Governance and Leadership for the Land Surveying Profession in Alberta: Roles, Responsibility and Regulation for the Future

A Consultation Discussion Paper
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This Paper was written for and at the request of the Alberta Land Surveyors’ Association as a background discussion and consultation document by Izaak de Rijcke through IdR Law Professional Corporation. Neither party practises law in the Province of Alberta and this consultation paper is neither legal advice nor to be treated as a legal opinion.

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Preface

It is appropriate to begin this paper with an observation about the nature of public trust in government, regulators, and professional surveyors and the need to instil and maintain this confidence. “Public trust” is not won, like a prize at the end of a competition. It is not won like a trophy to be gloated over at the expense of another entity that may have “lost.” Rather, public trust is a truly hard-earned and humble result of cultivating best practices using an integrity and ethics-based orientation towards service in the public interest.

Somehow, these objectives have become clouded in the smoke of history, posturing, declarations of authority and losing sight of the public needs and interests of all Albertans. An opportunity to bring clarity to roles and responsibilities in the delivery of reliable and competent legal boundary location services presents itself in this paper.

The importance of public trust and certainty for a parcel fabric that supports a profession committed to the making of proper and defensible opinions on boundary location can be best understood in the characterization of what happens when these attributes are missing: uncertainty and mistrust grows and neighbours are immersed in boundary disputes. The words of Lord Hoffman in an English House of Lords decision are apropos:

“Boundary disputes are a particularly painful form of litigation. Feelings run high and disproportionate amounts of money are spent. Claims to small and valueless pieces of land are pressed with the zeal of Fortinbras's army. It is therefore important that the law on boundaries should be as clear as possible.”

In this paper, other threats to boundary certainty are identified and considered: the overlaps and gaps in jurisdiction; the lack of clarity on roles and the need for a rationalization of regulation and mandate for the maintenance and adjudication of boundaries in the Province. The cost of not doing so is no different from the result in the quote above.

1 Alan Wibberley Building Ltd v. Insley, [1999] UKHL 15.
Introduction and Overview

This paper seeks to explore, discern, and offer guidance on solutions to a problem that has recently attained an unacceptable state of affairs. The creation of the problem finds its roots in government policy that was applied before Alberta came into existence. It is as old as the land settlement policies of a Dominion government seeking to achieve an expansion of Canada at a time in history when many other factors and developments were in conflict with the achievement of a country, an identity and ultimately, the Province of Alberta.

History must be referred to in this paper as a necessary foundation for understanding modern day institutions and their respective roles and responsibility. What may have been well intended - in fact what did work somewhat well in the past - may no longer serve as a modern and efficient method for achieving governance and responsible conduct when societal challenges and needs have changed. A future Alberta will be best served if the respective roles, responsibility and professional regulation of the “stakeholders” can be repurposed to meet those identified needs.

The origin of this consultation paper lies in a short memo prepared by the Alberta Land Surveyors’ Association. A copy of that memo is attached at Appendix A. A summary of the key points paraphrased from that memo, are:

Summary – ALSA Memo

The relationship between a Director of Surveys/Surveyor-General and the professional regulatory body is unique. There is no other profession in Canada in which a Director of Surveys/Surveyor-General can require a surveyor to adopt a certain professional opinion on a specific project/case.

In Alberta, this had led to a dysfunctional relationship between the Director of Surveys and the Alberta Land Surveyors’ Association which is prompting the Alberta Land Surveyors’ Association to ask some fundamental questions.

The questions are divided into two broad categories: the current situation and the potential future situation:
THE CURRENT SITUATION

**Alberta Land Surveyors’ Association**
- Why does the Alberta Land Surveyors’ Association exist?
- What are the roles and responsibilities of a professional regulatory organization?
- Under existing legislation, what are the roles and responsibilities of the Alberta Land Surveyors’ Association?
- What non-statutory services does the Alberta Land Surveyors’ Association provide?
- Is the Alberta Land Surveyors’ Association efficient and effective in carrying out its current roles and responsibilities?
- Are the roles and responsibilities of the Alberta Land Surveyors’ Association still relevant?

**Director of Surveys**
- Why does the Director of Surveys exist?
- Under existing legislation, what are the roles and responsibilities of the Director of Surveys?
- Does the Director of Surveys currently have any non-statutory roles and responsibilities?
- Is the Director of Surveys Office efficient and effective in carrying out its current roles and responsibilities?
- Are the Director of Surveys’ roles and responsibilities still relevant (that is, do they still need to be done)? If the roles and responsibilities are still relevant, could they be better performed by some other entity (either within government or outside government)?

**Overlap**
- Are there any overlapping responsibilities (either statute or non-statute) between the Alberta Land Surveyors’ Association and the Director of Surveys Office?
- If so, how does the ALSA recommend that they be resolved?
THE POTENTIAL FUTURE SITUATION

**Alberta Land Surveyors’ Association**
- What will the public expect from a professional regulatory organization in the future?
- What improvements should be made to the Alberta Land Surveyors’ Association governance model?
- What statutory/non-statutory services should the Alberta Land Surveyors’ Association provide?

**Director of Surveys**
- What spatial/survey infrastructure is required in Alberta for the 21st century?
- What role should the Director of Surveys play in the 21st century?
- Should the Director of Surveys position continue to exist in the 21st century?

This Paper considers these questions and explores the situational context of the identified stakeholders in Alberta with a view to reaching answers. A brief summary of the approach and method used in preparing this Paper follows.

The historical context for the identified stakeholders is described. The unique elements of a Province achieving a distinct identity and the social features that have been served by the original offices are discussed. The changing face of professional regulation in Canada is described. A comparison with similar governance structures in other Canadian jurisdictions is considered, as well as a description of the New Zealand experience. Other reforms that have emerged in meeting society’s needs in the 21st century are considered. Lastly, the questions posed in the summary above for a “Potential Future Situation,” are answered.

The method used for this Paper has included a literature review, a consideration of statutory frameworks and a description of emerging trends. Methodology has not included opinion surveys or the seeking out, in advance, of a preferred result or outcome. Instead, the mandate has been to prepare an impartial and objective report that offers a candid assessment of options and choices to be made for the best interests of the people of Alberta.
Executive Summary

This report reviews the current state of affairs respecting the role, responsibility and the regulation of certain stakeholders and officials designated by statute in the Province of Alberta. The purpose is to gain insight to present context in order to make recommendations for future directions that are appropriate and realistic. Recommendations appear throughout this paper, but are summarized at the end, but also appear below for ease of consideration:

- Where surveys and plans are prepared based upon boundary retracement, deference should be given to the land surveyor completing the plan and any practice of inspection by the Director of Surveys should be limited to instances involving public lands or initial monumentation.

- The Director of Surveys should continue to play an important role in reviewing and inspecting surveys relating to previously unmonumented land.

- The Director of Surveys should continue its role in lending expertise in an advisory and coordinating role to aid the Alberta Energy Regulator where licensing requires the preparation of survey products.

- Where changes to existing survey systems are proposed or considered, a process that involves early meaningful consultations with stakeholders should be adopted as the normal practice.

- Working with stakeholder groups, explore options for a dispute resolution system for issues related to boundary and title problems with an aim towards developing a single path for dispute resolution that is timely and cost effective for participants.

- The existing role for Alberta Land Surveyors Association as regulator of the profession including setting of standards, competencies and disciplinary matters should be maintained and enhanced.

- Encourage a culture of collaboration across governing bodies.

- Government offices involved in land management and the operation of the land titles system are encouraged to work together in a coordinated manner across ministries.
The context of Alberta: a brief history of surveying, title and a striving for certainty

The formation of Alberta as a province in 1905, with its own legislature and representative government, must be considered as an important moment in time. Important, because it allows one to consider, as a snapshot, the legislation and regulations that existed just before establishment of the Province was achieved, insofar as the state of the following were concerned:

1. A survey profession;
2. A land registration statute; and,
3. A survey statue that had already been in existence and applied in what would become Alberta, for many decades.

The 1905 legislation that also brought Alberta into Confederation specifically contemplated the existing laws of the former North-west Territory as remaining in force until further amendment or being replaced entirely by Alberta legislative instruments.

If the subject matter of the legislation constituted a federal head of power, then it remained in force until amended further by Parliament. Subsequent enactments by the Alberta legislature in respect of the three listed items above would see the eventual adoption and amendment of legislation to tailor the language, policies and procedures to the circumstances of Alberta.

There were two important aspects to this anticipated adoption of law and legislation in Alberta.

First, there had been many decades of surveying, settlement, homesteading and patenting of land in the North-west Territory by the Dominion government and by Railroads. This activity had created vested property rights and physical boundary demarcation on the ground by surveyors, and which was not to be reversed.

Second, the deferral of shifting control and a transfer of ownership of natural resources from Canada to Alberta until 1930 meant that the Province was not able to manage its resources and administer its own surveying and land title authorities for another 25 years.

These aspects are noteworthy, not as mere anomalies in the evolution of province-hood for Alberta, but they can now be seen as having had specific implications for a profession operating in Alberta and which focused on surveys, boundaries, and the maintenance of a parcel fabric.

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2 See: The Alberta Act, 1905, S.C. 1905, c. 3, s. 16.
For example, the deferral of control and ownership of natural resources meant that survey records (including field notes, diaries, township plans and an enormous collection of archival records concerning land) were not physically turned over to Alberta by Canada’s former Department of the Interior until after 1930. As we consider a new future, we must be mindful of what these historic facts have done in creating certain attitudes and barriers that may present a challenge.

**Formation of Alberta Land Surveyors’ Association**

Although Alberta had been established as a Province in 1905, it was not until early 1910 that a meeting of surveyors took place in Edmonton, designed to bring about the formation of a provincial land surveyors’ association. That initial gathering was closely linked in time with the legislature’s passage of The Alberta Land Surveyors’ Act, on March 19, 1910. A description of the initial meeting – and opposition from Ottawa – is recounted in Men and Meridians:

The first regular annual meeting of the organization was held in 1911, and was attended by 20 surveyors. R. W. Cautley, then surveyor to the Land Titles Office, Edmonton, acted as chairman. He was elected secretary-treasurer and the registrar of the new body. William Pearce became first president of the organization and Lionel Clare Charlesworth its first vice-president. Mr. Pearce was a well-known western surveyor and a former inspector of Dominion lands. In 1875 he had been appointed to the original Dominion Land Surveyors Board of Examiners. He was particularly noted for his pioneering work in land settlement and irrigation. At the 1911 meeting the first item of business on the agenda was a discussion of the admissibility of Dominion land surveyors to membership in the Alberta association. It would appear that a certain amount of professional friction continued to exist between these two classes of surveyors and the unhappy controversy over the membership status of the Dominion land surveyors in relation to the provincial organization is reflected in the following extracts from the 1911 minutes:

“Mr. Cautley was able to inform the meeting that the Deputy Attorney-General, after consultation with the Hon. Mr. Mitchell [Attorney General], had definitely decided that any Dominion Land Surveyor resident in the province on the 16th of December, 1910, was entitled to be registered under subsection 25 (1) of the Act.

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3 See: Alberta Natural Resources Act, S.C. 1930, c. 3. See also the discussion in Spry and MCardle.

Mr. Cautley also read an adverse recommendation made by the Hon. Mr. Aylesworth, Minister of Justice, on complaint of the Surveyor General of Canada and communicated to the Lieutenant-Governor of Alberta, with a view to demanding that the Act be changed or that it be vetoed.”

Land Surveying in Alberta, a brief history

Some readers may be familiar with the publication, in 2007, of The Law and Practice of Land Surveying in Alberta. It serves as a resource for describing certain critical insights to the history of land surveying in Alberta. The evolution – and emergence – of the “Alberta Township System” is explained as a logical adoption of the former Dominion Township Survey System:

“The Alberta Township System of Survey is identical to the Dominion Land Survey (DLS) Third System of Survey in all of the following aspects: the system of survey, the sections in a township and their numbering, the township boundaries, the numbering of townships and ranges, monuments, division of quarter sections and division of sections into legal subdivisions.

The method of surveying Township under the Alberta Township System is similar to the DLS Third System where the control chord was surveyed at 90° to the control meridian. The remainder of the township was surveyed by intersecting the chord lines turned from the control meridian with the meridional lines turned from the control chord. Although this was the normal method of surveying a township, the Minister responsible for the Surveys Act may direct that public land be surveyed under the supervision of the Director of Surveys in the Alberta Township System of Survey, conforming as nearly as possible to the Act, in lots of a size and shape and with an allowance for roads that the Minister considers advisable. Although new ATS Township surveys are still continued on a yearly basis and they still conform as near as possible, to the DLS third system, the last one surveyed under the normal method of cutting and clearing lines was in 1988...”

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5 Ibid., at p. 72-73 [emphasis added].


