

Report to the Council
of the Alberta Land
Surveyors' Association

Boundary Panel Review

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Summary

The ALSA Boundary Panel has been in existence for about five years and has created files for fourteen cases. These cases have had varying degrees of success in resolving boundary uncertainty. The Panel serves a very useful purpose of potentially being a more cost and time efficient alternative to a Section 9 Board of Investigation or settlement through the Courts.

As a non-statutory committee of the ALSA, the Panel can only function within its limitations. The powers of the Panel are severely limited by this and by its need to avoid excessive liability. As a volunteer based committee, spread across the province, it suffers from communication and continuity issues. There are a couple of issues that may restrict the Panel's ability to provide an open and honest forum for ideas. As a relatively young program, its scope is evolving. The funding for the committee, while significant, is not being used to its potential. While there are a number of potential sources of cases in the future, it is difficult to predict the short and long term case load. If the Panel is not able to live up to its potential as a quicker and cheaper alternative, the members of the Association will be reluctant to utilize it.

There are some issues that do not have a quick and easy solution and will require some more thought and effort before pursuing them. Giving the Boundary Panel more power to make a binding decision will probably require legislative change if it is decided to pursue this route.

There are many things that can be done in the short term to streamline the program, within the current limitations of the Panel. By addressing the issues presented in this report, the Panel may be able to handle more cases, better; the better that it handles those cases, the more that members will be encouraged to bring before the Panel.

The Appendix gives a summary of the recommendations included in this report.

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1.0 Introduction

In May 2010, I was hired to research and write a report for the ALSA Council on the Boundary Panel. In my research, I looked at what the Panel has done well, what it has done not so well, and how we can improve it so that it works better in the future.

In this report I will first look at the background information pertaining to the Panel. I will discuss the nature of boundary uncertainty and alleged survey error. I will discuss the genesis of the current Boundary Panel. I will look at the cases that have come before it so far. I will then take a quick look at what other Canadian jurisdictions are doing to resolve boundary uncertainties.

I will then look at some of the factors that are impeding the Panel from resolving issues as well as it can. I will discuss the limitations on the powers of the Panel as a non-statutory committee of the ALSA. I will look at some of the communication and continuity issues that have plagued the Panel and look at maintaining an open and honest discussion. I will discuss the scope of current Boundary Panel as compared to a Section 9 Board of Investigation and some of the sources of cases.

I will then make some recommendations of how to overcome some of these problems. I will look at some ideas on how to resolve the limitations on the powers of the Panel. I will review the Boundary Panel as a whole group and how cases are prepared, conducted and followed up. I will recommend how to maintain an open and honest discussion. I will make suggestions on how the funding for the panel can be used to resolve problems.

In the end, I hope that I will have provided the Council with a comprehensive overview of the Panel so far, and give them some ideas on how the Boundary Panel can be employed to its potential. I have included a Summary of Recommendations in the Appendix.

2.0 Background

Before discussing the issues, I will discuss the nature of boundary uncertainty, give a summary of the history of the panel, a quick synopsis of the cases and a brief look at other Canadian jurisdictions.

2.1 Boundary Uncertainty

According to the current Boundary Panel terms of reference a “boundary uncertainty occurs when the opinions of two or more Alberta Land Surveyors differ as to the position of a corner or boundary of property. A boundary uncertainty may be a result of an alleged error in survey.”¹ ‘The Law and Practice of Land Surveying in Alberta’ describes survey errors as being “errors in judgment or technical errors in undertaking computations or in marking field boundary corners”². It lists a number of sources of boundary uncertainties:

- a. Monument were used to mark a new boundary and an error in placing the monument occurred. Under sections 36 or 45 of the Surveys Act the monuments so placed still governs the corner.
- b. An error was made in re-establishing a lost corner by incorrectly placing the re-established monument; (The professional assessment of the best evidence was good but an error was made in physically placing the new monument).
- c. An error was made in professional judgment by not using the best evidence in re-establishing a lost monument, by poor assessment of what was the best evidence, or by a failure to obtain all the evidence available.
- d. There is conflicting opinion between two or more professional land surveyors as to the best evidence to be used.
- e. Coordinates are used to create a boundary and an error in the computed coordinate value is made. Under section 47 of the Surveys Act, the coordinates still govern the position of the property corner, until the certificate required by section 47 is filed [as proof that the monuments have been placed].
- f. An error was made in placing a monument to mark a boundary created by computed coordinate values. After the filing of the certificate under section 47 of the Surveys Act, the monument now governs the position of the property corner.
- g. An error was made in creating a boundary by textual description that is ambiguously worded, so that more than one interpretation or an impossible parcel configuration results.
- h. An error was made by a professional land surveyor in interpreting a textual description.
- i. An error was made in laying out property corner marks for a boundary created by a textual description.
- j. An error was made in the dimension or angular relationship on a descriptive plan used to create a boundary.
- k. An error was made in marking a property corner of a boundary created by a descriptive plan.

¹ Boundary Panel Terms of Reference. Alberta Land Surveyors’ Association, Feb 2009

² Monroe E. Kinloch and R.A. Bassil. “Chapter 3: Parcel Boundaries.” The Law and Practice of Land Surveying in Alberta. ed Alec McEwen. Calgary, AB: Alberta Land Surveyors’ Association, 2007. §3.74

1. A dimension error was made in expressing a unit boundary length on a condominium plan, thereby which producing an incorrect unit area.³

The text then goes on to state the statutory methods of resolving these issues through the Surveys Act, and through the Courts, but is silent on the role of the Boundary Panel⁴. These situations tend to be complicated by the retirement and passing on of land surveyors⁵.

2.2 Historical Summary

In 1987, the current Surveys Act came into force. Section 9 allows for a survey error investigation. It states that:

The Director [of Surveys] shall on receipt of a written notice from a land owner, the council of a municipality, the Council of the Alberta Land Surveyors' Association or a Registrar [of Land Titles] stating that the position of a corner or boundary is in question as the result of an alleged error in a survey or may, for any reason the Director considers sufficient, conduct an investigation and report the Director's findings to the Minister.⁶

It goes on to say that the Minister may appoint a Board of Investigation, consisting of a lawyer, an ALS and a public member to investigate the error. The Board has the power to compel a witness to give testimony and has the powers and duties of an arbitrator under the Arbitration Act. It may also "order that surveys and survey plans be varied, altered or amended in the manner that it directs", as well as order that costs be paid. An appeal of its decision can be made to the Court of Queen's Bench.⁷

In theory, these are very broad and effective powers. In practice, the Director of Surveys office has interpreted the scope of Section 9 quite narrowly. In January 1991, Dick Bassil, then the Director of Surveys, submitted an article to ALS News, titled "Intent and Application of Section 9 The Surveys Act". It included a "Report on the Application of Section 9 The Surveys Act (c. S-29.1, S.A. 1987)", by C.W. Youngs, ALS⁸. According to The Law and Practice of Land Surveying in Alberta, "it has been interpreted to apply to matters that result from overlapping parcels"⁹. To date, there have been five cases that have been before a Board of Investigation. It is not a cheap or easy process, nor should it be given the authority of the Board.

As a result of the narrow interpretation of Section 9, there was significant support for the ALSA to create a solution to resolving boundary uncertainties and alleged survey errors. It needed to be simpler and cheaper than either a Section 9 investigation or resolution

³ Kinloch and Bassil, 2007, §3.75

⁴ Kinloch and Bassil, 2007, §3.76-3.79

⁵ Haggerty, John, ALS, email correspondence with the author, 29July 2010

⁶ Surveys Act, §. 9(2), R.S.A. 2000, c. S-26

⁷ Surveys Act, s. 9, R.S.A. 2000, c. S-26

⁸ R.A Bassil. "Intent and Application of Section 9 the Surveys Act." ALS News, Jan 1991

⁹ Kinloch and Bassil, 2007, §3.77

through the Courts. At the 91st AGM of the ALSA, in April 2000, a motion was moved by Bill Hunter ALS and seconded by David Thomson, ALS, that:

it is recommended that Council of the ALSA consider establishing a committee charged with preparing a white paper for presentation to the Government of Alberta with respect to establishing a Statutory Boundary Tribunal to provide an avenue to resolve boundary uncertainties and disputes as an alternative to resorting to the court process.¹⁰

The motion was discussed among the membership and passed.

