys Ltd. is now mourey@telus.net.

Kim Uhrich—removal of fax number; please phone first.

McElhanney Land Surveys (Alta.) Ltd.—Fax: 780/784-2516; E-mail: mmmsurveys@calgarytel.net.

Millennium Geomatics Ltd. in Calgary on January 20, 2009. Mr. Hall is a member of the Regional Municipality of Wood Buffalo as of February 20th. He can be reached at 6 Biggs Avenue, Fort McMurray, AB T9H 1J1. E-mail: salmon.edward@yaloo.ca.

Richard Schlachter is currently employed with Deloitte 2103 – 11 Avenue, Regi- na, SK S4P 2Z8; Tel: 306/565-5265; Fax: 306/757-4753; E-mail: r-schlachter@alsasktel.net.

Michael Stewart is now with the Edmonton office of Altus Geomatics Limited Partnership. His e-mail is: michael.stewart@alsasktel.net.

Diverseified Geomatics Group Inc.—website address: www.diversifiedgeomatics.com.

McElhanney Land Surveys (Alta.)—registration was cancelled on April 28, 2009. The e-mail address is newe@calgarytel.net.

Andriy Mahendru is employed with Midwest Surveys Inc. in Calgary.

Sachin Mahendru was commissioned as ALS #800 on December 3, 2008. Mr. Mahendru is employed with Midwest Surveys Inc. in Calgary.

Alberta Land Surveyors’ Association Newsletter • March 2009 18
You don’t have to be there to buy a ticket!

The J.H. Holloway Scholarship Foundation has commissioned a bronze sculpture to celebrate the Alberta Land Surveyors’ Association’s 100th anniversary. The sculpture will sit on a carved walnut base on top of either granite or slate. The title will be 24 carat gold plate.

Tickets are selling at $50 each and can be purchased from the J.H. Holloway Scholarship Foundation. The draw for the sculpture will take place at the President’s Ball at the 2009 Annual General Meeting.

More information and tickets are available by contacting Sharon Armstrong by e-mail at sarmstrong@alsa.ab.ca or phone at 780/429-8805 or toll free at 1-800-605-2572.

Director of Surveys

The management of Stewart Weir is very pleased to have been voted among the top 25 Best Small & Medium Employers in Canada by our staff.

The study, facilitated by Queen’s School of Business, focuses on measuring employee engagement and allows management to assess the degree of intellectual and emotional commitment employees have in their workplace.

Stewart Weir has learned valuable information about our company through the survey. And by reviewing the results, we hope to facilitate improvements that will make us an even better choice for a career.

We would like to congratulate ISI. Engineering on their achievement in this survey as well.

ALSA Professional Exam Results—Fall 2008

Candidates are encouraged to continue discussions with their principals, land surveyors and fellow applicant pupils on these topics in order to prepare for discussion of similar types of questions in the qualifying exam.

The survey profession was disorganized to very near. Candidates should remember whether they were reading these exams to become a professional land surveyor and their writing style and organization should reflect this goal.

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The management of Stewart Weir is very pleased to have been voted among the top 25 Best Small & Medium Employers in Canada by our staff.

The study, facilitated by Queen’s School of Business, focuses on measuring employee engagement and allows management to assess the degree of intellectual and emotional commitment employees have in their workplace.

Stewart Weir has learned valuable information about our company through the survey. And by reviewing the results, we hope to facilitate improvements that will make us an even better choice for a career.

We would like to congratulate ISI. Engineering on their achievement in this survey as well.
An article in December

Question 10: Dormant plans was the focus of this question. Students were asked to define what is a dormant plan. The first half of the question was worth, students averaged 4.6.

Question 11: An article in December 2007, ALS News by Fred Cheng was the basis of this question. It dealt with bringing unsurveyed territory into the Land Titles system. The first half of the question was done well with students receiving 3 out of 4 marks. The second half of the question that dealt with the MSP and unsurveyed territory was not as well done as students received 2.6 out of 4 marks (but this is much better than the 1.8 out of 4 the last time this question was asked).

Question 12: The qualities an expert witness should possess was worth 2 marks. Students averaged 1.5.

Question 13: The aspect of safety was the focus of this question. Students were asked to name one of six certifying partners for a company’s safety program, what the importance of Bill C-45 is, the most important goal of a safety program, ground disturbance, and to name three basic things all companies should do to ensure the highest level of safety for their staff. Marks out of 11 was the average.

Question 14: The focus of this question was based on some of the opinions that the ALSA’s legal counsel had on whether there is a statutory requirement that a plan must be registered at the Land Titles Office when a monument or statutory iron post is placed by a land surveyor. The questions were based on why the legal counsel believes that there is a requirement to register a plan when you place a pin, what is the difference between a monument and a statutory monument, and are RPRs and well sites surveys that need to comply with the Survey Act. This was a very tough question and is the first time it has been asked on an exam. The students received 4.1 out of 7 as an average.

Scholarship Recipients . . .

ALBERTA LAND SURVEYORS’ ASSOCIATION
Andrew G. Fraser
University of Calgary
Reena Grant
Lethbridge College
Claire Lacey
University of Lethbridge
Henry Oderwatt
University of Lethbridge

J.H. HOLLOWAY SCHOLARSHIP FOUNDATION
Ben Knoechel
University of Calgary
John Deyholos Memorial Award
Dongning Xue
Southern Alberta Institute of Technology

Project Management Systems

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For President

**D.R. (Don) George, ALS**
- Born in Edmonton, Alberta.
- Began surveying career in 1966.
- Received diploma in Survey Technology at NAIT in 1969.
- Articled to Hugo Engler and received ALS commission (#397) in 1975.
- Sold shares in W.D. Usher, bought assets and started Cam-Alta Surveys Ltd in 1984.
- Sold Cam-Alta Surveys Ltd. to Malrais Associates Surveyors Ltd. in 1993.
- ALSA Assistant to the Director of Practice Review January 1994 to November 2007.

**ALSA Activities:**
- Member of Council 1988 to 1990 (as councillor) and 2008 to present (as vice-president).
- Over the years, I have been a member of various committees of the ALSA [Standards and sub-committees of Standards (13 years), Legislation, ALSA Liaison, and lately Buried Facilities, Peer Review and Boundary Panel committees].
- Presenter at various seminars (Getting It Right, Evidence, and Field Staff).
- Hobbies: traveling, mentoring and outdoor activities with my wife, children and our grandchildren.
- Reside in Edmonton and married to my lovely wife Eileen.
- Five children and eleven fantastic grandchildren.
- Future goals are semi-retirement and actively being your president of the ALSA.

For Vice-President

**Robert W.M. Scott, ALS, P.Eng.**
- Born in Kimberly, British Columbia.
- Raised in BC, Montana, Saskatchewan, Ontario, England, Quebec, and Alberta.
- Graduated from the University of Alberta with a B.Sc. in Geography (Survey Science) in 1980.
- Graduated from the University of Calgary with a B.Sc. in Surveying Engineering in 1987.
- Articled to Grant Cross, ALS.
- Obtained ALS commission in 1987.
- Received professional engineer status in 1991.
- Employment history: Walker Newby (Edmonton), Tronnes Surveys (Calgary), Martin and Co. (Lethbridge), Brown Okamura and Associates (Lethbridge), All West Surveys (Calgary).
- Director and owner of Scott Geomatics in Lethbridge from 1996 to 2003.
- Involved with setting up the Geomatics Engineering Program at Lethbridge Community College.
- Involved in instructing surveying at the Lethbridge Community College from 1996 to 2003.
- Employed with Stantec Geomatics in Calgary since 2005. Currently a senior associate.
- Future goals are semi-retirement and actively being your president of the ALSA.