7 Ibid., at page 165, s.5.34 and 5.35.
Despite the adoption of an Alberta Township System of Survey, the underlying Dominion government policies of certainty, speed, and efficiency are no longer applicable – or even possible – for an Alberta in the present. Settlers are no longer arriving in waves in order to homestead. The speed and efficiency necessary and desired for a “first survey” are not the same “speed and efficiency” which a public expects from a surveyor today when performing a retracement. This explains the further description of the modern surveyor’s role:

“Only an Alberta Land Surveyor, as defined in section 3 of the Land Surveyors Act, shall engage in the practice of land surveying in Alberta. With the exception of creating a boundary by textual description is provided in the Land Titles Act, only an Alberta Land Surveyor shall perform surveys made under section 10 of the Surveys Act. Alberta Land surveyors also perform surveys that create boundaries under the Land Titles Act, which are called descriptive plans. In the performance of their duty, land surveyors may commit errors. These can be errors of judgement or technical errors in undertaking computations or in marking field boundary corners. There are a number of solutions available in resolving errors committed in retracing boundaries or re-establishing lost boundary corners that cause boundary uncertainties.”

At this point, a reader will have a growing sense that what surveyors used to do in the 19th Century (laying out townships, sections and quarter sections for settlement) is not at all accurate in describing what surveyors in the future are already performing in Alberta (new surveys for descriptive plans and new parcels of land and the active engagement in solutions when an error is found to have occurred). **Key to the distinction in evolving role for the surveyor is the evolving mindset that a survey fabric of the 19th Century must serve the parcel fabric of the 21st Century.**

Regulated Professions and Relationship to the State

The preceding discussion provides historical context for development of the practice of land surveying in Alberta. In the 19th and 20th century the contribution made by land surveyors was vital to achieving the Province's settlement goals. This function of providing a critical service to the state, was among the factors contributing to the later regulation, and eventual self-regulation of the profession of surveying in Canada.

In *Regulating Professions: The Emergence of Professional Self-Regulation in Four Canadian Provinces*, Professor Tracy Adams explores the evolution of self-regulated professions in Canada with particular emphasis on historical context and the legislative record. A Adams

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8 Ibid., at page 110, s. 3.74.

notes a number of forces that contribute to the emergence of professionalism and self-regulation of professions - social concern, lobbying and organization of professional groups and, of note for the profession of land surveying, the interplay between state projects and professional projects. Where state-led projects required mass employment of certain skill sets, there was an interest in controlling the qualifications for those performing that service, and regulating that profession. Adams provides the following assessment of the land surveyor's role in government-led projects as a contributing factor to the later regulation of the profession:

Surveying was considered crucial in the new colony, as Britain sought to establish British settlers in Canada. After the American Revolution tens of thousands of Loyalists moved north to the British colonies. Families and officers who had demonstrated loyalty to the Crown were promised land. At the time, the region that became Ontario was sparsely settled by Europeans. To prepare for the Loyalists, colonial authorities sent out deputy surveyors to survey the land, divide it into townships and plots, and then map them for the authorities and new settlers alike. When the Canadian colony was divided, and Upper Canada became a separate province in 1791, land surveying was deemed a priority by the new lieutenant governor John Graves Simcoe. Simcoe believed the post of surveyor required “great professional abilities and equal integrity”. It was crucial that land surveys be accurate and that land surveyors be skilled and trustworthy. 

This requisite professional skill and integrity continues to be reflected in the present day Codes of Ethics and Standards of Practice governing the profession in different jurisdictions across Canada. Regulation of the profession of surveying came early, relative to other professions, and is described in the following excerpt from Adams:

Thus, in the mid-nineteenth century, land surveying became one of the earliest regulated – but not self-regulating – professions in Canada. The year 1849 marked the year that law acquired status as a self-regulating profession in Quebec, and was merely two years after powers of self-regulation were granted to medical doctors and notaries. At this time, land surveyors had a board of examiners, but this was not elected; it was appointed by the government. In this manner the regulation of land surveying was similar to the regulation of medicine in Upper Canada at the time, with two notable exceptions. First, an important government official, the commissioner of Crown lands, played a key role. Second, land surveyors’ regulatory legislation contained more stringent discipline provisions than most other professions, and more assurances of “good behavior” – testimonies as to character, an oath, a bond, and questioning under

10 Ibid. at p. 32

11 Adams, Tracy L., Regulating Professions: The Emergence of Professional Self-Regulation in Four Canadian Provinces, University of Toronto press, Toronto, 2018 at p. 144
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The amount of autonomy and control delegated to the professional organization itself, that is to say - the degree of self-regulation, varied widely across time, professions and Canadian jurisdictions. Historically, Adams notes, land surveying was very much state controlled with land surveying as state regulated and many land surveyors employed by the state. That said, arguably public confidence in the land system was still a consideration with the integrity of the land surveyors reflecting on the integrity of the state system. In time, though surveyors' professional projects were generally aided by state contracts, as the state ceased to be the primary consumer of land surveyors’ services as their role in state led...
projects lessened, and surveyors began to become employed more and more readily by private citizens or corporations; Adams notes a shift towards the development of a professional identity, the formation of organizations and an effort to seek out self-regulation.⁵

Professional self-regulation [...] was the outcome of both professional projects and state actors activity. In the nineteenth century, the impetus for professional self-regulation came from both state actors and professional bodies. Evidence suggests state actors took the lead in introducing original legislation to establish self-regulating professions in a slight majority of cases. By the early twentieth century, professional bodies and organizations were more often the drivers of regulatory change in this area. ⁶

The current framework of professional regulation consists of a suite of legislatively derived powers for the professional organization to govern admittance to the profession and discipline of its members. Some duties and powers are set out explicitly in statutes and others involve a degree of autonomous decision making by the Association and its committees within a broader formal framework.

Through regulation of the profession, the standards of practice are in place to ensure a consistent high quality work product comes from the land surveyor - up to date methods and techniques accepted by the profession as a whole are part of these standards of practice but, as the surveyor's work product feeds into the broader land system, an overarching set of standards and management is also in place. As such, we see some elements of the practice of surveying enshrined in legislation and regulations rather than being left to the association for determination. Though the state may no longer be the sole employer of surveyor services, the work of the land surveyor continues to feed into the cadastre and land titles system which is run, and in some instances, guaranteed by the state. For the sake of certainty in land based transactions and confidence in the system, the state takes an interest in and exerts some control over defining acceptable survey methodology. The nature and extent of those methodologies set out in statute varies between different jurisdictions. In some instances standards of practice appear in regulations while in others they are a separate guidance document prepared by the association. In some jurisdictions the associations have limited regulation making authority (subject to certain approvals) within their sphere of power.

Beyond setting the standards of practice there is also a need for addressing disputes where they may arise over boundary location.

Standards of practice, entry to the profession, the broader organization of the cadastre and land titles system are all important to the proper functioning of land information systems

⁵ Ibid., at p. 152.

⁶ Ibid., at p. 240.
and regulation and certainty in these areas contributes to a social order of sorts. Adams notes the contribution of regulated professions in such a social order as professional regulation links the concepts of competency and expertise with an assurance of integrity that is directed at contributing to the public good:

Durkheim believed that the professions could serve an intermediary role between the state and the public. In doing so, they could reduce anomie and encourage ethical behavior by extending professional ethics to economic activity. Other scholars... argue that professions, along with community, market, and the state, contribute to social order. These are valuable insights that enhance our understanding of professional and social regulation. Further, they encourage researchers to explore interactions between professions, the state, communities, and markets.17

While the further research described is well outside the scope of the paper, the idea of a linking between the profession, the state, the market and the public is very relevant to addressing the future-looking questions posed. There are a number of critical functions that form part of the work that surveyors do and how it is done and to what standard that ensures smooth alignment between the profession, the state, the public and the market. Responsibility for such functions and the mechanism that is either set in statute, regulation or formal guidelines or by convention to address these questions ought to be clear and work effectively and efficiently to maintain public confidence in the system and the profession. These functions include the following:

- setting standards and parameters for the cadastre
- setting standards and parameters for the land title registration system
- establishing standards for entry to the profession, issuing licences
- addressing complaints and disciplining members of the profession
- setting standards for survey methodology
- establishing a professional code of ethics
- forums for resolution of disputes related to questions of boundary, title and otherwise

The manner in which such duties are divided between the profession and state actors varies among different jurisdictions. What follows below is a summary of the roles and responsibilities within the Alberta system at present in order to discern what future roles will look like.

**Existing Roles**

17 Ibid. a p. 246.
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With this discussion of the historical significance of the land surveying in Alberta and the emergence of self-regulated professions in Canada, and a summary of some of the key tasks that require some oversight, let us now turn to the existing legislative framework which governs surveyors and surveys in Alberta. This summary addresses a number of questions set out in the memorandum concerning the roles and responsibilities of the Director of Surveys and the ALSA and others, and also touch on how some of the functions identified above are handled within the overall legislative framework.

**Director of Surveys**

In Alberta, the role of the Director of Surveys is created by statute, the *Surveys Act*, and the bulk of the Director's powers and duties are specifically set out therein. The Director must be a land surveyor and is designated by the Minister of Environment and Parks. 18

The Director's position is one of rather broad responsibility over coordinating and establishing the technical framework of survey and mapping systems for the Province and inspecting plans of survey. The Director of Surveys serves a role in the coordination, establishment and development of the provincial land survey system and various other supporting systems dealing with land mapping, geographical positioning system, and land related information systems networks. More specifically the duties of the Director of Surveys are set out in section 5 of the *Surveys Act* as follows:

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(a) co-ordinate the establishment, maintenance and preservation of the land survey system for the purpose of determining the positions of boundaries that govern the extent of interests in land,

(b) co-ordinate the establishment and maintenance of a geographical positioning system for Alberta,

(c) co-ordinate the establishment and maintenance of a mapping system for Alberta,

(d) co-ordinate the development and maintenance of a land-related information systems network for Alberta,

(e) maintain the network of survey control markers and controlled photographic diapositives that are the physical elements of the geographical positioning system,

(f) provide a cartographic service, and
(g) perform any other duties prescribed by this Act.

While the first responsibility listed above - the coordination of the land survey system with respect to boundary determination - cannot be otherwise assigned, the statute gives the Minister of Environment and Parks the discretionary power to assign any duty or other specific responsibilities to other government employees. In the case of duties related to the coordination of the geographical positioning system for the Province or the maintenance of the network of the control markers and physical elements of geographical positioning, that employee must also be a land surveyor.

There is common responsibility between the Minister of Environment and Parks and the Minister of Service Alberta for two subsections of the Surveys Act. Reference is made to subsections 5(1)(d) and (2)(b), which collectively refer to the power of the Ministers to assign the duty of the Director of Surveys to coordinate the development and maintenance of a land related information system network for the Province to a government employee other than the Director of Surveys. This represents a logical extension of the authority of the Minister of Service Alberta over the Land Titles Act\textsuperscript{19} and the public-serving land information system.

This role is further enhanced through the provisions relating to survey control. In essence, this is a recognition of geodetic control for accurate and precise point positioning systems from which the co-ordination and integration into a common mathematical network for all surveys can be maintained. It is intended to enhance certainty much like the Dominion Township Surveys were founded on a mathematical framework of astronomical meridians and lines of longitude on the globe.

The relevant section now reads:

“Survey control

8(1) Survey control may be established only by a surveyor in accordance with the specifications and instructions of the Director.

(2) A survey control marker becomes an integral part of the geographical positioning system if the Director confirms its co-ordinate position.”

Inspection and Correction Powers - Surveys not yet Registered

The Director, under section 6 of the Surveys Act, also has powers to inspect plans of survey prior to the registration of such plans at the Land Titles Office or filing of such plans at the Metis Settlements Land Registry either on the Director’s own initiative or through an

\textsuperscript{19} Alta Reg. 80/2012, s. 15(1)(t).
application coming from a Registrar or the Council of the Alberta Land Surveyors' Association. A surveyor may be appointed by the Director to make the inspection.\(^\text{20}\)

In inspecting the survey, the Director (or appointed surveyor) is required to consider evidence that may have been presented to the surveyor originally making the survey and make a report of his or her findings, submitting the report to the Registrar or Council of the ALSA, as the case may be, if one of these parties had applied for the Director to conduct the inspection. Upon making the inspection, the Director may then take steps to correct any errors or omissions in a plan before it is registered at the LTO or the Metis Settlements Land Registry. These particular inspection and correction powers of the Director apply only to circumstances where the plan has not yet been registered in the respective registry.

**Boundary Questions**

In addition to the inspection of surveys not yet registered, the Director has limited power to investigate questions concerning the position of a boundary resulting from an alleged error in a survey where the Director receives a written notice from a land owner, municipal council, Council of the ALSA or a Registrar - or on his or her own initiative. He may conduct an investigation and report the findings of the investigation to the Minister of Environment and Parks.\(^\text{21}\)

Following the investigation by the Director and the reporting to the Minister, the Minister may appoint a three member Board to further investigate the survey error. The Board in these circumstances must include one lawyer and one ALS. In such circumstances, where the matter is a question of boundary location, the Director's role is limited to initial investigation of the alleged error or questions, which is a “triage” kind of role whereby the Director reports the findings of this initial investigation to the Minister who then has the power to appoint the Board which takes on a more thorough and all-encompassing investigatory role and has decision making power.

In this respect, the Board exercises a function similar to that of the Director of Titles in the Ontario system. See Appendix B for a more thorough discussion of the roles within the Ontario system.