In 2001, Ken Allred, ALS, submitted a report to the ALSA Council entitled “The Need for a Statutory Boundary Tribunal in Alberta”¹¹. In it he outlined a proposed action plan that recommended doing significant review of related legislation within Alberta and in other jurisdictions, prior to creating a committee to deal with the issue.

In the same year, ALSA Council created a Statutory Boundary Tribunal Committee to further Mr. Allred’s research and to identify options including possible legislative change. After some difficulty in defining the scope of the issue, the committee recommended to Council that, in principle, Section 9 is suitable for dealing with boundary uncertainties as a result of survey errors. In September 2002, Council replaced this committee with the Section 9 Ad Hoc Committee, with more focused terms of reference than its predecessor.¹² This committee came up with the original terms of reference for the Boundary Panel.

By 2005, a Boundary Resolution Process had been developed, consisting of two phases. The first phase was to take place if the surveyors involved could not come to an agreement informally and could be assisted by a mediator. If mediation did not successfully resolve the issue, or was not applicable in that case, the matter could be referred to the Boundary Panel. The Panel could then convene and determine what the best solution to the boundary uncertainty or alleged survey error was.¹³

Since then, the Boundary Panel has gone through a couple of major changes. The mediation phase was found to be ineffective. This was in part due to the mediator wanting to come to a compromise solution instead of trying to determine the true location of a boundary. This was not to discourage the surveyors involved from coming to an agreement between themselves; there is still room for this discussion, just without a formally trained mediator. In 2008, a new funding model was introduced that provided \$2.50 from the sale of all iron posts and marker posts to go towards funding the Boundary Panel. The terms of reference were updated in 2009.

¹⁰ “Recommendation #1 to Council.” Report of Proceedings of the Ninety-first Annual General Meeting. Alberta Land Surveyors’ Association, April 2000. Pg 61

¹¹ G.K. Allred. The Need for a Statutory Boundary Tribunal in Alberta. Report to Council of the Alberta Land Surveyors’ Association. Edmonton, AB, 22 Feb 2001

¹² Council Report, Alberta Land Surveyors’ Association, Edmonton, AB, 26 Sept 2002

¹³ Section 9 Ad Hoc Committee. Boundary Resolution Process. Report to Council of the Alberta Land Surveyors’ Association, Edmonton, AB, 19 Jan 2005

2.3 Summary of Cases

Since 2005, there have been 14 cases that have been assigned file numbers. Some of the highlights of the cases are as follows:

- Case 2006-1 was referred to the Panel and assigned a case number but appears to have not been pursued beyond that point.
- Case 2007-1 involved an uncertainty over a re-established corner in a rural area. It was heard by the Panel and one of the surveyors involved registered a monument plan based on the Panel's recommendations.
- Case 2007-2 involved conflicting adjacent RPR's in an urban setting where there was a lack of conclusive evidence remaining in the ground. It was recommended that the municipality request a re-survey under Section 48 of the Surveys Act¹⁴.
- Case 2007-3 was discovered during a routine practice review and involved a conflicting re-establishment of a section corner in a rural area. With the Panel's assistance, the surveyors involved agreed to correct their affected plans to reflect the consensus of the best evidence of the location of the corner. However, it appears that there was a misunderstanding. When one of the surveyors involved corrected his plan, the other one disagreed with how he did so and did not follow through on his plan corrections. A boundary uncertainty remains at this corner.
- Case 2007-4 was dropped as a Boundary Panel case as it was decided that it was a title ambiguity issue, not a boundary uncertainty or alleged survey error issue, and therefore outside the scope of the Panel. It was given to the Land Titles Office to resolve.
- Case 2008-1 involved a difference of opinion between two surveyors on the re-establishment of a blindline. The Panel met and made an unofficial verbal decision but then the Panel hired an independent surveyor to do an investigation survey. The final report contradicted the verbal opinion voiced during the hearing. One of the surveyors involved has objected strongly to this change and the lack of transparency that appears as a result of it. This case is not yet resolved.
- Case 2009-1 is another case that involved conflicting RPR's in an urban setting. An independent surveyor was hired to do additional research. The Panel made recommendations on what was the best available evidence. The RPR's have been revised. As a more permanent solution, one of the surveyors involved has submitted to the Association two quotes of proposals; one for a monument plan showing evidence found and held, and the other for a re-survey under Section 48 of the Surveys Act¹⁵. A decision has not been made on what direction to go on this.