For Council

**G.A. (Greg) Boggs, ALS, CLS**
- Employed by Alberta Transportation from 1979 to 1982.
- Received B.Sc. from University of Alberta in 1988.
- Articled to J.J. Hagen, ALS in 1990.
- Received ALS commission in November 1995.
- Worked with Stewart, Weir & Co. Ltd. on land claims in 1996.
- Received CLS commission in April 1997.
- Employed by McElhanney Land Surveys (Alta.) Ltd. in 1996 through to April 2005.
- Began work with Universal Surveys Inc. in May 2005 as vice-president and will become president effective April 1, 2009.
- Worked on numerous ALSA committees including the Registration Committee and Discipline Committee.
- Hobbies include golf, hockey and travel.
- Married for twenty years to Catherine; two children; Carson (19) and Connor (14).

**H.C. (Hugo) Engler, ALS, BCLS, CLS**
- Born in Varsity, Alberta in 1941.
- Attended Royal Roads Military College for one year after high school.
- Graduated from Southern Alberta Institute of Technology in 1961.
- Employed by Dozo and Smith Surveys from 1961 to 1970.
- Articled under James Keith Smith, ALS and received ALS commission in 1965.
- Received CLS commission in 1972.
- Received BCLS commission in 1973.
- Served on the Discipline Committee for five years.
- Self employed from 1987 to 1988.
- Served on the Legislation Committee for one year.
- Served on the Registration Committee for six years and as chairman in the 5th year.
- Hobbies include photography and, lately, wood working.
- Married to Faye, 43 years (no children), and reside in St Albert.

**D.J. (David) Hagen, ALS, P.Eng.**
- Born in Edmonton, Alberta in 1962.
- Graduated from Salisbury Composite High School in Sherwood Park in 1980.
- Graduated from University of Alberta with a B.Sc. in Engineering in 1985.
- Graduated from University of Alberta with a B.Sc. in Survey Science in 1988.
- Articled under J.J. Hagen, ALS.
- Received P.Eng. designation 1992.
- Received ALS commission in 1994.
- Member of the Public Relations Committee (1996-2002).
- Chairman, Public Relations Committee (1999-2000).
- Member of Alberta Land Surveyors Association Council (2000-2002).
- Chairman RPR Ad Hoc Committee (2003-2005).
- Member of Discipline Committee (2005-present).
- Vice-Chairman Legislation Ad-hoc Committee (2008-present).
- Reside in Sherwood Park, Alberta with wife Karima and two children Jean (9) and Emma (7).
The Queen v. Van der Peet [1996]
by Katherine Sangster and Michael Barry

The Van der Peet case established a precedent in that the common law rules of evidence should be adapted to account for the unique nature and characteristics of aboriginal rights. In addition, Chief Justice Lamer, as he was then, advocated ten factors which the courts should take into account in establishing aboriginal title, including how oral histories should be accommodated as evidence. The case has been cited in subsequent cases, e.g. Delgamuukw v. British Columbia, [1997] 3 S.C.R. 1010, the Marshall and Bernard cases, 2005 SCC 43, and more recently Tallio v. Nation v. British Columbia, 2007 BCSC 1700, with respect to how evidence in aboriginal land rights cases should be treated.

As a research group, our broader interest in aboriginal law cases is focused on what evidence is acceptable in the courts and how the data that constitutes this evidence can be captured and stored. Electronic evidence related to land law, particularly the admittance of digitally recorded oral testimony, is one area of interest. Another area related to this is the unique treatment afforded oral evidence and traditions in aboriginal land rights cases. Our limited field work in this area indicates that, in some aboriginal groups, the complete oral traditions are not being passed on from the elders to the new generation. We can speculate that as the current generation of elders die, the courts will have to rely on recordings as evidence future.

Following on R. v. Sparrow, [1990] 1 S.C.R. 1075, Van der Peet is instructive on how to interpret s.35(1) of the Constitution Act 1982, which states: “the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.” Certainly, any one considering writing the Canada Lands Surveyors exams should read the summary in the first ten pages of the Supreme Court of Canada law report.

The Facts
On September 11, 1987 Dorothy Van der Peet, a member of the Sto:lo tribe, was charged under s. 61(1) of the Fisheries Act, R.S.C. 1970, c. F-14, with the offence of selling ten salmon caught under the authority of an Indian food fish licence, contrary to s. 27(5) of the British Columbia Fisheries (General Regulations) Act. As a defence to the charge, Van der Peet argued the Sto:lo people had an aboriginal right to sell fish and upheld the trial judge’s decision to convict. The court held that an aboriginal right is protected when “evidence establishes that it has been exercised, at the time sovereignty was asserted, for a sufficient length of time to become integral to the aboriginal society” (para 43).

The Test for Identifying Aboriginal Rights
The court determined that the test for identifying aboriginal rights must be “aim at identifying the practices, traditions and customs central to the aboriginal group claiming the right.” The court held that the test requires that a practice, custom or tradition be distinct. It would be altered if there is evidence of any other practices, customs or traditions. The court held that the evidence should be of independent significance to the aboriginal community and will be determined on a case-by-case basis.

In the Supreme Court of Canada, on behalf of the Court, Lamer C. J. found the main issue to be determined was: “How are the aboriginal rights recognized and affirmed by s.35(1) of the Constitution Act, 1982 to be defined?”

General Principles
The courts must take a purposive approach and s.35 must be given a broad and liberal interpretation in favour of the aboriginal peoples (paras 21 and 22). The court remarked that Canadian, American and Australian jurisprudence supports the basic proposition that “aboriginal rights recognized and affirmed by s.35(1) are best understood as, first, the means by which the Constitution recognizes the fact that prior to the arrival of Europeans in North America the land was already occupied by distinctive aboriginal societies, and, second, the means by which that prior occupation is reconciled with the assertion of Crown sovereignty over Canadian territory” (para 43).

The Test for Identifying Aboriginal Rights
The court determined that the test for identifying aboriginal rights must be “aim at identifying the practices, traditions and customs central to the aboriginal group claiming the right.”

5. Courts must approach the rules of evidence in light of the evidentiary difficulties inherent in adjudicating aboriginal claims. In determining whether there is sufficient evidence for a successful claim, a court should approach and interpret the evidence “with a consciousness of the special nature of aboriginal claims, and of the evidentiary difficulties in proving a right which originates in times where there were no written records of the practices, customs and traditions engaged in. The courts must not undervalue the evidence presented by aboriginal claimants simply because that evidence does not conform precisely with the evidentiary standards that would be applied if, for example, a private tort case was involved” (para 68).

6. Claims to aboriginal rights must be adjudicated on a specific rather than general basis. The existence of an aboriginal right will be specific to each aboriginal community and will be determined on a case-by-case basis.

7. For a practice, custom or tradition to constitute an aboriginal right it must be more than just or a practice or custom or tradition is a defining feature of the culture in question” (para 59).

8. The practices, customs and traditions which constitute aboriginal rights are those which have continuity with the practices, customs and traditions that are significant to the community. It will be difficult to present evidence of pre-contact activities so the evidence relied upon may relate to aboriginal practices, customs and traditions post-contact; “it simply needs to be directed at demonstrating which aspects of the aboriginal community and society have their origins pre-contact. In that procedure, customs and traditions that can be rooted in the pre-contact societies of the aboriginal community in question that will constitute aboriginal rights” (para 62).

Evolution of those practices will not prevent protection (para 64). A broken chain of continuity will also not preclude the establishment of an aboriginal right and trial judges should adopt a flexible approach (para 65).