**Plans of Public Lands or Metis Patented Lands**

\(^{20}\) Surveys Act, s. 6(1).

\(^{21}\) Surveys Act, s. 9(2).
In addition to the Director's functions in establishing and maintaining the tools of the land survey system for the Province, and addressing errors in unregistered plans, the Director of Surveys plays a role in supervising the preparation of certain types of plans for provincial purposes. In the preparation of a plan of public land that is directed by the Minister or in the preparation of a plan of Metis patented land that is surveyed under the Surveys Act, it is the responsibility of the Director of Surveys to supervise the survey. In the preparation of such official plans, plotting from the surveyor's field notes is to be done under the direction of the Director and the plans must be confirmed by the Director of Surveys. If an error or defect is discovered in the official plan, the Director can cause a new plan to be made and after confirming, a copy of the official plan is filed with the Registrar.

With respect to the resurvey of public lands and Metis patented land, the boundaries are not considered to have been resurveyed until a new official plan has been confirmed by the Director of Surveys.

Where there is to be a resurvey of the lands identified above, and those lands are located within a municipality, the resurvey will be initiated by the municipal council. In such circumstances, in addition to the Director's role to supervise and confirm, noted above, the Director will also be required to fulfil certain obligations set out by the Surveys Act, including the publication of notice that land is to be resurveyed, request the appearance of anyone who claims to know the position of the monuments to be resurveyed to appear and give evidence, resurvey within a specified period of time, place monuments and submit the plan and other records to the Minister who then publishes a notice and confirms the survey. Some of these functions may be delegated by the Director to another surveyor. Following the Minister's confirmation, it then falls to the Director to amend the official plan accordingly and file the official plan of resurvey with the Registrar.

Minister Appointed Board

While the Director has some limited initial investigation power in circumstances where there is uncertainty as to boundary location, including the powers to conduct the investigation and report to the Minister, it is the Board that is appointed by the Minister which takes on a

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22 Surveys Act, s. 29, s.30, s.33

23 Surveys Act, s.33

24 Surveys Act, s. 34, s.35.

25 Surveys Act, s. 39.

26 Surveys Act, s. 39, s. 40.
more significant role. Upon providing proper notice to those holding interests in the affected land, the Board may conduct the hearing, and apply to a justice of the peace for a subpoena to compel witnesses to attend before the Board.

The Board has powers and duties of an arbitrator to administer oaths, affirmations and declarations and to make changes and corrections to its award. Following the Board's investigation, the Board has the power to order amendments to surveys and survey plans, amendments to descriptions, registers, certificates of title or plans of survey that have been deposited in the Land Titles Office and costs to be paid by or to any person part of the investigation. In this regard the Board's powers are similar to those of the Director of Titles in Ontario who has the power to conduct hearings and make orders on boundary matters under the Boundaries Act. Orders of the Board may be appealed on further application to the Alberta Court of Queen's Bench.

Registrar of Titles

Administration of the Registry

The Registrar of Titles is a position created through statute which include the responsibility and authority for the administration of the land titles register. The register is the government's centralized repository of land titles and interests and caveats in land and is publically accessible. The integrity and accessibility of the register is crucial for the operation of land related dealings and the public confidence in the land titles system.

Specifically, the Alberta Land Titles Act\(^ {27}\), at section 4, provides for the appointment of the Registrar of Titles, Deputy Registrars, Assistant Deputy Registrars and other employees required for the administration of a Land Titles Office. The Registrar, Deputy Registrars, and Assistant Deputy Registrars must take an official oath and are entitled to administer oaths related to titles to land.\(^ {28}\) The primary responsibility of the Registrar is to keep and maintain a land registry system record of titles and all related instruments. In this regard, the Registrar is required to keep a record of all the particulars of every instrument and caveat accepted for filing or registration and endorse with a serial number (or by other means that is suitable for identifying priority among instruments) those instruments or caveats that are found fit for filing.\(^ {29}\) Individual certificates of title and particulars of all instruments and caveats associated with the certificate of title are collectively retained in the Register.

\(^{27}\) RSA 2000, c L-4.

\(^{28}\) Land Titles Act, s.7, s. 9.

\(^{29}\) Land Titles Act, s. 14.
Certain parameters apply to how the Register is maintained by the Registrar and these are set by statute. For example, the Register must be such that it is searchable by name and the Registrar is required to furnish a search of information if requested in the proper format and with payment of the prescribed fee.\(^{30}\)

The Registrar, under statute, has several specific powers related to maintaining the Register including taking certain steps to ensure that records remain legible, to keep duplicate records under certain circumstances and substitute lost or destroyed instruments or caveats.\(^{31}\) Where the Registrar is unable to produce an instrument because it has been lost or destroyed, a court order to deal with the missing document (in a manner that is at the court's discretion) is possible.\(^{32}\)

**Limited discretion**

While the Registrar administers the land title registry, the position does not include absolute decision making powers; certain requirements for registration of documents are established by statute and must be followed by the Registrar. For example, under certain circumstances a statutory declaration is required. That said, there are some discretionary powers available to the Registrar in other circumstances (ie: the Registrar "may" reject an instrument unless satisfied that certain criteria is met).\(^{33}\)

The Registrar has the power to grant a certificate of title to an original grantee or to register an interest where an application for same has been made and there is no doubt as to the title or the extent or nature of the interest in land.\(^{34}\) However, if there is any question as to the extent or nature of the title or interest the application must be referred to a judge for determination.\(^{35}\) Similarly, any adverse claim or claims not recognized in the application for registration are examined by a judge.\(^{36}\)

\(^{30}\) Land Titles Act, s. 16, s. 17.

\(^{31}\) Land Titles Act, s. 18, s. 19, s. 20.

\(^{32}\) Land Titles Act, s. 21.

\(^{33}\) Land Titles Act, s. 27, s. 28, s. 30.

\(^{34}\) Land Titles Act, s. 36. “Extent” means that boundaries have been established and a layperson can presumably “find” them.

\(^{35}\) Land Titles Act, s. 37.

\(^{36}\) Land Titles Act, s. 39.
There are numerous other details outlining the nature of when the Registrar may register or refuse to register an interest or instrument or cancel a registration or certain encumbrances. Generally speaking, the discretion and decision making leeway afforded to the Registrar is fairly limited and the parameters for the administrative functioning of the register is set out with reasonable clarity in the statute.

Electronic Registration

The Registrar has significant authority in setting the standards and policies with respect to the submission of applications, instruments, plans and other documents to the register in electronic format and may specify form, content and format of electronic documents subject to the Act and regulations. These provisions regarding standards applicable to surveys of parcel fabric-based land entities are not to be confused with surveys touching an original element of the survey fabric – such as a township or section boundary. Accordingly, the role of Registrar in land registration should theoretically not overlap or conflict with the role of the Director of Surveys insofar as the survey fabric is concerned.

Registrar’s authority regarding Plans

In addition to having the authority to prescribe standards and format for electronic registration of plans beyond what is already set out in the Act and regulations, the Land Titles Act also grants the Registrar certain authority with respect to the content of plans. Section 79 of the Land Titles Act gives the Registrar the discretionary authority to require written explanations of any discrepancy between a new plan submitted for registration and the existing registered plan. The Registrar may also engage the Director of Surveys by requiring confirmation from the Director of Surveys that a plan that has been submitted is in compliance with the Surveys Act and in doing so may also require that the Director or Surveys to cause the survey to be verified on the ground.

The Registrar may also require that a plan of survey be prepared for purposes not already identified in the Act. The Registrar also has the discretionary power to grant permission to permit the registration of a descriptive plan in place of a full plan of survey - in circumstances where the Registrar is satisfied that a such a plan would be sufficient in lieu of a plan of

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37 Land Titles Act, ss.45-50, 64-65, 70-76.

38 Land Titles Act, s. 56.11.

39 Land Titles Act, s.81.
survey. The Registrar may also, in answer to an application for same, make amendments to parcel descriptions to reflect changes to natural boundaries.

Corrections & References

Like the Director of Surveys, the Registrar also has powers relating to the correction of plans. While the Director of Surveys may only investigate and report to the Minister in the case of a concern over an error or defect in a plan that has been registered, the Registrar has the authority to correct a registered plan or change the legal description of a property if there is no adverse impact or there has been consent from the party to whom there may be an adverse impact and there is consent from the land surveyor who prepared the plan. In more contentious circumstances, the Registrar may apply to the court for an order respecting the amendment of a plan or the vesting of an interest of land included in a plan. Furthermore, the Act also gives the Registrar the ability to direct a reference to a judge of the Court of Queen's Bench where a question arises in the course of exercising the Registrar's duties - such as, but not limited to, questions relating to the legal effect of a particular instrument, the persons entitled to an interest and the extent or nature of an estate.

Actions and Appeals

Where a person is dissatisfied with the decision of the Registrar an appeal may be made to the Court of Queen's Bench by application. Actions may be brought against the Registrar where a loss or damage has occurred due to an omission, mistake or misfeasance in the execution of duties by the Registrar or an official in the Registrar's office and the act sets out the further details as to the nature of such a proceeding including the limitations period and notice requirements.

40 Land Titles Act, s. 88.
41 Land Titles Act, s. 92, s. 93.
42 Land Titles Act, s. 91 - a surveyor or a person with interest in the land or the person registering the plan may also apply.
43 Land Titles Act, s. 184.
44 Land Titles Act, s.168-179.
The Alberta Land Surveyors’ Association

In Alberta, as in all other provinces in Canada and numerous international jurisdictions, the profession of land surveyor is self-regulated. In this respect a professional organization, the Alberta Land Surveyors’ Association, is created by statute - in this case, the Land Surveyors Act, for the purpose of regulating the profession. The governing body of the Association and Council is established by statute and has the power to manage the business affairs of the Association, and is obligated to report annually to the Minister of Labour. Under statute, Council is to consist of at least 9 land surveyors and, under certain circumstances, a member or members of the public. It is worth noting here that in Ontario, the Surveyor General is made a member of Council under statute whereas no such requirement is set out in the Alberta Act for the Director of Surveys.

The Act also establishes other bodies that form the governance structure for the profession of land surveying in the Province, including the Practice Review Board, the Registration Committee, the Discipline Committee, and the Association Registrar. Together these bodies set the standards for the profession, oversee matters concerning education and admission to the profession and the discipline of members.

Regulation-making powers

Council has broad authority to make regulations dealing with academic qualifications for the profession, prescribing standards of practice, governing registration of a surveyor’s corporation, establishing a code of ethics and respecting the registration, licensing, disciplinary matters and the practice of surveying generally. Regulations made by council are subject to the approval of the majority of Alberta land surveyors and the Lieutenant

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46 Land Surveyors Act, R.S.A. 2000, c L-3 s. 9, Alta Reg. 80/2012 s. 13.1.
47 Land Surveyors Act, s. 11.
48 Ontario Surveyors Act.
49 Land Surveyors Act, s. 12.
50 Land Surveyors Act, s. 20.
51 Land Surveyors Act, s. 34.
52 Land Surveyors Act, s. 10.
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General.⁵³ There are currently four sets of regulations in force that have been made under the Act, namely the Code of Ethics, Discipline Regulation, Examination and Training Regulation and the Professional Practice Regulation each of which is briefly described below.

The Alberta Land Surveyors Act specifically grants Council the following authority to make by-laws to govern the Association and to govern the appointment of individuals to Council and the Committees:

17(1) The Council may make bylaws
   (a) for the government of the Association and the management and conduct of its affairs;
   ...
   (e) governing the appointment of individuals as
      (i) members, or
      (ii) members by virtue of their office,
      of the Council, the Association, the Discipline Committee, the Board, the Registration Committee and any other board or committee established by the Council or the Association and prescribing their term of office, duties and functions;

The current by-laws made by the Association pursuant to the Land Surveyors Act, which set out in greater detail the qualifications of members of Council, the mechanism for election to and removal from the office, and the specific roles of a number of the executive positions in council also includes the requirement that at least one member of the public be a member of Council. (s. 14(2)). No mention is made of requiring the Director of Surveys to participate on Council.

The Code of Ethics, Alta Reg. 324/1982

The Code of Ethics speaks to the land surveyor’s professional duty to serve both his/her clientele, the profession and the broader public and the ultimate professional objective of "contributing to the knowledge of land, to the better management of land and to the preservation of peaceful and lawful enjoyment of land" thereby recognizing the importance of the land surveyors skill set in contributing to broad public and societal goals.⁵⁴ A duty to

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⁵³ Land Surveyors Act, s. 16.

⁵⁴ Alta Reg 324/1982, s. 1.
assist pupils and employees, preserving client confidentiality, maintaining the integrity, competence and dignity of the profession are also outlined within the code.  

Discipline Regulation, Alta Reg. 325/1982

The Discipline Regulation sets out the parameters for the Discipline Committee and the mechanism for complaints against members. Specifically, the Registrar receives the complaint, which is usually in writing, and then has the discretion to determine whether the complaint can be the subject of a mediation. If the complaint cannot be dealt with by mediation - either because the Registrar determines that it is not properly the subject of mediation or because the parties do not agree to mediation, then the Discipline Committee chair or vice chair is notified of the complaint for investigation. The regulation gives the committee the power to order costs and also sets out the powers of Council to reinstate a member whose registration was cancelled as a result of a disciplinary proceeding.