¹⁴ Surveys Act, s 48, R.S.A. 2000, c. S-26

¹⁵ Surveys Act, s 48, R.S.A. 2000, c. S-26

- Case 2009-2 involved a double posting found at a section corner and an east quarter. The surveyor who brought the case forward had taken the initiative of meeting with the numerous other surveyors involved and had submitted a fairly compressive report to the Panel. The Panel met and came to a unanimous decision, writing a rather brief report that same day. The surveyor who had brought the case forward disagreed with the decision itself and was frustrated by the brevity of the report. He has not accepted the recommendations and when I last talked to him had plans of looking for more evidence to support his opinion.
- Case 2009-3 was brought to the Director of Surveys by an affected landowner and was referred to the Boundary Panel. It involved posts planted but never shown on a registered plan. An independent surveyor was hired to do an investigation survey. He did the research, and submitted his report. The report was accepted by the Panel and forwarded to the Director of Surveys. The report spent six months at the Director of Surveys office before it was determined that there were questions that still needed answering. After doing about 30 minutes further research, the investigating surveyor was able to address the Director's concerns. It is currently back at the Director's office awaiting his response. At this point, this case is not resolved but may be easily wrapped up with a little bit of encouragement.
- Case 2009-4 was resolved with discussions between the two surveyors involved.
- Case 2009-5 was a complicated case that originated with the DLS survey of the 5th Meridian and involves several sections of land and numerous surveyors through the years including about a dozen active ALS's. The surveyor who brought the case forward provided a very comprehensive report and presentation to the Panel. The Panel members that I talked to agree that this surveyor did more than sufficient research to alleviate the need for an investigation survey. However, the Panel's report has not been issued yet and the initiating surveyor is getting very frustrated and disillusioned at the delay it is causing his client.
- Case 2009-6 involves a double posting at a section corner. An investigation survey has been performed and reported. A hearing has been scheduled for 17 Aug 2010.
- Case 2010-2 was determined to be a title error. The chairman of the Boundary Panel is working with the Land Titles Office on a solution.
- Case 2010-3 was brought to the Panel from a practice review. The hearing was held on 15 July 2010. It involved a case that was brought to the Panel by a member who was going through a practice review. It involves a section corner with two re-establishments, none of which are conclusively at the original location. The hearing went smoothly, and the written report is pending at this time.

As one can read from the past cases, the majority have yet to resolve the uncertainty for various reasons. In numerous cases the uncertainty could be resolved with the application of resources available to the Boundary Panel, whether financial or just procedural effort.

2.4 Other Canadian Jurisdictions

In the course of my research, I contacted a number of individuals with knowledge of other Canadian jurisdictions to see if they had a mechanism within their system to deal with boundary uncertainty. Solutions from other jurisdictions may not be applicable in Alberta due to differences in survey and title systems as well as differences in statutory and case law. However, their ideas may be able to give us some insights in how we can improve our system.

2.4.1 British Columbia

BC used to have provisions in their statutes to compensate land owners and surveyors in dealing with boundary uncertainties, but do not have any thing in their present legislation. At the time of our discussion, they were in the very early stage of setting up a committee to deal with this issue. They are tentatively considering using funds from their checklists (their funding source parallel to our post sales) to finance the initiative. Their LTSA (Land Titles Survey Authority) is willing to consider legislative change to allow for this should it be necessary¹⁶. They are interested in keeping in touch with our Boundary Panel to share ideas.