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The critical question is how those traditions at first contact have evolved and yet remained integral to a distinctive culture as aboriginal tenure systems have changed over time.

References


Commentary

The Van der Peet decision has emerged as an important case for how the courts should determine aboriginal rights. In assessing evidence for determining whether or not an aboriginal right existed, the courts have followed and enhanced the framework above. The laws of evidence, particularly oral tradition evidence, have been adapted to accommodate the sui generis nature of aboriginal land law; i.e. the law is unique, neither drawing exclusively on western jurisprudence nor frozen to the traditions as they existed at the time of first contact with Europeans or at the time at which Europeans declared sovereignty over different parts of Canada. The critical question is how those traditions at first contact have evolved and yet remained integral to a distinctive culture as aboriginal tenure systems have changed over time.

Dissenting Views

L'Heureux Daleh (dissenting). The criteria regarding the characterization and the time requirement of aboriginal rights protected under s. 35(1) of the Constitution Act, because the act of selling fish was not an integral part of the distinctive Sto:lo culture (para 91).

Based on the above points, Lamer found Van der Peet did not have an aboriginal right to sell fish, recognized by s.35(1) of the Constitution Act, because the act of selling fish was not an integral part of the distinctive Sto:lo culture (para 90).


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L’Heureux-Daleh (dissenting). The criteria regarding the characterization and the time requirement of aboriginal rights protected under s. 35(1) of the Constitution Act, 1982 were met. She found that “aboriginal rights protected under s. 35(1) have to be interpreted in the context of the history and culture of the specific aboriginal society and in a manner that gives the rights meaning to the natives.” The aboriginal perspective is more important than the common law perspective in this regard (para 145).

McLachlin (dissenting): It is not essential that a practice, tradition or custom be traceable to pre-contact times to qualify as an aboriginal right. As well, instead of an ‘integral/incidental’ kind of test, courts should use an empirical historical approach. Inferences as to what may qualify as “aboriginal rights under s. 35(1) should be drawn from history instead of attempting to describe a priori what an aboriginal right is” (para 261).

Commentary

The Van der Peet decision has emerged as an important case for how the courts should determine aboriginal rights. In assessing evidence for determining whether or not an aboriginal right existed (para 89). Finally “the absence of specialization in the exploitation of the fishery is suggestive, in the same way that the absence of regulated trade or a market is suggestive, that the exchange of fish was not a central part of Sto:lo culture.” The Sto:lo had no method of preserving fish, evidence for the assertion that there was an absence of exchange of fish (para 90).

Based on the above points, Lamer found Van der Peet did not have an aboriginal right to sell fish, recognized by s.35(1) of the Constitution Act, because the act of selling fish was not an integral part of the distinctive Sto:lo culture (para 91).


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A long-term working relationship between the client and their professional yields the highest level of service and meets the needs of the client better than an ever-changing service provider relationship based on price.

Second, the service provider is strongly motivated to do extra things not specifically covered by the bid document standard, and then charge the client for those things extra. This is such a strong motivation that a potential service provider may submit a bid with a ridiculously low price, knowing that they will "make it up" by charging high prices for extras. To make matters worse, there is no motivation for the service provider to help their client avoid problems, because problems lead to extra work outside the original scope.

So, did the client end up getting the results they needed for a lower price?

THE SIMPLIFICATION

It is quite easy for a client to make the decision to award work to the lowest bidder—all they need to do is change their perception of a professional service so that it looks like a commodity. To do that, they attract a few standards such as delivery date and final project deliverables and then gloss over all the intrinsic value that stems from the intangible qualities of a professional. If the client change in perception is made, it's no big leap to start treating your client as a commodity. For example, some kinds of labour activities can be handled like a commodity. For example, once a person learns how to assemble a toaster properly, their labour can be bought or sold, for example, to a toaster. It is usually quite easy to attach standards of quality to goods. Using our example toaster, it is easy to understand the qualities of it through descriptive terms such as two-slice, CSA approved, stainless-steel finish, and so on. Once those standards of quality are understood, then negotiations over toasters become boiled down to a few key factors such price, amount, delivery timelines and payment terms.

Some kinds of labour activities can be handled like a commodity. For example, once a person learns how to assemble a toaster properly, their labour can be bought in the same way the product will be. There can be a negotiation over how many toasters will be produced and how quickly they will be done, but as long as the toasters are put together according to the instructions, there is not much else to negotiate. The intrinsic value of the labour to build the toaster is no different from person to person, so therefore the labour can be treated as a commodity.

GOODS VS. PROFESSIONAL SERVICES

It is important to remember the difference between goods and professional services and then educate your clients all the time on why this difference matters to them. Goods (or commodities) are usually some sort of tangible thing that can be bought or sold, for example, a toaster. It is usually quite easy to attach standards of quality to goods. Using our example toaster, it is easy to understand the qualities of it through descriptive terms such as two-slice, CSA approved, stainless-steel finish, and so on. Once those standards of quality are understood, then negotiations over toasters become boiled down to a few key factors such price, amount, delivery timelines and payment terms.

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Who is This New Director of Practice Review?

Chris C. Everett, ALS (Ret.), BCLS, CLS, SLS (Ret.)

Introduction

As many of you will know by now I became the fourth Director of Practice Review beginning in February 2009. I consider it an honour and a privilege to have been appointed to serve the Association in this capacity. An honour because practice review in Alberta is so highly regarded among our sister associations throughout Canada, yet at the same time humbled by the responsibility to the Board, to the membership and to the citizens of this province.

The Job Description

The task assigned to me by the Association’s Practice Review Board is primarily to undertake internal audits and to support the required steps that the Board has to take in order to complete Phase 3 of the Systematic Practice Review. Phase 3 of the program is in its sixth year and it needs to be finished.

I see the task much like a boundary survey where the thin line between two neighbours cannot be arbitrarily adjusted to suit one or other of the parties. The line must be run in accordance with the provisions of the acts and regulations and the boundary defined with full knowledge of these rules and without prejudice or favour. Practice review will demand no less. Words like consistency and fairness also spring to mind and, as the Director, I will do my very best to live up to your expectations and to adhere to these principles.

It’s quite the challenge...

This job really is challenging. I will be following the footsteps of Inspector Bill Wylie-Dod and Directors, Al Nelson, Lyall Pratt, Fred Cheng and Don George—all long-time giants of this Association. What a line up! Fortunately, for me, the job has been made a lot easier because these gentlemen have done such sterling spadework in the past. The existing review process has been made a lot easier because these gentlemen have done such sterling spadework in the past. The existing review process has been made a lot easier because these gentlemen have done such sterling spadework in the past. The existing review process has been made a lot easier because these gentlemen have done such sterling spadework in the past. The existing review process has been made a lot easier because these gentlemen have done such sterling spadework in the past. The existing review process has been made a lot easier because these gentlemen have done such sterling spadework in the past. 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I served as a member on the Saskatchewan Land Surveyors’ Association Council, served on many committees and, in particular, spent about nine years on the Board of Examiners. I was also appointed to the original advisory board to the University of Calgary’s embryonic survey engineering program. I served as President of the Saskatchewan Land Surveyors Association in 1979.

During the twenty years I spent in the township system on the prairies, I covered most of Saskatchewan and some parts of Southern Alberta; all of this in private practice. I also managed to shoe-horn time at the University of Regina for a diploma in business administration and time at a flying club to complete a commercial pilot rating for aerial photography. In 1992, I landed in British Columbia and, after a short time with another firm, opened my own private practice, which I am closing in order to survey company, opened my own private practice. I also managed to shoe-horn time at the University of Regina for a diploma in business administration and time at a flying club to complete a commercial pilot rating for aerial photography. In 1992, I landed in British Columbia and, after a short time with another firm, opened my own private practice, which I am closing in order to respond to this challenge.