Examination and Training Regulation, Alta Reg. 86/2003

The Examination and Training regulation establishes the prerequisites and approval requirements for a surveyor's articles. Timelines for completing training and examinations are also set out as are the specific qualifications required for registration as an Alberta Land Surveyor.

Professional Practice Regulation, Alta Reg. 327/1982

The Professional Practice Regulation establishes the framework under which Alberta Land Surveyors may practice the profession, in terms of establishing professional corporations, partnerships and establishing branch offices.

Council is also permitted under the Act to make by-laws governing the practice of surveying and the exercising of the duties of the Association. By-laws are less formal than regulations and do not need to be approved by the Lieutenant Governor- only by a majority of Alberta Land Surveyors, in order to come into effect. Bylaws may govern the management of the Association and the conduct of its affairs, including the calling of meetings and the election

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55 Alta Reg 324/1982, s. 2.
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of members to Council, prescribing fees to be paid by members to Council, prescribing an oath of office. The by-law creating powers within the statute facilitate the self-governance of the profession of surveyors - they do not address the required content, standards or methods involved in the actual practice of surveying.

Note is also made of the Alberta Land Surveyors' Association Policy Manual 2018-2019 which sets out a broad statement on organization governance and defining the role of Council. Under the Policy Manual, the role of Council is to establish organization priorities, operational and governance policies. Day to day management and administration of the association's affairs is to be handled by an Executive Director. Council members' roles duties and responsibilities are set out in the manual which speaks to duties of confidentiality, familiarity with the Association's mandate and priorities considering the public's best interest when participating in meetings and maintaining the honor and dignity of Council and the Association broadly.

The Act establishes a Registration Committee, composed of persons appointed by council which has the function of considering applications for registration and accepting, refusing or deferring applications. Decisions of the Registration Committee are forwarded to Council and any decisions to refer or refuse an application, along with reasons will be reviewed by Council where the applicant has made a request for such a review. The Registrar of the Association issues registrations to individual surveyors, and maintains the register by issuing annual certificates to members, entering memoranda of suspension, cancellation as appropriate.

The role of the Practice Review Board is set out by the duties assigned within the Act, the regulation, bylaws or directly from Council. Duties focus on the assessment of existing and development of new educational and experience standards and requirements for entry into the profession and ongoing evaluation of competency standards. In addition to setting the broad requirements for the profession as a whole, the Practice Review Board also has the power to review the practice of an individual surveyor and conduct a preliminary investigation make a recommendation to the Disciplinary Committee that a further inquiry or review is necessary.

While the Discipline Regulation provides some guidance on allowing the Registrar to address a complaint through the process of mediation and further allows for cost orders to be made by the Committee, the bulk of the Discipline Committee's powers and the mechanism for addressing complaints against members, are set out in statute. The Act establishes the Discipline Committee as consisting of land surveyors appointed by Council. Further details on the power of Council to designate a mediator and the mechanism for conducting a

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56 Land Surveyors Act, s. 17.

57 Land Surveyors Act, s. 13.
preliminary investigation into a complaint against a member are also set out in the Act. On concluding an investigation, the chair may direct that no further action be taken, or may refer the complaint to the Discipline Committee. The Discipline Committee may investigate a matter, hold a hearing, consider evidence, examine witnesses and, through a notice issued by the Registrar, compel the attendance of witnesses and the production of documents.

The Discipline Committee may make findings of unprofessional conduct and/or unskilled practice against a member. This may occur where the committee finds that any conduct of the practitioner:

(a) is detrimental to the best interests of the public,

(b) contravenes a code of ethics of the profession as established under the regulations,

(c) harms or tends to harm the standing of the profession of surveying generally,

(d) displays a lack of knowledge of or lack of skill or judgment in the practice of surveying, or

(e) displays a lack of knowledge of or lack of skill or judgment in the carrying out of any duty or obligation undertaken in the practice of surveying.

Further, where there is a failure to comply with the Act, regulations or bylaws and that failure is of a serious nature, the Discipline Committee may also make a finding of unprofessional conduct - even if the conduct does not fall within one of the enumerated list above. Upon a finding of unskilled practice or unprofessional conduct, the Discipline Committee has the power to make certain orders as set out in statute. These orders range in severity from a reprimand of the investigated person to imposition of certain conditions on a person's entitlement to practice (e.g. requirement to practice under supervision or not engage in sole practice or permit periodic inspections), require a certain course of study, direct that fees for services rendered be waived or repaid, or cancel the registration of the investigated person and order the payment of costs or a penalty. The powers of the Discipline Committee also include the flexibility to make “any other order that it considers appropriate in the circumstances.” Decisions of the Discipline Committee may be appealed

58 Land Surveyors Act, s. 36-38.

59 Land Surveyors Act, s. 35.

60 Land Surveyors Act, s. 53, s. 54.

61 Land Surveyors Act, s. 53. It is assumed that this does not extend to the power of the Committee to make an Order correcting a survey or altering the location of survey monuments already planted – even if acknowledged to be incorrect.
to Council and on appeal, Council has certain powers set by statute, including confirming, quashing or varying a finding of the Discipline Committee, substituting its own finding or referring the matter back to the Discipline Committee. Decisions of Council may be appealed by the person investigated to the Court of Appeal.

The Code of Ethics, set out in regulation, is further explained within the Manual which sets out the particulars of how one is to ensure that one is meeting the obligations under the duties to the profession and the public that are enshrined in the regulation. As a self-governing profession, the duty to the profession includes participation in and contribution to the Association's efforts and to the development of the legislative framework and supporting programs to improve the survey system broadly:

(5) An Alberta Land Surveyor shall assist in maintaining and improving the integrity and competence of the profession of surveying.

This responsibility includes maintaining the survey system by cooperating with colleagues to resolve any apparent errors or discrepancies in a Surveyor’s work and taking all necessary measures to remedy those errors or discrepancies.

In particular, surveyors are asked to become actively engaged in the development of the profession and the profession's governing structure and are called upon to

... devote some time to the affairs of the Association, thereby contributing to the Association’s constant effort to maintain and improve the survey system, procedures, institutions, and profession.

Furthermore, surveyors are required to

... participate in proposing and supporting legislation and programs to improve the survey system, procedures, institutions, and profession. If a Surveyor believes that the existence or non-existence of a rule of law, regulation, or instruction causes or contributes to an unjust result, that Surveyor should endeavour to obtain appropriate changes.

The Manual also sets out the terms of reference and operational policies for the individual committees created under the statute including guidelines for the selection of committee members, guidelines for the content of committee recommendations to Council and

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62 Land Surveyors Act, s. 59.

63 Land Surveyors Act, s.60.

64 Manual.

65 Manual.

66 Manual.
Council's role in considering recommendations. In addition to the committees created by statute, the Registration Committee, Discipline Committee and the Practice Review Board, the Manual further sets out the terms of reference for the Boundary Panel and other non-statutory committees: Communications & Public Relations Committee, the Convention & Social Committee, the Executive Committee, Future Committee, Historical & Biographical Committee, Legislation Committee, Nominating Committee, RPR Working Group, and Standards Committee (LIAISES WITH LTO).

ALSA Boundary Panel

The Boundary Panel is a non-statutory committee of the Association. Its purpose is to investigate and resolve boundary uncertainties or alleged errors in surveys. Decisions of the panel are not binding upon participants and the panel does not have statutory or delegated authority to issue binding orders, award damages or costs. The panel is not associated with the work of the Discipline or Practice Review Committees or their processes which are set out in statute. Rather, the panel is an early option or mechanism where there exist questions concerning uncertainty or alleged error that would benefit from the investigation and insight of experienced land surveyors.

The Boundary Panel process is set out in the ALSA Boundary Panel Handbook and an application to the panel may be initiated by landowners, Alberta Land Surveyors, municipalities, the Land Titles Office or any other party with a bona fide interest in a specific property.

Although the Boundary Panel may express an opinion, and may recommend how the participants resolve the boundary uncertainty, the opinion or recommendations do not relieve the participants from any liability, responsibility or actions that result from the hearing or any resolution of the boundary uncertainty. Despite any recommendations from the Panel, the steps taken to resolve a boundary uncertainty and any costs or claims arising from steps taken, remain the professional responsibility of the participants.

The panel does not have any authority to compel attendance of witnesses or production of documents and participation is voluntary. The Boundary Panel operates as a body of knowledgeable practitioners who can aid in triaging a dispute, reviewing and assessing the severity of a problem and providing a recommended course of action. It is a forum for information sharing among the participants in a way to fully assess the matter at hand prior to commencing a course of action that seeks a formal correction or resurvey under the statute. Where the problem cannot be resolved among the participants and the panel, it may be that the panel will provide a recommendation to forward the question of uncertainty

to the Director of Surveys or through the Courts, based upon the decision making frameworks that are established by statute.

The Role of the Courts

The Courts serve an important function in hearing and determining appeals against orders and decisions of the administrative officials involved in the land titles and survey systems as well as professional regulation. Whether those appeals rest with the Court of Queen's Bench or the Court of Appeal, answers as to respective jurisdiction is set out by statute. As noted above, appeals of orders of the Board appointed by the Minister to investigate survey error under the Surveys Act, lie with the Court of Queen's Bench. Appeals of decisions of the Registrar under the Land Titles Act may also be made to the Court of Queen's Bench. Actions against the Registrar under the Land Titles Act are also brought in court. Discipline decisions of the Discipline Committee appealed to Council may then appealed to the Court of Appeal (Land Surveyors Act s 60).

Where questions arise with regard to the performance of the Registrar's duties, the Registrar may initiate a reference question before the Courts in which case the Court has its usual powers to summon persons in relation to the question (s. 185) and broad powers to initiate further proceedings.

The courts also play a key role as the avenue for a definitive and final statement on questions of individual boundary and title questions when they arise and resolution is not achieved between the parties through the recommendations of the Boundary Panel.

In Summary - the Existing Framework - Recommendations

The framework established by statute to regulate the profession of land surveying and is intended to set out the basic roles and duties of the various bodies in order to ensure the proper functioning of the system as a whole. An effective land titles system and cadastre requires certain functions be fulfilled, there needs to be access to certainty that the land surveyor, who will be properly trained and competent, which is a public protection function served by the professional regulation duties of the ALSA.

Likewise, there needs to be a clear and consistent set of requirements for which types of documents are to be submitted to and registered within the land registration system and prescribing the format these documents take. Ensuring that land surveyors are using up to date technology and methods and that the system be open to continual improvement is also important, and these goals are reflected in the Code of Ethics.
All of these functions, and others, combine to ensure the certainty and consistency in land ownership and transactions relating to land; critical components for the functioning of the economy. Above all, the public trust in the cadastre, the land titles system and the profession are critical. Legislation does not set out all of the requirements for successful fulfillment of the duties in their entirety. However, the framework does create a certain spirit and sets out overarching goals to which parties involved should work towards as they carry out their functions on a day to day basis.

Other provincial jurisdictions have taken slightly different approaches to Alberta in order to achieve the same ends - that is to say the development and ongoing regulation of the survey profession, the provincial cadastre and land titles systems. A few examples are presented below. The powers and responsibilities of roles set out in statute and comparable to the Alberta Director of Surveys, the Registrar of Land Titles and Council and Committees of ALSA as the professional regulatory body may be slightly different and there may be some lessons taken for effective integration of, and collaboration between, the different bodies that would enhance the coordination of these complementary offices. Examples from Ontario, New Brunswick and British Columbia can be found in Appendices.

Roles and Responsibilities under the Alberta Framework: Efficiency, Effectiveness and the Public Trust

Dispute Resolution

To maintain the public trust and confidence in the provincial land system and by extension, the profession of surveying, there is a need for a cost-effective and efficient mechanism for land owners to resolve disputes over title or boundary issues where they do arise. Boundary uncertainties and alleged errors may exist in surveys as the result of a number of factors such as lost or conflicting monuments or an ambiguous description. It is important to remember that in the process of retracement, a land surveyor does not set boundaries but rather provides an expert opinion on the location thereof. This opinion may differ between two or more surveyors who may have been hired by the land owners for the purpose of providing a survey to settle a dispute or misunderstanding concerning a boundary location.

For certainty sake, a court ruling on a boundary location is a final and definitive statement. However, litigation of boundary and title issues in the courts is a time consuming and expensive process in which legal costs will often exceed the value of the land in dispute and reaching a solution may take years.

Mechanisms which encourage dispute resolution between parties outside of the court system are not only consistent with the purpose of the rules governing the Courts but also
encouraged by the rules themselves as an alternative avenue of dispute resolution for potential litigants.

Within the Alberta Rules of Court, the stated intention and purpose is set out as, “to provide a means by which claims can be fairly and justly resolved in or by a court process in a timely and cost-effective way.” More particularly, the regulations set out that, the Court rules are intended to be used to:

(a) to identify the real issues in dispute,
(b) to facilitate the quickest means of resolving a claim at the least expense,
(c) to encourage the parties to resolve the claim themselves, by agreement, with or without assistance, as early in the process as practicable,
(d) to oblige the parties to communicate honestly, openly and in a timely way, and
(e) to provide an effective, efficient and credible system of remedies and sanctions to enforce these rules and orders and judgments.