I see the practice review function as a vehicle that helps to ensure this bond of trust is maintained so that future surveyors and the public whom they serve can rightly depend on the integrity and accuracy of the cadastre in Alberta.

“Getting to Know You”

In the capacity of Director of Practice Review, I will get a chance to reconnect with old survey friends from years gone by and, hopefully, get to meet and know many new ones. I look forward to this with relish. I hope I get a chance to meet you all.

Before I finish, it occurs to me, that in addition to the common interests always found among members of the same profession, land surveyors share a particular bond. As we carry out our surveys daily, we absolutely have to depend on the evidence and monuments recorded and placed by the “old-timers” who have gone before.

Today, we land surveyors are creating a trail of evidence for those who will also follow. And, like today’s practitioners, those who follow will have to depend on the work of what they will then call “old-timers” (that’s us). I see the practice review function as a vehicle that helps to ensure this bond of trust is maintained so that future surveyors and the public whom they serve can rightly depend on the integrity and accuracy of the cadastre in Alberta. ■

How many times have we heard the phrase “but the data doesn’t match the co- ordinates” uttered around the office? I even uttered that same phrase early during the course of my articles, as much as I hate to admit it. My principle quickly set me straight that coordinates were not the “be all and end all” in surveying. One had to look at all the evidence provided. Reliance on coordinates seems to be a more common occurrence with the increased use of GPS in surveying.

While GPS coordinates have made our lives much easier, we must not forget that there are other pieces of evidence that need to be examined to get a complete picture. This fact has to be stressed to our new field crews, survey analysts and articling students. The last thing we want to do is create a new generation of surveyors that are glorified data collectors.

In a perfect world, the location of the survey post would match exactly where the provided coordinate says it should be, but this world is far from perfect. With different datums and map projections, one location can have multiple coordinates. For example, a location’s coordinates could be given in NAD83 STM, NAD83 UTM, and latitude/longitude. Ensuring that the correct datum and projection is used is one small step in correctly using coordinates. This will, at least, make sure the field crew is working in the correct section when laying out a wellsite, performing a boundary survey or posting a subdivision.

In an effort to improve efficiency in the field, calculated coordinates are sometimes provided for field crews performing a boundary survey. The coordinates are usually calculated from the ATS and legal survey fabric that can have accuracies ranging from a couple of centimetres to three metres or more. The crew must be instructed to not rely solely on the coordinates themselves when looking for a post but to look at the area surrounding the post. For example, a coordinate is provided and the crew searches for the post finding no evidence. Instead of blindly putting “found no mark,” the crew should also be looking for other evidence of the post’s location such as fences, if another surveyor had found the post recently and if there has been recent ground disturbance. A thorough search will prevent most double posting and the problems and/or embarrassment that they can cause. Some of the more experienced land surveyors in the office even refuse to send a crew out with coordinates as they want the crews to examine the plans and determine where to find the evidence themselves.

There are also instances where GPS cannot work; a provided coordinate is all but useless. GPS not functioning properly in a heavily treed area is no excuse for being unable to complete a survey. A crew must know other methods of measuring a point in addition to using GPS. When analyzing the survey data, a post cannot be called “out” just based solely on the coordinate. Other items have to be looked at including when and how the post’s location was established in the original survey, the accuracy of the time and how the post’s location fits with the evidence around it. With the survey I calculated as an articling student, where I uttered the aforementioned phrase, according to the coordinates almost everything was “out.” After talking to my principal, I started comparing the relationship of the posts to surrounding evidence and plans, discovering that everything fit nicely together. The important thing is to compare the relationship of the evidence to surrounding posts and plans; this will be stressed to articling students and new survey analysts.

While GPS coordinates have made our lives much easier, we must not forget that there are other pieces of evidence that need to be examined to get a complete picture.
Findings and Order of the Discipline Committee

In the matter of the Land Surveyors Act and in the matter of a complaint against Allan Nielsen, ALS.

November 14, 2008

The Hearing
Appeal heard by a Panel of the Discipline Committee of the Alberta Land Surveyors’ Association composed of the following members: G. K. (Ken) Allred, ALS, Panel Chair; Daniel Lachapelle, ALS, Panel Member; Roy Pominesville, ALS, Panel Member. Parties present at the hearing: Allan Nielsen, ALS (Ret.).

Witnesses present at the hearing: Syd Loeppky, ALS (Ret.), Blaine Benson, ALS. (These witnesses were only present during their own testimony.)

Alberta Land Surveyors’ Association representatives present: David R. McWilliam, ALS, Registrar; David Jardine, Association Counsel.

Court Reporter: Ashley Chan

Place and date of the hearing: Alberta Land Surveyors’ Association Boardroom, #1000 – 10020 – 101A Avenue, Edmonton, Alberta, June 6, 2008

Background
On July 17, 2007, Mr. Syd Loeppky, ALS filed a complaint against Mr. Allan Nielsen, ALS. The complaint arose as a result of the appointment of Mr. Loeppky to act as a monitor of the practice of Allan Nielsen, ALS pursuant to an order of the Discipline Committee of the Alberta Land Surveyors’ Association dated October 2, 2006. Since the time of the complaint both Mr. Loeppky and Mr. Nielsen have retired as members of the Alberta Land Surveyors’ Association and have been granted retired status by the Council of the Alberta Land Surveyors’ Association.

Jurisdiction
This matter comes before a panel of the Discipline Committee of the Alberta Land Surveyors’ Association as a complaint pursuant to section 36 of the Land Surveyors Act. This panel of the Discipline Committee is charged with hearing the matter of the complaint pursuant to Part 5 of the Land Surveyors Act.

Summary of Proceedings

Allegations
The Chairman of the Discipline Committee has conducted an investigation into the matters set out in the complaint and the following allegations have been made against Mr. Nielsen:

1. It is alleged that you, after months of repeated attempts by a duly imposed Monitor, have failed to allow your practice of land surveying to be monitored in compliance with an Order of the Discipline Committee of the Alberta Land Surveyors’ Association dated October 2, 2006.

2. It is alleged that your refusal to be monitored has thwarted the essence of the Order of the Discipline Committee dated October 2, 2006, and therefore, there has been no monitoring, no feedback to the Practice Review Board, and no final report as contemplated by the aforementioned Discipline Order. Furthermore, there has been no monitoring of your day-to-day survey practices by the appointed monitor as contemplated by the said Discipline Order, a circumstance that continues to this very day.

3. It is alleged that the history of your uncooperative responses, which led to the Order of the Discipline Committee dated October 2, 2006, and your continued uncooperative actions including your refusal or failure to enter into a monitoring arrangement as contemplated by the said Order, may suggest that you are ungovernable by the Profession and therefore, may be guilty of unprofessional conduct.

Summary of Evidence
Allan Nielsen, ALS, was the subject of a discipline action and the resulting Order of the Discipline Committee dated October 2, 2006. The Discipline Committee found Allan G. Nielsen guilty of unskilled practice and unprofessional conduct and assessed ten penalties against Mr. Nielsen, the fifth of which is the subject of this hearing and is enumerated as follows:

5. The practice of Allan G. Nielsen, ALS is to be monitored by a senior ALS at Mr. Nielsen’s expense.

Appointment of the Monitor will be by the Discipline Committee.