The purpose section of the Court Rules goes further and sets a number of requirements upon participants in order to achieve the stated purpose and intention including the following:

(3) To achieve the purpose and intention of these rules the parties must, jointly and individually during an action,

(a) identify or make an application to identify the real issues in dispute and facilitate the quickest means of resolving the claim at the least expense,
(b) periodically evaluate dispute resolution process alternatives to a full trial, with or without assistance from the Court...

Such encouragement of alternative dispute resolution mechanisms takes other forms in other jurisdictions, and in Ontario, for example, certain circumstances trigger a mandatory mediation in specified actions with the intention that an early and fair resolution of disputes occur.

It is noted that while the Boundary Panel in Alberta does not have statutory authority and cannot issue any binding order upon the participants, the Boundary Panel created by the ALSA has the potential as an informal mechanism to resolve disputes between parties in a

69 Ibid., at s.1.2(1).
70 Ibid., at s.1.2(2).
cost effective and time efficient way. While not all disputes coming before the panel will be
resolved by the panel, the forum nevertheless provides an efficient opportunity outside of
the court system to share information, have experts weigh in on the matter and work
towards the intended purpose of the court rules themselves - early identification of the real
issues in dispute, resolving disputes quickly and with least expense, encouraging open,
honest and timely communication and, in particular, encouraging parties to resolve claims
themselves by agreement as early in the process as practicable.

This final goal is of particular importance in the context of boundary disputes in which the
parties are generally adjoining landowners71 who will have an ongoing relationship as
neighbours long after the dispute is over. A "win" by one party in the courts that results in
an order favourable to that party may achieve affirmation of one's legal rights and interests
but still leaves a tense relationship with the neighbour after a prolonged and expensive
process. If parties are able to resolve issues amicably, on their own, by agreement and with
minimal time or financial resources expended, there may be less damage to the relationship
between neighbours.

Going forward, an affordable dispute resolution mechanism is needed. While the courts are
available for the hearing of appeals from tribunal decisions, it is not a recommended forum
of first resort. From the ALSA's boundary panel recommendations, to the Director of
Surveys making orders to the Registrar of Titles issuing correcting orders or rulings, there is
a confusing overlap of role and responsibility in this domain and uncertainty among those
seeking resolution of title or boundary issues as to where one should turn first. Presently
there are many routes available to the land owner though not all are ideal to solve all of the
issues. A consideration of other models in Canada and New Zealand leads to a strong
recommendation that the function of dispute resolution concerning land matters be placed
with an official having inherent legal skills or training, or at least access to such resources.

The present fragmentation is due in part to the fact that there is often a distinction made
between boundary issues and title issues, though this distinction is somewhat arbitrary
when one considers the outcome interest of the parties involved. For the land owner the
problem is the same regardless of how it is framed. Any dispute resolution mechanism
proposed as a future solution should be a forum to address both boundary and title
problems. A "single window" forum for boundary and title issues must be able to offer a
range of solutions from information gathering, such as is currently available through the
ALSA boundary panel, to encouraging a negotiated settlement between the parties to
conducting formal hearings and issuing binding orders similar to the powers of a court. A
streamlined approach should encourage early settlement and resolution but also have the
resources and authority to handle disputes that presently find their way before the courts.

One potential option for a solution may lie in an expanded role for the Registrar of Titles
office akin to that of the Director of Titles in Ontario. In such a forum, the private

71 They are neighbours.
practitioner members of the ALSA would serve an important role in providing expert evidence and the forum and the Director of Titles would have standing as a participant rather than a decision making. Another option may be developed based upon the civil courts disputed resolution in British Columbia. Further, the Massachusetts Land Court provides an innovative example of a stream within the judicial system to address title and boundary disputes.

Finding a solution and developing a streamlined and efficient mechanism for resolving boundary and title disputes will require involvement from, at minimum, the Alberta Law Society, the Association of Alberta Land Surveyors, Service Alberta, the Ministry of Environment and Parks and the Ministry of Justice.

Recommendation: Working with stakeholder groups, explore options for a dispute resolution system for issues related to boundary and title problems with an aim towards developing a single path for dispute resolution that is timely and cost effective for participants.

Setting Standards of Practice

Standards of practice refer to the preparation of various survey products and the exercise of the land surveyors’ duties, they range from client interactions such as dealing with questions of conflict of interest and billing, to preparation of various survey products, conducting research on retracement issues, preparing products for registration at the Land Titles Office and so on. Setting of surveyor standards of practice is informed by duties set out in statute and the code of ethics which are further expounded upon within the regularly updated Manual of Standard Practice. The Surveys Act, as noted above, primarily sets out the powers and duties of the Director of Surveys. The Act also provides some rather sparse direction on survey format and monumentation and standard of measure. Presently, the only Regulation made pursuant to the Surveys Act is in regards to setting a cadastral mapping fee. This rather limited legislative direction on how a survey is conducted, such detail instead appearing in the Manual of Standard Practice.

The ALSA annually prepares and publishes a Manual of Standard Practice, which in addition to setting out explanatory language surrounding the professional code of ethics also provides detailed guidelines on a wide range of relevant general standards and procedures for conducting surveys, standard practices for surveys, plans and reports. Published annually, and with a stated onus on the Alberta Land Surveyor to "to improve the Manual and to participate in keeping it current," in its introduction, the Manual content may be

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considered a constant work in progress to reflect the Association's constant strive towards improvement. In this format, there is opportunity for considerable flexibility in updating standards of practice that impact the profession.

Within the Manual there are of course, numerous references to the Office of Land Titles, in terms of using the resources of the office in research for boundary retracement problems and the criteria and requirements for surveys when they are to be registered at the Land Titles Office. In this regard, section 7 of the manual set out requirements for integrated surveys, and connections to Alberta Survey Control Markers. Further, the Manual makes reference to the requirements set by the Land Titles Act for surveys to be registered in the Land Titles office and more specifically the Service Alberta Land Titles Procedure Manual.

The Land Titles Procedure Manual prepared by Service Alberta is a collection of regularly issued and updated bulletin type documents each explaining and setting registration criteria for the registration of various instruments at the Alberta Land Titles Office. Many of the requirements for registration and the operation of the Land Titles Office are set out in the Land Titles Act, the Manual provides an explanatory guide directed to LTO employees and is an accessible source of information for land surveyors preparing documents to be registered. The Manual serves as a guide and is not authoritative statement on substantive law, legislation prevails in the event of any discrepancy.

In considering the development of an alternative dispute resolution mechanism for boundary and title questions, it is recommended that the responsibility for regulating members of the survey profession remain with the Alberta Land Surveyors' Association. Complaints against individual members that involve allegations of incompetence or professional misconduct should continue to be dealt with by the Association's existing complaints and discipline framework as presently established by statute. The role of the Alberta Land Surveyors' Association, as a self-regulated profession is critical to the continued presence of skilled practitioners of cadastral surveying to serve the Alberta public. The discipline machinery operates for the benefit of the public and should continue to do so. There is no identified benefit in shifting the public trust in Alberta Land Surveyors, as regulated professionals, to the office of the Director of Surveys or some other government agency. The modern trend as seen in other professions is towards less government regulation and control and instead placing responsibility with a self-regulating professional body.

**Recommendation:** Maintain the existing role for Alberta Land Surveyors' Association as regulator of the profession, including setting of standards, competencies and disciplinary matters.

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73 Manual, section 5.

Maintaining the Alberta Township System Survey Fabric

Certainty of boundary lines is central to the original concept of a reliable and secure title as was originally contemplated in the 19th century survey practice and title legislation. While this has proven to be a proud legacy for Alberta, there have been deep misunderstandings, to the present day as to how boundary certainty supports a stable Land Titles system. A township, section or quarter section line, whether first surveyed or not is a projection of "lines on the ground". One will often see this survey fabric referred to in literature and in court decisions as ATS or Alberta Township System.

The ATS legacy lies in a historic shift in the Dominion lands policy by the federal government in the late 1800s, whereby the earlier practice of surveying townships by laying out distances on prescribed bearings was prone to error and inefficiency. The new Dominion Land policy relied instead on lines of astronomic meridian and latitude with mathematical corrections for convergence. As such the ATS survey fabric was and remains proudly viewed as superior to survey systems used in eastern Canada.

There is a significant step in taking the survey fabric, a conceptual organization of future parcels, and converting it to the parcel fabric, a network of land interests. The distinction between the two is considerable. The survey fabric only becomes the parcel fabric when the monuments have been planted, the certificate of title has been issued and settlers take up possession to occupy the land and make improvements thereon. Thereafter the survey fabric continues as a parcel fabric with further subdivision over time and fractional ownership. As parcels are patented and granted and then further subdivided, the survey lines become boundary lines marked on the ground. A boundary if understood as the location in space where two property interests come up to abut against one another only really comes into play once there are title interests involved. The original survey fabric, from which the parcel fabric was derived was remains available as evidence, but not a controlling fact of the owners' boundaries.

There are distinct functions that emerge from this understanding of the survey fabric and parcel fabric. A continued consistent approach to the survey fabric and ATS helps to maintain the legacy already established and the foundation of boundary certainty for the land titles system. As vast tracts of land within the province have not yet undergone the process of having monuments laid out on the ground and a parcel fabric established there is a continued need to oversee and champion the ATS. It is proposed that the Director of Surveys is in the best position to take on this function as it is consistent with their statutory duties.

It is the land surveyors of the province that transform the survey fabric into the parcel fabric through the laying of monuments on the ground in regions of unpatented land and then through the further subdivision of established parcels. Activity of the owners further
establishes same. That first laying of monuments and establishment of the parcel fabric is quite distinct from the later process of boundary retracement. The initial monumentation of unpatented land according to the parcel fabric benefits from the oversight and confirmation by the office of the Director of Surveys. Once this has taken place though and there is a transition to boundary lines which are now marked on the ground, any further retracement exercise by surveyors is with respect to boundary lines previously laid by land surveyors and part of the established parcel fabric. There should not be a need for any further oversight or approvals of such survey products by the Director of Surveys, rather the activity can be accomplished efficiently, effectively and consistently by land surveyors operating under the guidance of their professional standards of practice.

Historically, it was the turnover of custody in records, plans, and documents - together with the control of its natural resources in 1930 served as a starting point for an Alberta perpetuation of the role of Surveyor General in the form of the Director of Surveys. While as noted above, the office of Director of is a necessary for maintaining a survey fabric and a control network for use by surveyors, this role would overlap and eventually conflict with other stakeholders if it impinged on land title. A land surveyor hired by a private client for a boundary retracement is paid by that client for his or her expertise. Additional approvals by the Director of Surveys related to boundary retracements performed by the land surveyor are paid for through government operations, the effect is a double bankrolling by the public for a process of auditing and inspection that becomes inefficient and expensive. Further such an auditing and inspection erodes the confidence in the competency of the profession.

Where surveys are being done on behalf of the Alberta Energy Regulator related to resource extraction projects on public lands, there is a role for the Director of Surveys in providing professional expertise to the AER. These may arise in the context of coordinating short or long term leases related to forest or oil and gas extraction. Where for example, the AER receives a licence request from a private energy company the Director of Surveys can review the request and work with AER to issue instructions on the type and standard of the product required, coordinating the process with the AER and reviewing the survey products. Such cases differ from land that is entirely in private ownership. Here ownership of the land remains with the government, there is no private owner in the usual sense of the word but rather a licence holder with specific interests in the land as set out within the licence.

The very important function of the Director of Surveys was, and is suggested to remain, as the guardian and champion of the township survey fabric and a control network that enhances the local availability of evidence of boundary location. However, this role is exceeded when the Director of Surveys wades into a role of inspecting or retracing boundaries, or is engaged in boundary dispute resolution. All three functions are critical to the enduring confidence in the land titles system but are best delivered by different positions. Boundary retracement, particularly on private land should remain the domain of the land surveyors, governed by the ALSA. Boundary dispute resolution, in its current form in Alberta is a rather confusing mix of overlapping rolls, for the sake of efficiency and a timely, inexpensive resolution of disputes, an alternative is proposed below.
**Recommendations:** Where surveys and plans are prepared based upon boundary retracement, deference should be given to the land surveyor completing the plan and any practice or inspection by the Director of Surveys should be limited to instances involving public lands or initial monumentation.

The **Director of Surveys** should continue to play an important role in reviewing and inspecting surveys relating to previously unmonumented land.

The **Director of Surveys** should continue its role in lending expertise in an advisory and coordinating role to aid the Alberta Energy Regulator where licensing requires the preparation of survey products.