At a minimum the practice monitoring will consist of the following elements:

i. Pre-assessment preparation
ii. Joint work effort
iii. Follow-up

Summary and critique
a. Monitoring will continue for a period of twelve months, or until such time as all the requirements of Systematic Practice Review 2 and the follow up review are satisfied and all current projects and plans are completed and registered whichever time is the later, where after the Monitor will provide a final report to the PRB.
b. The Monitor shall provide a progress report on the eightieth day of each month commencing December 18, 2006. 

3. The Monitor shall act as an advisor and
counsellor, trouble-shooting, training to
strengthen skills, and correct weaknesses in
technique. The Monitor will observe Mr.
Nielsen in action for the express purpose
of improving results, and help Mr. Niels-
en to help himself. How often the moni-
tor coach will depend on the progress of
Mr. Nielsen.

d. The Monitor must coach Mr. Nielsen
with particular attention to at least the
following items as identified in SP 2 and the Follow Up Review:

1. Assessing survey evidence applicable to all field work, giving consideration to governing evidence, hierarchy of evidence, sequence of original evidence and eviden-
tary evidence.

2. Give consideration to the survey in-
structions and procedures in the cur-
tent Manual of Standard Practice and
amendments thereto.

3. Improving and streamlining office
procedures, specifically with respect to
check sheets, field notes, etc.

4. Complete the responses to Practice
Review in a timely and orderly fashion. The
Monitor is to pay particular atten-
ciation to coaching Mr. Nielsen in preparing
drafts, complete and timely responses.
Mr. Nielsen is to use the same numbering
system used by the Director of Practice
Review in his reports.

5. Continue to write all reports for ser-
vice, and restrict activities to only for
those projects Mr. Nielsen possesses the
expertise to complete. Any new work
outside Mr. Nielsen’s expertise will only be
undertaken where expert support is
available. Due diligence is required at all
times to ensure that all work is of high
class, with time for proper quality con-

cell and plan checking being as impor-
tant as field work.

6. To perform all work and plan process-
ing with skill and professionalism. All
work to be performed in accordance with
current professional standards and expec-
tations.

The Order goes on to prohibit Mr.
Nielsen from practicing as a sole practitio-
nur and requiring him to close the practice
of Nielsen Land Surveys Ltd. among other
things which the panel feels are not spe-
cifically relevant to the current allegations,
except possibly number 9 as follows:

9. The PRB is to review the report and rec-
ommendations provided by the Monitor, and
also those submitted by Mr. Nielsen. The
PRB may make additional requests or ad-
justments as may be found necessary to carry
out the intent of this order, including the
scheduling of another SPR.

Exhibits Submitted at the Hearing

Exhibit 1A Report of the Discipline Committee of the Alberta Land Surveyors’ Associa-
tion dated March 26, 2001

Exhibit 1 Alberta Land Surveyors’ Association
Documents

Exhibit 2 Records Provided by Syd Loopky, ALS (Ret.)

Exhibit 3 Practice Review Board Materials

Testimony of Mr. Loeppky

Syd Loopky, ALS was appointed by Larry Pals, ALS, Chairman of the Discipline
Committee to exercise the duties of Moni-
tor as set out in section 5 of the Order of the Discipline Committee dated October
2, 2006.

Messrs. Pals and Loopky initially met with Mr. Nielsen on or about February 1, 2007. Mr. Nielsen’s initial reaction to the
decision of the Discipline Committee, the
monitoring, and the order to not prac-
tice as a sole practitioner was that he just
wanted to give up and resign. Mr. Loop-
ky talked him into continuing.

Mr. Loopky met with Mr. Nielsen
several times and they corresponded by
e-mail as well by telephone continu-
ously from February 1 until July 13, 2007
attempting to reach an agreement on the
Terms of Reference for the “monitoring
of Allan Nielsen’s practice” in accor-
dance with the order of the Discipline
Committee. Among the concerns that
needed resolution for the Terms of Refer-
ence were the questions of what and how
the monitoring would take place, what
costs would be, and who would pro-
vide professional liability insurance for
the monitoring that Mr. Loopky was
required to undertake. Mr. Loopky esti-

cated that he had over 120 contacts with
Mr. Nielsen and others in attempting to
reach an agreement but was never able to
give Mr. Nielsen a commitment. Finally,
outright from total frustration with his lack
of success in reaching an agreement with
Mr. Nielsen, Mr. Loopky filed a letter of complaint against Allan Nielsen, ALS.

Testimony of Mr. Benson

Blaine Benson, ALS appeared before the
panel of the Discipline Review Board and
gave evidence in his capacity as a former
chairman of the Practice Review Board
(PRBB) from May 1, 2007 to April 30,
2008. Mr. Benson had been a member of
the PRB for several years prior to assum-
ing the chairmanship of the PRB.

Mr. Benson testified that the Practice
Review Board was aware that during a
regular Phase 1 review of the practice of
Allan Nielsen, ALS there had been nu-
merous deficiencies, which resulted in a
follow-up review. The Phase 1 review had
taken place in 1997 and the follow-up
review was conducted in 2003. As a result of
the deficiencies in the Phase 1 review a
disciplinary hearing was held in 2000, which
resulted in an order of the Disci-
pline Committee, dated March 26, 2001
(Exhibit 1A) As a result thereof, the
practice of Mr. Nielsen was monitored by
John Drybolos, ALS and the results of the
monitoring forwarded to the PRB along
with six undertakings signed by Mr. Niel-
sen. Mr. Benson testified that despite these
reviews, the disciplinary action, and the
monitoring, the practice of Mr. Nielsen
had not improved and that the Practice
Review Board was frustrated by Mr. Niel-
sen’s lack of and inadequate response to the
concerns of the Board with regard to the
undertakings that he had committed to
observe in his practice.

A Phase 2 review of the practice of
Mr. Nielsen was conducted and the re-
sults submitted to Mr. Nielsen for his re-
sponse. His response was not satisfactory
to the Practice Review Board and a formal
hearing was held which resulted in Mr.
Nielsen being given six months to demon-
strate a major improvement in his practice
and report back to the PRB on a monthly
basis. The PRB became increasingly more
frustrated with the inadequate and in-
complete responses to the undertakings
and the concerns of the Board. The PRB
conducted a Phase 2 follow up review,
which had further continued concerns with
Mr. Nielsen’s practice. After sev-

eral months of communications and con-
sideration of the Director of Systematic
Practice Review and Mr. Nielsen with in-
complete responses, the PRB laid a further
formal complaint against Allan Nielsen,
ALS and Nielsen Land Surveys Ltd. This
complaint resulted in the Discipline deci-
dion dated October 2, 2006, which found
Allan Nielsen guilty of unskilled practice
and unprofessional conduct.

Condition 5 of the Order of the Dis-
cipline Committee required that “the
practice of Allan G. Nielsen, ALS is to be
monitored by a senior ALS at Mr. Niels-
en’s expense.” The condition required that
the Monitor provide a final report to the
PRB. As a result of this condition the PRB
asked the chair of the Discipline Panel to clarify the role of the PRB in the
monitoring. Subsequently the chair of the
panel chair, the PRB directed further communication with Mr. Nielsen to
take them apprise of the progress on the
concerns of the PRB from previous
reviews. In their subsequent communica-
tion they expressed concerns with delayed
reporting and correspondence, and to why reports were late or incomplete.

The PRB subsequently noted that out-
standing plans and dormant plans had
been taken care of by the Board’s satisfac-
tion with the exception of the monthly
reports.

Testimony of Mr. Nielsen

Mr. Nielsen testified that he felt that his
experience with the Practice Review
Board was a harsh process and he felt they
were unfair to him.

He felt that his dealings with Syd
Loopky were good and that Syd’s testi-
ymony was an accurate portrayal of their
dealings. He has a high degree of respect
for Mr. Loopky and agreed that Syd had
spent a lot of time with him. He agreed that
Syd Loopky was frustrated in his dealings with him but (he) Nielsen was
frustrated with the order of the Disci-
pline Committee.

Mr. Nielsen was of the opinion that he
was good at evaluating evidence and that
he could teach a course on evidence. He
declared that with the dissolution of his com-
pany and rectification of his plan errors,
etc. he had fulfilled the obligations of the
Order.

Mr. Nielsen advised that in about May
2007 he became an employee of Doug-
las Surveys Ltd. and that his position with
that company involved him training field
staff in such things as evaluation of
evidence and other fieldwork. He stated
that he basically worked as a land surveyor
except that he did not sign plans. He did not
see how the Order could work to help
him improve his skills.

In dealing with Syd Loopky as the moni-
tor, he was in agreement that the
arrangement should involve Iain
Douglas, ALS, as his new employer, as
well as himself and Mr. Loeppky. He did not like the idea of being monitored but would have liked it if he could continue providing his services to the profession. He also expressed his opinion that after he closed his company and became an employee of Douglas Surveys that the monitoring could end once he completed the registration of all the pertinent documents and corrections to plans.

He knew Iain Douglas very well; they had known each other since high school when they had often worked together on monitoring issues. Mr. Nielsen’s son worked for Douglas Surveys and it was a good relationship. He got along with Mr. Douglas very well but respected the fact that Iain was the boss and he had to do things Iain’s way rather than following his own practice. He cited an example where the practice of land surveying was to only show a found pin with a black circle, whereas Mr. Nielsen wanted to be more descriptive and illustrate the fact that he had found the iron pin bent, had straightened it and replaced it.

The Discipline Committee issued a preliminary decision on August 11, 2008, which was forwarded to Mr. Nielsen and the Registrar of the Alberta Land Surveyors’ Association. On August 28, 2008, Mr. Nielsen received the Submissions on Penalty which was forwarded to Mr. Nielsen and Alliance. He was given two opportunities to make any representations, either orally or in writing. Mr. Nielsen responded that he had been unskilled and unprofessional in his dealings with the Practice Review Board since at least the year 2000. He had avoided giving complete answers and evaded their efforts to make it abundantly clear that he can teach evidence and in his present capacity as an employee of Douglas Surveys he is in fact teaching and supervising crews. He is very concerned about this, in view of the findings of previous reviews and discipline hearings that question his basic level of competence.

Mr. Jim Casey in his text entitled Regulation of the Profession in Canada has set out the factors that make for consideration of the duty of a professional organization in its responsibility to protect the public interest. These factors are set out in the following order:

1. Specific deterrence of the individual member from any further misconduct.
2. Rehabilitation of the member.
3. The need to maintain the public’s confidence in the integrity of the profession’s ability to properly supervise the conduct of its members.

The Practice Review process is essentially a coaching process whereby the member is mentored and encouraged to raise his level of competence to professional standards. There would be an opportunity to complete the program and as a last resort where rehabilitation becomes questionable a referral to the discipline process is mandated to impose sanctions on the member. There is a sense that the misconduct of the discipline committee may fail to comply with the standards of the profession.

The panel has reviewed six other disciplinary actions by the Alberta Land Surveyors’ Association including two involving Mr. Nielsen. The panel has concluded that in view of the disciplinary decisions in these cases, essentially as a result of the same lack of response on his part, that his attitude demonstrates a lack of desire to participate in any rehabilitation. In view of the attitude and lack of understanding by Mr. Nielsen it is important that the public be protected from a continuing demonstration of Mr. Nielsen’s lack of competence in the practice of land surveying.

Cancellation is obviously a last resort and is only imposed in extenuating circumstances, which this case has demonstrated. Cancellation has not been imposed in the previous cases cited, however in two of the previous cases the suspended member never completed the conditions of reinstatement and has voluntarily resigned from practice.

The panel also reviewed the circumstances cited by counsel for the Alberta Land Surveyors’ Association regarding the demonstration of unprofessional conduct and as a last resort where rehabilitation becomes questionable a referral to the discipline process is mandated to impose sanctions on the member.

In view of the severity of the misconduct and the lack of rehabilitation over an extended period it is important that the serious nature of this conduct be communicated to the profession. It is important that they appreciate the consequences of failure of a member to communicate in good faith with disciplinary and practice review bodies and to commit professional matters of these bodies after a duly constituted hearing and review process. Mr. Nielsen’s situation was exacerbated by the fact that he failed to comply with his own undertakings.

3. Denunciation of the misconduct by the profession. It is important to communicate to the membership that the failure of Mr. Nielsen or any other member, to comply with orders of the Practice Review Board and the Discipline Committee are serious matters of professional misconduct and failure to comply will attract serious penalties and sanctions.

4. Punishment for the misconduct. The misconduct in this case over a period of three separate disciplinary actions warrants a severe monetary penalty as well as sanctions on his right to practice.

5. Rehabilitation of the member. It is apparent to this panel given the facts that Mr. Nielsen has been before a Discipline Committee on three separate occasions, essentially as a result of the same lack of response on his part, that his attitude demonstrates a lack of desire to participate in any rehabilitation. In view of the attitude and lack of understanding by Mr. Nielsen it is important that the public be protected from a continuing demonstration of Mr. Nielsen’s lack of competence in the practice of land surveying.

6. The need to maintain the public’s confidence in the integrity of the profession’s ability to properly supervise the conduct of its members.

7. Ensuring that the penalty imposed is not disproportionate with penalties imposed in similar cases.

The panel has reviewed six other disciplinary actions by the Alberta Land Surveyors’ Association involving two including Mr. Nielsen. The panel has concluded that in view of the disciplinary decisions in these cases, essentially as a result of the same lack of response on his part, that his attitude demonstrates a lack of desire to participate in any rehabilitation. In view of the attitude and lack of understanding by Mr. Nielsen it is important that the public be protected from a continuing demonstration of Mr. Nielsen’s lack of competence in the practice of land surveying. Cancellation is obviously a last resort and is only imposed in extenuating circumstances, which this case has demonstrated. Cancellation has not been imposed in the previous cases cited, however in two of the previous cases the suspended member never completed the conditions of reinstatement and has voluntarily resigned from practice.

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Order
Pursuant to Part 5 of the Land Surveyors Act (RSA 2000, c. L-3) the Discipline Committee having found Allan Nielsen, ALS guilty of unprofessional conduct hereby orders that:

• That Allan Nielsen be ordered to comply with section 71 of the Land Surveyors’ Act and shall not, without the consent of the Council of the Alberta Land Surveyors’ Association immediately;

• That Allan Nielsen be ordered to surrender his certificate of registration to the Registrar of the Alberta Land Surveyors’ Association forthwith, and that Allan Nielsen shall not engage in the practice of land surveying with any other practitioner;

• That the total amount of the fine and costs in the amount of $23,711.80 be paid in 7 equal monthly installments of $2,996.00, the first installment to be paid within 30 days of the date of this order; and in monthly installments thereafter; and a final payment in the amount of $2,963.80 to be paid no later than 9 months from the date of this order.

• That Allan Nielsen pay the costs in the amount of $16,211.80.

• That Allan Nielsen pay a fine of $7,500.00.