**Decision Making Powers Related to Provincial Land Systems and the Cadastre**

Who has the decision making authority to set rules and procedures that establish the very basic yet critically important overarching land system, mapping system and the cadastre is set out in statute. But it is not a simple question of who holds this authority but also how that authority is to be exercised - both in terms of specific criteria that are set out by statute for the development, approval and implementation of such decisions and also the general principles of sound policy development and, arguably, where the decision maker is a land surveyor, the land surveyor’s code of ethics. A reliable, accurate, accessible and affordable technical framework defining and depicting parcels of land is a critical component for the successful operation of the land titles system. The administrative system for registration of interests in land is governed by the *Land Titles Act* and largely established by statute for certainty and continuity. The Alberta *Surveys Act* sets out the duties of the Director of Surveys as noted above. The Director's duties specific to the land system are set out as follows:

5(1) Subject to subsection (2), the Director shall

(a) co-ordinate the establishment, maintenance and preservation of the land survey system for the purpose of determining the positions of boundaries that govern the extent of interests in land,

(b) co-ordinate the establishment and maintenance of a geographical positioning system for Alberta,

(c) co-ordinate the establishment and maintenance of a mapping system for Alberta,
(d) co-ordinate the development and maintenance of a land-related information systems network for Alberta,

(e) maintain the network of survey control markers and controlled photographic diapositives that are the physical elements of the geographical positioning system,

[...]

(2) The Minister may, in writing, assign

(a) any duty under subsection (1)(b) or (e) to an employee of the Government who is a surveyor and whose position is under the administration of the Minister, and

(b) any duty under subsection (1)(c), (d) or (f) to an employee of the Government whose position is under the administration of the Minister.

While the coordination of the establishment, maintenance and preservation of the land surveys system to spatially define interests in land rests solely with the director, other duties may be assigned by the minister to surveyors or non-surveys within the Ministry as the case may be.

The duty of the Director of Surveys listed above, is set out as a "coordinator" role rather than a role of a unilateral actor. The word "coordinate", in its ordinary meaning is defined by the English Oxford Dictionary as a verb to "bring the different elements of (a complex activity or organization) into a harmonious or efficient relationship."75 The use of the word in statute recognizes the complex and multifaceted nature of the authority and responsibility that is being granted to the Director of Surveys. The implications decisions on a land survey system, a geographical positioning system, a mapping system, and/or a land related information system for the province would be far reaching and significant for the public at large and particularly for the professionals whose work contributes to the building and maintenance of such a system. A sense of efficiency and harmony in how the various elements work together contributes to the public trust in the system as a whole, public trust being critical for the functioning of a land titles system and a self-regulated profession.

The Act itself, in defining the duties of the Director does not specify how the coordination is to take place or identify with whom, if anyone the Director (or Minister's assignee) is to engage in setting out these duties. There is no specific requirement for consultation with or for obtaining approvals from either the Registrar of Land Titles or the ALSA, in as part of the establishment, maintenance and preservation activities. The elements of the various systems described within the Director's list of duties include the surveys themselves, (how

75 https://en.oxforddictionaries.com/definition/coordinate
they are completed, the technology and methods used) the monumentation, the compilation of the various materials (both by the Ministry and Land Titles Office) how it is organized and made available to land surveyors, government staff and the public. As many of these elements tie into the purview and responsibility of the Registrar or the ALSA, for the sake of exercising the Director's duties under section 5 of the Surveys Act, "coordinate" implies meaningful consultation with these parties.

The Director of Surveys has recently put forward the notion of adopting a hybrid cadastre as an example of using measurement tools, GPS and mathematics as an attempt to control the position of a boundary line or corner. While such a model has been sold as an inexpensive and efficient solution to boundary uncertainty, it should not be considered a panacea. Though the Alberta Land Surveyors’ Association does not oppose the hybrid cadastre model in principle, it encourages taking a more considered approach to the introduction of any broad sweeping changes to the tools used in the control of the province's survey system. The limitations of such models must always be well understood. While there application may an efficient and cost effective solution in some areas, particularly large of areas of unsurveyed territory in the northern regions of the province, the changes proposed by the Director of Surveys will not be an appropriate substitute for a technical survey in some regions of the province. Ultimately depending on where and how the proposed mechanism are used, it may create more long term boundary problems than the short term gains are worth.

Any changes to the mechanisms used in the provincial survey system should be thoroughly researched and investigated including an opportunity for early meaningful consultation with parties impacted by any proposed change.

**Recommendation:** Where changes to existing survey systems are proposed or considered, a process that involves early meaningful consultations with stakeholders should be adopted as the normal practice.

**Example: New Zealand**

An example reflecting statutory recognition of the importance of an integrated, collaborative and coordinated approach to decision-making and standard setting related to the survey profession and the land titles system may be found in the legislation of New Zealand. The New Zealand Cadastral Survey Act provides for the appointment of a Surveyor General whose functions include maintenance of a national geodetic system, a national survey control system, setting standards for how spatial extent of interests must be described and setting standards for integrating new cadastral surveys and the use of data.

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76 2002, NZ
sets, issuing guidelines and advising agencies and auditing compliance with standards. Essentially, this is an “establish, inform and audit” function to maintain a national survey system. Further, the Surveyor General in New Zealand has the authority under statute to make rules regarding the conduct of cadastral surveying including the use of survey marks and for cadastral survey data sets. However, this power is tempered by due diligence and sound governance principles which are directly enshrined in the legislation through a consultation requirement and a list of considerations which must be taken into account before the Surveyor General is to make any such rules. More specifically the Act lays out the following:

s. 49 (2) Before making any rules under this section, the Surveyor-General must consult --

(a) the Board in relation to rules that have implications for the standards set by the Board under section 11(1)(d); and

(b) the body or bodies representing cadastral surveyors; and

(c) if the standards will affect a tenure system, the agency or officer responsible for the tenure system.

(3) Before making rules under this section, the Surveyor- General must have regard to the following matters:

(a) the extent to which the proposed standards will promote the purpose of the tenure system;

(b) the costs and benefits of consistency in standards relating to more than 1 tenure system;

(c) the costs and benefits of maintaining the accuracy of the cadastres

(d) the costs involved in cadastral surveys and cadastral survey data sets complying with the proposed standards

(e) maintaining public confidence in the cadastre.

This thorough list of considerations for the Surveyor General in exercising his or her rule making power related to the conduct of cadastral surveying is consistent with accepted public policy processes. Cost benefit analysis, overall economic impact (including changes in costs associated with new rules), public (i.e. stakeholder) acceptance and alignment with overall policy objectives are typical lines topics of analysis were policy positions are

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77 Cadastral Survey Act, 2002, NZ s.7. The New Zealand Surveyor General has additional functions related to professional competencies discussed below in the section entitled “Collaboration”.

78 Cadastral Survey Act, 2002, NZs. 49(1).
developed. That is to say, principles of sound governance and leadership would have the Surveyor General taking these factors into consideration when developing rules even if there was no such explicit requirement to do so set out in statute.

However, to highlight these and include them as a requirement reinforces the importance of recognizing the widespread implication of decision making. That the Surveyor General is also required to consult with the Board, representatives of cadastral surveyors, and (where applicable given the nature of the proposed rules) those responsible for the tenure system further reflects the critical integration of the various elements of the land titles system, the survey profession and the cadastre. The elements do not operate in isolation.79

In New Zealand the approach to ensure rules made by one actor take into consideration the interests of the other parties involved is set out in statute through specific requirements put on the potential rule maker, in Alberta, while such specific requirements are not part of the statute, the legislation nevertheless recognizes the importance of an integrated system through the language used in describing the Director of Surveys duties. Further, as the legislation gives the Minister the authority to delegate several of the Director of Surveyor's coordinating functions under the Act to other parties within government, this is arguably a discretion which should be exercised if the Director's decisions and actions do not reflect the "coordinating" role set out for the position in the governing legislation.

Collaboration

In the above discussion on the Code of Ethics it was noted that the Code is but one element of the framework that governs the professional practice of land surveying. Components must work together and complement each other in order to maintain consistency and achieve broad goals of serving the public, the client and maintaining trust and confidence in the profession, and to the cadastre and the land titles system which serve a critical social purpose and require the public trust.

While distinct positions and bodies are defined by statute with powers and obligations set out in legislation the functions of the Director of Surveys, the Registrar and the Association do not operate in isolation. There is an interdependence between the bodies which is critical to the efficient and effective functioning of management of land within the province and the maintenance of the public trust in the land titles system, the survey system and the profession of land surveyors.

79 It should also be noted that where the Surveyor General fails to consult meaningfully with those parties set out in the statute, formal claims for failure to consult in a meaningful way may be brought to the regulator review board, https://www.parliament.nz/resource/mi-nz/49DBSCH_SCR4923_1/e3c3d4d2e742b3817c16d02438e751ec8fa3b8f
Collaboration between the various authorities that govern and contribute to land management in the province is key to the efficient and effective functioning of the different components. The importance of collaboration between the different elements is recognized in statute where duties of the Director of Surveys begin with the act of coordination.

There are examples in other jurisdictions where collaboration between the various oversight bodies that deal with the interconnected topics of land titles administration, establishing and maintaining a survey systems and fabric, and governing those who practice the profession of surveying is encouraged through the participation of members of the public or the cross appointment of various statute derived positions within the formal governance framework of the Council of the respective Associations. In Ontario the Surveyor General is required under statute to be part of Council of the Association of Ontario Land Surveyors, and therefore has a direct participatory role in the governing body of the Association. Section 3(2) of the *Surveyors Act* sets out the composition of Council and requires, at subsection 3(2)(d) that one of the members of council be the Surveyor General. The Act further requires that non-members of the Association, appointed by the Lieutenant Governor in Council be part of Council. This additional representation provides for a broader basis of input into Council decision making. Non-member inclusion reflects the importance of regulation of the profession in the public interest. Similarly, the Alberta *Land Surveyors Act* includes a requirement for representation of members of the public on Council of the ALSA (at s 11(1)). However, the Act does not require that the Director of Surveys be a member of Council.

By comparison, the New Brunswick Act does not require that members of the public or the Director of Surveys be part of the Executive Council of the Association (*New Brunswick Land Surveyors Act, 1986*, c.91 at s. 9) however the Act does provide that membership in the Executive Council can be governed by the Association's by-laws. The present by-laws of the association set out a series of zones - provincial and regional - and specify the number of councillors to be elected to Council by the membership for each zone. The particulars of the election process are also set out in the Association's by-laws. A number of committees are also identified within the by-laws, each of which has its membership appointed by the elected Executive Council. By setting out parameters for the Association's governing bodies within the by-laws rather than in statute or regulation, there is greater control on part of the Association to alter the by-laws. By-laws need not be approved by bodies outside the Association such as the legislature or the Lieutenant Governor in Council, only the Association itself and they may be made, amended or repealed by a resolution of two-thirds of the members voting at the annual general meeting or by a special meeting called for that purpose. (s. 7 of Act). This gives the Association flexibility, when acting consistently with the governing statute, on setting the composition of Council and the Committees.

As noted above in the descriptions of the governing statutes that define the relevant roles, there are presently three separate government Ministries with some form of jurisdiction in respect of the bodies or offices considered in this paper - The Ministry of Labour, the Ministry of Government Services and the Ministry of Environment. While reducing the
number of ministries involved through a transfer of responsibilities, is one option here, a coordinated approach between government ministries that eliminates any experience of "silos" by the profession, the professional regulator, and the public dealing with government offices.

**Recommendations:** Encourage a culture of collaboration across and between governing bodies.

Encourage government offices involved in land management and the operation of the land titles system to work together in a coordinated manner across Ministries and government departments.

**Culture**

Collaboration between the various administrative bodies that set standards and carry out various functions to achieve the goals of legislation may be encouraged through statutory requirements that set cross representation among offices with related or complimentary functions - like the requirement that the Surveyor General be a member of the Council of the professional regulatory body. They may also be encouraged through legislation by requiring consultations or approvals from different bodies. However, effective collaboration and a smooth and efficient operation of the system as a whole relies upon a culture of collaboration and respect between the different bodies and contributors. This was noted in a recently released visioning document from British Columbia which conducted a review of professional reliance in the natural resources sector.\(^80\) The excerpt below has particular relevance in the discussion of culture both within government ministries and professions:

“A third factor influencing the extent of reliance is the culture within ministries and professions. This is a significant factor because it affects oversight even where government has legal authority and sufficient resources. It goes to an agency’s understanding of its role in regulating resource use, and professionals’ understanding of their obligations in relation to clients, employers, professional associations, government and the public interest.

... Professional reliance has been embraced as a *modus operandi* in government for about 15 years, so it is well ensconced in the public servant’s psyche. Some newer employees might not have working experience of other modes of administration

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professional reliance is not well understood or defined. It therefore competes with other expectations about the proper role of government as the owner and regulator of resources. Public servants expect that their education and training is valued too, and that they have a duty to apply it in the public interest.

One of the reasons that professional reliance lacks clarity of meaning is that there are many different regulations across the natural resource sector, and there is no single, consistent approach to the discretion of statutory decision makers. Most statutes provide for discretion, so agency culture is relevant to how it is exercised. For some there are no issues; they are doing what they have always done, and professional reliance just means that government relies on professionals to prepare and submit certain plans, designs or reports. For others, professional reliance is interpreted as political direction to defer to the professional’s opinion.\footnote{Ibid at p. 24.}

This excerpt reflects the longstanding relationship between the government, land surveyors and the emergence of a self-regulating survey profession that was discussed at some length earlier in this document. There is an ongoing tension between control and deference between the state and the professional whose work contributes to state initiatives, a tension that may need to be resolved at the cultural level in the case of the Association of Alberta Land Surveyors and the present Director of Surveys.

The Future

There is no doubt that a vision of Alberta’s future is being articulated - and already exists - in selected published documents from related government, private sector and professional organizations. A few examples will suffice. These are replicated below as gleaned from land title and survey sector related organizations:

1. Land Titles

Promote E-Commerce as a way to access new markets
A visioning document, now more than 10 years old, stated the future business opportunities for the Alberta Land Titles office as follows:

“Land Titles is already seeing the benefits of a wider variety of access channels through increased sales of copies of survey plans, which have risen over 50% since SPIN was implemented. Customers now worldwide can have access to survey plans, titles, documents and other GoA land related data products.

With the implementation of Alberta E-Government, more communication and exchange of documentation will be conducted electronically. Connecting through the Internet makes a variety of services, such as, document submission, examination, and retrieval, data query and automatic notification available directly to the customer, should that be their preferred way of doing business.

As the E-Government transition continues, the Land Titles vision includes the streamlining and integrating processes and data across functional and organization lines to provide transparent, seamless services to customers. While this may not fully occur within the next few years, it will become important to achieve as government continues to change to address public and corporate expectations.”

2. Real Estate Council of Alberta

A response to a request for public commentary in 2013 prompted this submission (in part) from RECA:

Alberta Government Anticipated Outcomes from Alberta Land Titles Registry System Review

“The Alberta government’s seven (7) Strategic Plan outcomes are:

. Honoring Alberta’s Communities
. Supporting Vulnerable Albertans
. Healthy Albertans
. Preserving the Provinces Finances
. Investing in Learning
. Innovative and Responsible Resource Development
. Building Relationships and Markets

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In alignment with these strategic outcomes, government will decide whether land title services may be improved, costs lowered and better quality products delivered. As part of the review, other land titles business models will be examined to determine whether an improved, more efficient and effective opportunity exists for Alberta.

Government states that its objective is to ensure the Alberta land titles system provides the best possible value to Albertans... Leading to the conclusion that:

“...Real Estate Council of Alberta requests that the Alberta Government maintain and protect the **integrity of the Alberta Land Titles Registry System** by retaining full and direct control of the system and all operations and administration.

Alternatively, the Alberta Government is requested to protect the integrity of the Alberta Land Titles Registry System in the public interest by creating a statutory corporation, modeled after the British Columbia Land Title and Survey Authority, which would operate and administer the system.

Either option would

. ensure the delivery of Land Titles services to Albertans in the best possible way so that Albertan’s property interests and property rights are protected by law; and

. innovatively leverage valuable data resources to advance Albertans’ social and economic future for the benefit of all Albertans.

Neither outsourcing nor privatization is in the public interest.”

**Business Operating Principles**

“Land Titles management and the working committee have defined the following business operational principles to be used as the basic guidelines for the visioning exercise:

- Land Titles will continue to provide both individuals and private sector companies with timely, high-quality information and registration services at the lowest possible cost.

- Remain with the Alberta Torrens system for the foreseeable future. Alberta’s strict application of the Torrens Land Titles system principals will be maintained. This is the preferred system and Land Titles have defined and adopted their preferable implementation of this system.

- Maintain or exceed the same level of performance, functionality and customer service in the future.
• The electronic document will become the official record subsequent to registration.

• Government of Alberta will remain the owner, insurer and custodian of title and owner interest data.

• Service Alberta will act in accordance with the good information handling practices in data distribution and information release activities.

• Land Titles will continue to operate and offer service to Albertans under a cost recovery model.

• Land Titles will continue to use the Registry Agent Network to assist in providing Albertans with over the counter access to Land Title data.

• In keeping with the GoA / Service Alberta direction, Land Titles will strive to promote a level playing field among all external customers and offer a choice of delivery channels.

• Land Titles will recognize its role in providing primary information to the land information industry in Alberta.”

Together, the themes that emerge from these vision documents imagine a land titles and land management system that is efficient and cost effective and provides a level of excellence in customer service. The integrity of the system and protection of public trust is seen as of utmost importance. While Alberta has seen these goals as being achieved through retained control over the land titles registration electronic system by the province, other jurisdictions have seen success delegating the delivery of a registry through a third party, though this is another discussion. For the roles of the Association and Director of Surveys, already established by statute and convention, to fit cohesively within this vision the themes of transparency, seamlessness, public trust, efficiency and value for money should be considered as their various duties are exercised. The public will generally view "government" as a single entity, expecting seamless sharing of information and consistency of expectations between ministries and by extension to government agencies and to third parties whose work feeds into government initiatives.

Conclusions and Summary of Recommendations

The preceding paper provided a somewhat lengthy exploration of the historical and legislative context that has contributed to the evolution of the current structures in the

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83 From: Report from the Real Estate Council of Alberta with Respect to the Government of Alberta’s Review of the Alberta Land Titles Registry System In its Results-Based Budgeting Process, August 26, 2013.
province today which govern the management of the survey fabric, parcel fabric, land titles office and the profession of land surveying. It is argued that this context in part explains where we are today and informs how the future is to develop. At the heart of it all is public trust and confidence in the systems, the offices which manage the systems and the profession whose work product feeds into the parcel fabric and land titles systems. There are a number of changes that are proposed to assist in clarifying roles and achieve goals of efficiency and cost effectiveness, certainty for the consumer within the context of how these roles developed in the first instance. In other cases, change may be at a cultural level and a challenge to implement-seeing the value across professions, offering professional deference and seeking constructive input where new systems are proposed. A dispute resolution system accessible to the public as an affordable forum for boundary and title issues is a longer term goal requiring considerably more input from a number of impacted parties.

The following recommendations will assist with more clearly defining the roles and responsibilities of the Director of Surveys and the Association going forward for a coordinated approach to managing the survey fabric, parcel fabric and land titles system. There is a significant element of serving the public trust in the work that is done by the parties that contribute to these systems and public confidence in the survey profession and the land titles system is crucial. With this in mind the following recommendations, explained more fully in the preceding paper are presented as summary bullets below:

- **Where surveys and plans are prepared based upon boundary retracement, deference should be given to the land surveyor completing the plan and any practice of inspection by the Director of Surveys should be limited to instances involving public lands or initial monumentation.**

- **The Director of Surveys should continue to play an important role in reviewing and inspecting surveys relating to previously unmonumented land.**

- **The Director of Surveys should continue its role in lending expertise in an advisory and coordinating role to aid the Alberta Energy Regulator where licensing requires the preparation of survey products.**

- **Where changes to existing survey systems are proposed or considered, a process that involves early meaningful consultations with stakeholders should be adopted as the normal practice.**

- **Working with stakeholder groups, explore options for a dispute resolution system for issues related to boundary and title problems with an aim towards developing a single path for dispute resolution that is timely and cost effective for participants.**
The existing role for Alberta Land Surveyors’ Association as regulator of the profession including setting of standards, competencies and disciplinary matters should be maintained and enhanced.

Encourage a culture of collaboration across governing bodies.

Government offices involved in land management and the operation of the land titles system are encouraged to work together in a coordinated manner across ministries.

Appendix A: Alberta Land Surveyors Association Memo

SUMMARY
The relationship between a Director of Surveys/Surveyor-General and the professional regulatory body is unique. There is no other profession that I am aware of where the Director of Surveys/Surveyor-General can require a practitioner to have a certain professional opinion on a specific project/case.

In Alberta, this had led to a dysfunctional relationship between the Director of Surveys and the Alberta Land Surveyors’ Association which is prompting the Alberta Land Surveyors’ Association to ask some fundamental questions.

The questions are divided into two broad categories: the current situation and the potential future situation?

CURRENT

Alberta Land Surveyors’ Association
- Why does the Alberta Land Surveyors’ Association exist?
- What are the roles and responsibilities of a professional regulatory organization?
• Under existing legislation, what are the roles and responsibilities of the Alberta Land Surveyors’ Association?
• What non-statutory services does the Alberta Land Surveyors’ Association provide?
• Is the Alberta Land Surveyors’ Association efficient and effective in carrying out its current roles and responsibilities?
• Are the roles and responsibilities of the Alberta Land Surveyors’ Association still relevant?

**Director of Surveys**

• Why does the Director of Surveys exist?
• Under existing legislation, what are the roles and responsibilities of the Director of Surveys?
• Does the Director of Surveys currently have any non-statutory roles and responsibilities?
• Is the Director of Surveys Office efficient and effective in carrying out its current roles and responsibilities?
• Are the Director of Surveys’ roles and responsibilities still relevant (that is, do they still need to be done)? If the roles and responsibilities are still relevant, could they be assigned to some other entity (either within government or outside of government)?

**Overlap**

• Are there any overlapping responsibilities (either statute or non-statute) between the Alberta Land Surveyors’ Association and the Director of Surveys Office?
• If so, how does the ALSA recommend that they be resolved?

**FUTURE**

**Alberta Land Surveyors’ Association**

• What will the public expect from a professional regulatory organization in the future?
• What improvements should be made to the Alberta Land Surveyors’ Association governance model?
• What statutory/non-statutory services should the Alberta Land Surveyors’ Association provide?

**Director of Surveys**

• What spatial/survey infrastructure is required in Alberta for the 21st century?
• What role should the Director of Surveys play in the 21st century?
• Should the Director of Surveys position continue to exist in the 21st century?
Appendix B: Ontario Example

Management of Electronic Land Titles Registration in Ontario

In the 1980s the Ontario government undertook a significant project to automate the existing paper land registration system, this included the development of the Province of Ontario Land Registration Information System (POLARIS) provincial map and a complementary project of creating the electronic land registration system. In the early 1990s private company Teranet was tasked with building the map.\(^8^4\) Just under a decade ago, the conversion from paper based land registration system to an electronic title system was completed and Teranet continues to operate and maintain the system on behalf of the Ontario Government. Land registry offices are managed and staffed by Service Ontario but the electronic registration system is managed by Teranet through an agreement with the provincial government. Teranet provides two service portals through which users can access the land registration system remotely through desktop applications. The bulk of land registration services including transfers and registration of many instruments can be done remotely.

Surveys and other applications made under the *Boundaries Act* and *Land Titles Act* are done as paper registrations in person at Land Titles Offices. Where plans of survey are deposited or registered at land registration offices Teranet receives a certified copy of the plan which is then scanned into digital format and added to the Teranet databases.

While the database is managed by Teranet, every registered instrument and deposited or registered plan is property of the Crown\(^8^5\) and the standards for forms and documents to be accepted for deposit or registration or retained in the database, and the responsibility for the supervision and control of over the land titles system rests with the Director of Titles. The Director of Titles has authority to set the form and requirements for registration of instruments, and is tasked with the responsibility of preparing property maps and assigning property identifiers. The Director also has authority and responsibilities in connection with compensation claims and the administration of the Land Titles Assurance Fund.

Regulations concerning governing the assessment of costs, requiring information in connection with forms governing elements of proceedings under the Act may be made by the Minister while there is some limited regulation making power for the Director of Titles with respect to prescribing forms and providing for their use.\(^8^6\) The Minister also has

\(^8^4\) For a thorough account of the history of the development of the current electronic registration system in Ontario and the involvement of land surveyors in same see the decision of Justice Horkins in *Keatley Surveying Ltd. v. Teranet Inc.*, 2012 ONSC 7120 (CanLII).

\(^8^5\) *Land Titles Act*, RSO 1990, c. L5 s.165.

\(^8^6\) *Land Titles Act*, RSO 1990 c. L5 at s. 163.
authority under the Act to make Orders specifying the Directors duties and a broad list of particular related to property identifiers, division of land into blocks, maintenance of an abstract index, the manner for certification of entries at registration, the custody of instruments and records and other details related to the administrative functioning of the land registration system. The Director of Titles also has limited authority to make orders related to requirements for rectification of the registry.

Land Titles Administration in Ontario - Director of Titles

The Director of Titles also has an adjudicative role and may make determinations on questions relating to title and boundary location. The Director may hear and determine any matter relating to titles of land covered by the Land Titles Act. Further, the Director of Titles may hear applications under the Boundaries Act. As Ontario converted from a Registry system of deeds to a land titles system in decades past, there remains a legacy of potential claims of interests in land through adverse possession. Such claims are not available under Alberta property law. However, the existence of these claims are frequently brought as applications under the Land Titles Act to be heard by the Director of Titles and with the volume of and specific nature of claims under both the Land Titles Act and the Boundaries Act, specialized tribunals which can ease the pressure on a busy court system.

The adjudicative power of the Director of Titles is comparable to other administrative tribunals, and represents a specialized forum for hearing specific disputes under certain Acts and is intended to be a relatively informal, less expensive and more expedient venue relative to the Courts. The Director may issue orders. Appeals of decisions of the Director of Titles may be made to the Divisional Court.

An Examiner of Surveys is appointed under the Land Titles Act to work with appointed Assistant Examiners of Surveys under the direction of the Director of Titles.