• That the registration of Allan Nielsen as an Alberta Land Surveyor be cancelled forthwith, and that Allan Nielsen shall surrender his certificate of registration to the Registrar of the Alberta Land Surveyors’ Association immediately;

• That this decision be published in ALS News, the quarterly newsletter of the Alberta Land Surveyors’ Association. Dated at the City of St. Albert in the Province of Alberta on the 14th day of November 2008.

G. K. (Ken) Allred, ALS
Discipline Panel Chair

Don’t miss it!
The Future Seminar at this year’s 2009 ALSA 100th AGM at the Fairmont Banff Springs Hotel

Keynote Speakers
Ruben Nelson
Changing Landscapes—Changing Futures: Exploring Our Choices
Robert J. Sawyer
The Future of Professional Certification
Dr. John McLaughlin, NBLS
The Fourth Wave of Property Reform
Dr. Naer El-Shemy, PEng, CRC
The Future of Surveying

Professional Certification
CPD
Council of the Alberta Land Surveyors
The Alberta Land Surveyors’ Association immediately;

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G. K. (Ken) Allred, ALS
Discipline Panel Chair

P art of the 2008-2009 terms of reference for the PDC was to develop a mandatory continuing education regime for presentation to the membership at the upcoming AGM. Chair Marty Robinson struck a sub-committee to develop such a regime early in his tenure.

...considerable reading and reflection caused my perspective to change somewhat.

I was the mover of the motion during the new business session in Lake Louise last year. In the interim, considerable reading and reflection caused my perspective to change somewhat. I realize now that trust begets trust, and that demanding that a surveyor take responsibility for his professional development might be perceived as a sign that, in fact, surveyors don’t trust each other to do so on their own. This notion bothered me. I have known many surveyors well and invariably they have been people who inspire my trust in their professional practices. Some would consider my point of view naïve, but if I, as a surveyor, don’t trust a fellow surveyor, then the association and the history that make this the fulfilling profession I find it to be are merely a myth. I and the Committee had to find a way to bring to the membership a mandated continuing education regime that honored the judgment of the members of the association and didn’t compromise the ethic of trusting a fellow professional, which we feel and feel is important to our own sense of professional pride. We did not want to bring upon our fellows some ‘we know what’s best’ proposal that might offend some and discredit the unspoken, except in this article, trust we have for each other. Last month, we submitted our proposal to council. We felt that the members themselves should dictate the nature and amount of continuing education that should be expected of an Alberta Land Surveyor. We proposed that the members be required, for a period of two or three years, to report their educational and developmental activities, thereby affording those tasked with the development of a mandatory regime relevant information about what the membership considers to be adequate participation in continuing education. Council has returned our proposal for further consideration.

The Agreement on Internal Trade, specifically, has changed the nature of the game. Potentially, surveyors from disparate jurisdictions will be writing and passing truncated versions of the professional exams and hanging out shingles. Membership numbers in our Association and in our sister Associations will increase and additional mechanisms, such as mandatory continuing education, may indeed be necessary for the monitoring and enforcement of the quality of the work surveyors do.

Unfortunately there might not be time to develop the ‘naïve in Alberta’s regime we aspired to. A voluntary reporting regime will be proposed to you at the AGM this spring and a compulsory continuing education regime in the future, maybe one or two years hence. Without the amount of information we had hoped to use in the development of our regime, we could be forced to merely modify existing regimes stolen from other professional Associations. I urge you to consider the merits of the proposal and faithfully submit your reports. The more information the committee receives from you, the more closely the eventual mandate will suit the needs of the Association and Albertans.

Courtsey James Tripp, ALS. CCLS, SLS, P.Engr.
Early in the year 2000, when the US government “turned off” selective availability (an intentional degradation of the GPS stand-alone positioning accuracy), a computer consultant and GPS enthusiast, Dave Ulmer, wanted to test just how accurate GPS could be.

So, he placed a black bucket, in the woods near Beaver Creek, Oregon (near Portland) noting the coordinates of the location using his GPS receiver. Inside the bucket, he left prize items including videos, books, software, and a slingshot. Ulmer called the idea the “Great American GPS Stash Hunt” and posted it on an Internet GPS users’ group. The reader was to locate the bucket using only the coordinates provided, and once found, was to take a prize item and replace it with another left behind.

It didn’t take long for a couple of readers to find the stash using their own GPS receivers and share their experiences online. The game of outdoor hide-and-seek we now know as geocaching was born.

Since 2000, geocaching has grown to be quite a popular activity. In fact, as of Monday, February 16th, 2009, www.geocaching.com (the largest web site database devoted to geocaching) lists 730,607 active geocaches in locations around the world.

Geocachers range from young kids to old grandmothers, from secretaries to celebrities, and they are enjoying the activity all over the world.

The rapid growth is evidence of its mass appeal. Geocachers range from young kids to old grandmothers, from secretaries to celebrities, and they are enjoying the activity all over the world. Geocaching has many benefits. It encourages a healthy and active lifestyle by requiring that you be out on your feet and moving around. It can be enjoyed alone or with family, involving kids in the process. It provides opportunities for teamwork and to learn about math, maps, wildlife, history, and the environment. It can give a break from cell phones, television, video games and other distractions of the modern world. It can challenge your puzzle solving skills, or require you to kayak or rock climb to find the treasure. Most of all though, it is fun!

Well, it is time that the Alberta Land Surveyors’ Association joins in on the fun. On behalf of the ALSA membership, the Public Relations Committee is in the process of establishing several geocaches throughout Alberta. Locations are being chosen that have significance to land surveying.

One such location is the geographic centre of Alberta. The geographic centre of Alberta was determined by accurate measurements of the latitude and longitude of the boundaries of the province. It is located equidistant from each of the straight-line border segments to the north, south, east, and west. A short hike off of Grizzly Trail (Highway No. 33) will bring you to the location (ATS Reference: 14-33-63-W5M). The geocache canister is hanging behind a

ALSA to Join the Geocaching Community
...we believe that the geocacher is likely to have many of the same traits and interests that would suit them well for a career in the profession of land surveying. So, why not make some these geocachers aware of this option by joining in on their activity?

"twin trunk" tree approximately 18m off-set from the Bear Statue. Inside the canister, the "geocacher" will find several brochures, ALSA pins, and other trinkets relating to land surveying. Perhaps the membership too, has a few good ideas and would be willing to share them with us?

As the geocaches are established, we will be sure to update the membership and provide links to each of the geocaches from the ALSA web page. By the way, if you wish to explore some of the finer details of this fun, new activity, a good place to start reading would be www.geocaching.com.

If we believe that the geocacher is likely to have many of the same traits and interests that would suit them well for a career in the profession of land surveying. So, why not make some these geocachers aware of this option by joining in on their activity?

Of course the connection from geocaching to land surveying may be a stretch in some cases, but even then, at the very least, we should have made further progress towards increased public awareness of our existence and role in today's society.

A couple of other ALSA geocache locations we have in mind are:

1. An original township corner monument, including pit and mound.
2. An Alberta Survey Control Marker.

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PROPERTY

Y
ou could say that the Memo-
randum of Understanding (MOU) between the Alberta
Land Surveyors’ Association and the Alberta Society Of Surveying?
and Mapping Technologies began its evolution when ASSMT was
formed in 1970, but it took until August 2007 before both or-
ganizations agreed to hold a historic meet-
ing in Edmonton. Both groups agreed to
work collaboratively to define the role
of the non-professional with respect to the
professional land surveyor in Alberta.

ASSMT has come to represent not only the
potential professional, but all those who are
committed to a career in the surveying and
mapping industry. Not everyone can be,
or perhaps wants to be, a professional.
After all, surveying and mapping, aka geo-
matics, has expanded to encompass many
more disciplines dealing with the manage-
ment of spatial data.

ASSMT provides a means to certify those individuals who are practicing in
this field. The need for certified techni-
cians and technologists has never been
more apparent than when the demand for
technical staff in Alberta’s super heated
economy meant that survey companies
were willing to hire anyone that showed
an interest in the profession. The result
was that many under-trained and non-
certified workers were given the label of
a survey or CAD technician (or technol-
ologist) and were sent out to the field or
given a computer.

This approach undermines the training
and skill required to work in the industry
while increasing the potential liability to
the employer.

More recently, a joint meeting of the
ALSA-ASSMT MOU Implementation
Committee drafted a recommendation to
strike an ad hoc committee to implement
the terms of reference (the goal being to
gain Council endorsement from ALSA
and ASSMT to strike the new committee
for the upcoming year).

The draft recommendation reads as fol-
lows:

Preamble
At the 2008 ALSA AGM, an Memoran-
dum of Understanding was signed recog-
nizing the increasing importance of cer-
tified survey technologists and technicians
in the Land Surveying industry and the
need to formalize the roles and respon-
sibilities of the various parties involved
in ensuring Land Surveying services are
provided to the public in an efficient and
quality manner.

This document serves to establish
terms of reference for a one-year, ad-
hoc committee tasked with creating the
specific framework within which the for-
malization of the roles of technicians and
technologists will be recognized and es-
tablishing means to ensure this framework
receives wide acceptance and application
throughout the Land Surveying commu-
nity.

This joint committee is to consist of
two members each of the Alberta Land
Surveyors Association and the Alberta
Society of Survey and Mapping Tech-
nologies, one each from their respective
registration and certification panels, and
a member at large possibly representing a
post-secondary institution or other inter-
terested party to the process.

For the purposes of expediency, it is
recognized that technicians and technolo-
gists play a wide variety of roles through-
out the geomatics industry, but that this
committee will concern itself chiefly with
dealing with those members of the indus-
try working directly in the field (Field
Surveyors). In addition, it is recognized
that the framework developed does not
detract from the scope-of-practice of li-
censed Alberta Land Surveyors.

Goals
The implementation committee will be
tasked with the following specific goals:

- Modification of the current tiered
  system of certification for technicians
  and technologists where each tier will
  correspond to increasing responsibility
  and capacity on behalf of the regist-
  rant.
- Development of specific, knowledge-
  based requirements (i.e. a syllabus) for
  admission and advancement to each
  tier, coupled with requirements relat-
  ing to applicable work experience.

The committee will be expected to propose
the structure of any registration com-
The need for certified technicians and technologists is constant and ASSMT continues to meet that need.

These are challenging times for ALSA and ASSMT, but thanks to the Joint AL-SA-ASSMT MOU Implementation Committee, they are also exciting times. There is a (supposedly) Chinese Curse that is constant and ASSMT continues to meet that need. Are you ready?

Robert Goodwin, CFS
President, ASSMT

ASSMT’s Council unanimously approved the recommendation at their February 2009 meeting. While the timeline may seem aggressive, it is important to remember that the committee is creating the framework of a working relationship. Additional work will have to be completed the following year to implement the program. Some people have asked why the terms are limited to technical field staff. Again, this is the first step, and clearly defining the goals is simplified by focusing on a specific group, in this case field technicians and technologists. Later the program will be expanded to include other members of the surveying profession.

Timeline
The committee is expected to have the above requirements completed by the 2010 ALSA AGM.

University of Calgary
Dr. Lachapelle Receives ION 2008 Capt P.V.H. Weems Award
Professor Gérard Lachapelle, CRC/iCORE Chair in Wireless Location, was presented with The Institute of Navigation 2008 Capt. P.V.H. Weems Award for continuing contributions to the art and science of navigation. The International Technical Meeting of the Institute held in Anaheim, CA, this week. In presenting the award to Professor Lachapelle, the Institute noted his pioneering efforts related to Canada’s successful GPS research and commercial involvement during the past thirty years and his exceptional work in the area of education and R&D training of post-graduate students who are now playing major roles in the GPS industry and academia in Canada and the United States.

Dr. Chaminuda Basnayake Receives the 2008 GM R&D’s Charles L. McCuen Award
Congratulations to Dr. Chaminuda Basnayake, who received the 2008 GM R&D’s Charles L. McCuen Award. Dr. Basnayake, a Senior Research Engineer at GM R&D since 2005, studied in the PLAN Group from 2001 to 2004 and received his doctorate from the University of Calgary under the supervision of Professor G. Lachapelle. This third award received by Dr. Basnayake since joining GM in 2005. He received the 2006 Charles L. McCuen Award for contributions to the V2V technology R&D, and the 2007 OnStar President’s Award for successfully prototyping and demonstrating a sensor integration algorithm that replaces a critical navigation component with software and other existing sensors yielding a significant cost saving for GM. The Charles L. McCuen Award is the highest award offered by GM R&D.

Dr. Andrew Hunter Wins the Third and Fourth Year Teaching Excellence Award
Andrew Hunter is this year’s recipient of the Teaching Excellence Award for third and fourth year courses in Geomatics Engineering. The award was presented by the University of Calgary Engineering Students Society at their annual Third and Fourth Year Dinner
The Association was by no means indifferent to its main problem of getting new members into the profession. At the 1948 Annual Meeting, the Secretary-Treasurer reported that, although the number of young men who were interested in becoming land surveyors was high, the number actually attempting to become qualified remained small. This indicated the existence of certain obstacles and difficulties which few candidates were able to overcome, and the Examining Committee produced a report which contained proposals for their alleviation.

Up to that time, the sole route of qualification for new Alberta Land Surveyors had been by way of articling and examination under the DLS regulations, followed by a couple of written papers and an oral examination on Alberta survey law and field practice. After the war, both the Association and the University of Alberta had advised prospective entrants to the profession to follow that route, because the DLS system provided a ready-made means of examination in academic and technical subjects, and candidates could obtain both DLS and ALS qualifications in the shortest space of time.

The Examining Committee reported, however, that this approach had not produced the results that had been hoped for. In 1947, nineteen candidates in Alberta had written the DLS preliminary examination, and although some of them were university students, only three had passed. The difficulty appeared to be in the examinations on mathematical subjects, partly because the DLS Board, having in mind the need for a higher level of mathematical proficiency in federal government survey work, had raised its examination standards, and partly because several of the candidates had obtained little solid nourishment from the mathematics courses given in the schools at that time.

The Examining Committee had therefore, recommended to the ALS Board of Examiners that the Board should run a complete set of ALS examinations, with somewhat easier mathematical papers than those of the DLS examinations but of a sufficient standard to meet Alberta land surveying requirements. This the Board had agreed to do, but first it would be necessary to amend the Act in order to bring the syllabus, which the Act then spelled out in antiquated detail, up to date and to enlarge the membership of the Board to provide a sufficient number of examiners.

Unfortunately, the Act could not be amended before 1949, but during 1948 the necessary revisions of the syllabus were worked out, a new set of examination regulations was drafted, and the Board was enlarged to include five members of the Association and four members of the University staff, with Dean R.M. Hardy of the Faculty of Engineering, who was also a member of the Association, serving as chairman.

Discussion and endorsement of these proposals was the main item of business at the 1948 meeting, and nothing else of historical note appears in the proceedings except the election of Mr. C.W. Lester to the office of Secretary-Treasurer and Registrar, replacing Mr. J.H. Holloway who in 1947 had succeeded Mr. A.P.C. Belyea as Director of Surveys.
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