Public Surveys - Surveyor General

The Surveyor General is appointed by the Lieutenant Governor in Council under the Ministry of Natural Resources and Forestry Act with responsibilities set out generally as “such duties in

87 Land Titles Act, RSO 1990 c. L5 at s. 163.1(1) and (1.1).
88 Land Titles Act, RSO 1990, c. L5 at s. 10.
89 Boundaries Act, RSO 1990, c. B10, s.3.
connection with the surveying of lands, investigation of water powers, engineering, inspection, research and other such matters as are assigned by the Lieutenant Governor in Council or by the Minister."90

The Surveyor General has responsibility under statute for approval of plans related to subsurface rights leases, mining claim leases, overseeing surveys of public lands and participating on Council of the Association of Ontario Land Surveyors.91

Professional Regulation - Association of Ontario Land Surveyors, Council and Committees

In Ontario, the Surveyors Act92 provides the authorization for the Association of Ontario Land Surveyors (whose objects are similar to those of the ALSA in setting standards of knowledge and skill, qualification and practice and professional ethics among members). The Act further provides for a Council as the governing body of the Association and sets out specific requirements for the composition of Council which includes: elected members of the Association, lay members, a lawyer of at least 10 years standing appointed by the Lieutenant Governor in Council and the Surveyor General.93 This statutory requirement that the Surveyor General be part of Council reflects the important integration that must occur between the two spheres of responsibility - survey administration and professional regulation of surveyors.

Bylaws and Regulations of the Association of Ontario Land Surveyors

Subject to the approval of the Lieutenant Governor in Council, Council has broad authority under the Act to make regulations related to professional standards and the manner in which the Association carries out its objectives. The authority includes regulation making abilities relating to representatives to council and the composition and duties of committees under the Act, practice and procedures before committees, relating to issuing and suspension of licensing, prescribing a code of ethics, defining professional misconduct, prescribing the form of monuments.

90 Ministry of Natural Resources and Forestry Act, RSO 1990, c. M. 31, at s.5, as am.
93 Surveyors Act, RSO 1990, c. S. 29 at s.3.
Presently, survey standards are set out in regulation, O. Reg 216/10, *Performance Standards for the Practice of Professional Land Surveying* and regulation of monuments is set out in O. Reg. 525/91, *Monuments*. Regulations concerning licensing, continuing education, standards of practice, a code of ethics, advertising defining professional misconduct, and designations are set out in the General Regulation RRO 1990, Reg. 1026. Members must confirm the regulation before requesting that it be approved by the Lieutenant Governor in Council. Bylaws relating to the administrative affairs of the Association (for example, banking, forms for internal use, management of Association property, conducting meetings, providing for additional committees) may, with approval of Association members, passed and do not require further approval by an outside body.

**Committees**

A number of committees within the association are identified and given particular powers and obligations under the Act.

- Executive Committee
- Academic and Experience Requirements Committee
- Registration Committee - licensing of applicants and certificates of registration
- Complaints Committee - consider and investigate complaints against members
- Discipline Committee - determine allegations of professional misconduct or incompetence, may issue orders relating to licence
- Fees Mediation Committee - mediates and may arbitrate written complaint by client against member concerning fees charged for services.

There are no provisions for a committee whose functions resemble those of the ALSA Boundary Panel, that is to say, to review and provide advice on issues that arise where multiple surveyors are in disagreement. Matters before the Fees Mediation Committee involve surveyor-client disputes over the relatively narrow issue of fees.

Boundary disputes which will generally involve a disagreement between surveyors over an ambiguous boundary or complex retracement problem, are initiated by the land owner before the Director of Titles by application under the *Boundaries Act*.

There is an oversight power of the Minister over the Association which includes a power of the Minister to review the activities to Council, request Council to undertake activities necessary to carry out the intentions of the Act and to advise Council with the
implementation of the Act and regulations.\textsuperscript{94} The Minister responsible for the Act is the Minister of Natural Resources. The Minister of Natural Resources also has responsibility for the administration of the \textit{Surveys Act}, under which survey methods are set out both in the act and the regulation and is also responsible for the \textit{Ministry of Natural Resources Act} which provides the authority for the Surveyor General.\textsuperscript{95}

\textsuperscript{94} \textit{Surveyors Act}, RSO 1990, c. S. 29, at s.6.

\textsuperscript{95} \textit{Ministry of Natural Resources Act}, RSO 1990, c. M. 31, at s. 5.
Appendix C: New Brunswick Example

New Brunswick Director of Surveys

In New Brunswick, the Surveys Act\(^6\) provides for the designation of a surveyor in the role of Director of Surveys (s.3) whose responsibility it is to establish and maintain coordinate monuments. The Act further sets out duties of the Director as they specifically relate to a coordinate based survey system and to integrated survey areas (sections 4-6).

Conduct of Surveys

The brief regulation made under the Act, General Regulation, NB Reg 84-76 sets out a number of specific instructions related to the conduct of surveys and further gives the Director of Surveys the power to "issue instructions governing the standards of survey and the content of subdivision plans." This recognizes the importance of further details in addition to those standards set out in statute in order for a functional and consistent survey system.

Association of New Brunswick Land Surveyors

The powers and duties of the Association of New Brunswick Land Surveyors is set out in the New Brunswick Land Surveyors Act, 1986, c. 91. The objectives of the association are set out in statute and comparable to those of the other equivalent provincial associations - regulating the practice of professional land surveying, governing its members in the interest of serving and protecting the public trust. More specific objectives are set out by the Act and these relate to developing standards of knowledge, skill, qualification, professional ethics and further promote public awareness of the association and cooperate with other professional organizations. A broad suite of powers are conferred on the Association by the Act in furtherance of the Association's statutory objectives including but not limited to providing for the governance and discipline of the profession, establishing and maintaining a register, providing for a means of determining competency (e.g. setting exams), establishing internal committees, investigating complaints.\(^7\) To this end the New Brunswick Act also sets out the requirement for and the duties and powers of and Executive Council, a Discipline Committee

\(^6\) RSNB 2011, c 226.

\(^7\) Ibid. at s. 6.
and a Complaints Committee within the Association. The Executive Council has the governance role over the Association, the Act does not require that the Director of Surveys be a member of the Executive Council.

Unlike other jurisdictions in which regulation making powers are delegated by statute to members of the profession (usually to the professional regulatory organization), in New Brunswick it is the Lieutenant Governor in Council who has sole authority under the Surveys Act to make regulations:

(a) respecting coordinate monuments and legal monuments;
(b) prescribing standards of survey;
(c) respecting the record of survey;
(d) prescribing forms and the procedure for submitting reports, notes and plans of survey;
(e) respecting large scale mapping;
(f) prescribing penalties for violation of regulations;
(g) for the better administration of this Act.98

Such a model removes considerable authority from the profession in establishing rules and regulations for practice at the level of statute. However in practice, principles of good governance in regulation-making would require input and involvement of those stakeholders impacted by the regulations in their development. While regulation making authority rests with the Lieutenant Governor in Council, such authority would not be exercised without considerable direct involvement from representatives of the survey profession. Where other jurisdictions delegate regulation making authority to members of the profession, such regulations must be approved by the Lieutenant Governor in Council before they become valid so there is a gate-keeping role for this office in either case and regulations are not under the absolute authority of the professional association or office to whom there is a delegation in the respective Act.

While there are no regulation making powers conferred on the Association by statute, the Association does have power to make by-laws, which must be approved by a two thirds majority of association members. The current by-laws of the Association address membership requirement, fees and dues, set out procedures for the handling of discipline, establish a number of non-statutory committees, set out a standards manual and list a canon of ethics for the profession.

98 Surveys Act, RSNB 2011, c 226 at s. 15.
Land Titles Registration in New Brunswick

The New Brunswick Land Titles Act, SNB 1981, cL-1.1 sets out provisions for the appointment of a Registrar General of Land Titles by the Lieutenant Governor in Council. The Registrar General may conduct hearing and issue orders with respect to very limited questions under the Act concerning Condominium properties,99 however, generally the role is one of responsibility over the administration of the land registration system, both in terms of setting requirements, like the Director of Titles in Ontario, and accepting and coordinated registered documents. The Registrar General approves the format for electronic instruments, sets requirements for information that is to accompany certain instruments, assigns numbers to registered instrument, determines applications relating to rights of indemnity under the Act.100 Decisions of the Registrar General under the Act are appealable in court.101

Like Ontario, New Brunswick has a hybrid of the registry and land titles system.

Dispute Resolution in New Brunswick through Registrar General

For boundary disputes and situations of uncertainty over boundary location, in New Brunswick the procedure for addressing such questions begins with an application by certain parties specified by the Act, such as an owner with an interest in the parcel, a surveyor (with consent of the owner), the Director of Surveys, a local government that is made to the Registrar General of Land Titles. The application procedure and the adjudicative powers of the Registrar General of Land Titles to conduct a hearing, and issue orders is comparable to that of the Director of Titles under the Ontario Boundaries Act. Appeals of orders of the Registrar rest with the Court of Queen's Bench.102

Regulations

In terms of regulation making relating to standards and procedures for surveys, proceedings by the Registrar General, corrections of plans of survey, filing of plans of survey under the


100 Land Titles Act, SNB 1982, c. L-1.1.

101 Land Titles Act, SNB 1982, c. L-1.1 s. 79.

102 Boundaries Confirmation Act, RSNB 2012, c. 101 at ss. 6 – 13.
Act, this authority is held by the Lieutenant Governor in Council,103 though, as noted above principles of good governance would call for significant contribution from and consultation with impacted stakeholders in preparing such regulations.

103 Boundaries Confirmation Act, RSNB 2012, c. 101 at s. 21.
Appendix D: British Columbia Example

Association of British Columbia Land Surveyors

Common to other jurisdictions, the Association of British Columbia Land Surveyors is created by statute, the Land Surveyors Act¹⁰⁴, which also give the association powers to create by-laws dealing with governance, discipline, professional standards, and other matters concerning its administration.¹⁰⁵ These by-laws are filed with the Minister.¹⁰⁶ The Board of Management of the Association carries out essentially the same functions as the Council in other provinces including the maintaining the discipline and professional standards of members, hearing of complaints and disciplining members.¹⁰⁷ One function of the Board set out in statute is aimed at dispute resolution between members and stated as follows:

s.7 (b) preventing or conciliating misunderstandings between members;

The mechanism for doing so is not prescribed but the presence of this requirement in legislation speaks to the importance of maintaining the unity and integrity of the profession, something that is often supported in the language of professional codes of ethics. The Alberta Land Surveyors Association Boundary Panel is aimed at a similar goal through the early and informal handling of disagreements between surveyors.

The Surveyor General of British Columbia is required by statute to be a member of the Association's Board of Management¹⁰⁸, similar to the appointment by statute of the Surveyor General to the Association of Ontario Land Surveyors Council.

The Association is also tasked with establishing a code of ethics which does not appear in legislation, but similarly to other provinces speaks to the exercise of professional judgement, maintenance of client confidentiality, and maintaining and enhancing the public trust. Survey plan rules are developed by the association, though they must be approved by the Surveyor General.¹⁰⁹

¹⁰⁴ RSBC 1996, c. 248 at s 2.
¹⁰⁵ Ibid., at s 5.
¹⁰⁶ Ibid., at s 6.
¹⁰⁷ Ibid., at s 7.
¹⁰⁸ Ibid., at s 6(2)(b).
¹⁰⁹ Ibid., at s 75.
Surveyor General

Through the *Land Title Survey Authority Act*, and an operating agreement with the province, a regulatory authority independent from government with a mandate to manage, operate and maintain the land titles and survey systems of the province is created.\(^{110}\) It is from within the Land Title Survey Authority that the BC Surveyor General is appointed.\(^{111}\) The powers of the Surveyor General are outlined in the *Land Survey Act* and consist of approving the types of control monuments and reference posts to be used, specifying requirements and standards for electronic submissions of plan, field notes, date; issuing instructions and setting rules for certain types of surveys.\(^{112}\)

Dispute Resolution

While the Director of Titles in Ontario is tasked with hearing claims made under the Land Titles and Boundaries Acts in that province, in British Columbia, petitions to have one’s title investigated and its validity declared are made directly to the Supreme Court.\(^{113}\) Certain supporting particulars are set in statute and the court has the power to refer the petition to the Registrar of Titles or an officer of the court. While this model for a path of dispute resolution does refer the matter to the Court, it does represent an expedited process relative to an action that might be brought under the *Rules of Civil Procedure*. The Act itself sets out the goals of expediency and cost effectiveness in resolving such petitions.

\(^{s. 30}\) *This Act must be construed and carried out to facilitate, as much as possible, the obtaining of perfect titles by the owners of estates in land, through the simplest machinery, at the smallest expense and in the shortest time, consistent with reasonable prudence in reference to the rights or claims of other persons.*\(^{114}\)

\(^{110}\) *Land Title Survey Authority Act*, SBC 2004, c. 66.

\(^{111}\) *Ibid.*, at s. 34.

\(^{112}\) *Land Survey Act*, RSBC 1996, c. 247.

\(^{113}\) *Land Title Inquiry Act*, RSBC 1996, c. 251.

\(^{114}\) *Ibid.*, at s. 30.