2.4.2 Saskatchewan

When I conducted interviews in Lloydminster, we discussed how the SLSA solves boundary uncertainties. In Saskatchewan, plans are still examined prior to registration. An SLS can do a “change order” to correct his or her own plan; an active SLS can make the change order for an SLS who is no longer around. As well, they tend to place more emphasis on the intent of the prior survey when there is ambiguity.¹⁷

2.4.3 Ontario

In Ontario, boundary uncertainty can be resolved through a confirmation process pursuant to the Boundaries Act.¹⁸

The Boundaries Act provides that where doubt exists as to the true location on the ground of any boundary of a parcel, application may be made to the Director of Titles appointed under the Land Titles Act to confirm the true location of the boundary on the ground. The Director, of his own initiative, may take proceedings under the Act and engage a surveyor to make a survey and a plan of a parcel or any boundary thereof.¹⁹

¹⁶ Chuck Salmon, BCLS (ABCLS Registrar), in telephone conversation with the author, 29 June 2010

¹⁷ Lee Anderson, ALS, SLS, in conversation with the author, 26 May 2010

¹⁸ Boundaries Act, R.S.O. 1990, c. B.10

¹⁹ David W. Lambden and Izaak de Rijcke. Boundaries and Surveys. Ontario: The Carswell Company Limited, 1985. §115

The Act lays out who can make an application, including an affected land owner, a Council of a Municipality, a Minister of the Crown, the Surveyor General of Ontario or of Canada, and a surveyor with consent of an affected land owner. If some one objects to the location of the boundary, they may file a written statement to the Director. The Director may then hold a hearing after which the Director may confirm the location of the boundary or order that a survey and plan be amended. This decision may be appealed to the Divisional Court but “this provision must be given a restrictive interpretation appropriate to the intent of the Act”.²⁰

The boundaries confirmed and certified by the Director and defined by the monuments shown on the plan are deemed, notwithstanding any other Act, to be the true boundaries of the parcel, and that after the plan is registered, the plan supersedes all corresponding portions of all former registered plans and descriptions. The Director may order the removal of any monument that conflicts with any boundary so confirmed.²¹

2.4.4 Quebec

Quebec has probably the most developed system for dealing with boundary disputes. Their system of “Bornage” covers three scenarios:

- “Bornage à l’amiable (mutual consent bornage) where both parties (land owners) settle on the choice of a land surveyor and accept his or her decision
- Where both parties settle on a choice of a land surveyor, but one or both parties do not accept the decision of the surveyor, and it goes to court
- Where the surveyor is appointed by the Court, who then submits a report to the Court and acts as an expert witness and is then instructed by the Court to place monuments.

In all three types of situations, the end result is placement of monuments and registration of the surveyor’s report (process-verbal) at the land titles office. This can not be contested.” There was a major change in the early 1990’s with a new Civil Code and Code of Civil Procedures, but it did not have any major effects on the Bornage process.²²

²⁰ Lambden, and de Rijcke. 1985, §117

²¹ Lambden, and de Rijcke. 1985, §118

²² Jean-Claude Tétreault, CLS, a-g, P. Eng, MBA (Executive Director ACLS) in email correspondence with the author, 29 May 2010.

2.4.5 Maritimes

Nova Scotia and PEI do not have any legislation for resolving boundary uncertainty. Traditionally, under the Registry System, it has either been settled in the Courts the old fashioned way or if two landowners could agree on a boundary, they could consent to a surveyor's plan showing this agreed boundary with notes. This can be followed up with a lawyer executing a Boundary Line Agreement document. This has been used effectively in both Nova Scotia and PEI. In Nova Scotia, the move to a Land Registration System (a Land Titles Program) about a decade ago has not included any good procedures for resolution of boundary uncertainty. In fact, the Land Registration Act (LRA)²³ has caused a great deal of conflict in areas of occupation which otherwise might be deemed to be adverse possession. Occupation that meets 20 years under the Limitation of Actions Act²⁴ need only be accompanied by two statutory declarations and the lawyer can guarantee title to the occupied area under the LRA. Also, the new Land Registration System in Nova Scotia is full of examples where poor research of land descriptions has resulted in overlaps of adjoining properties and other problems.²⁵ The former Chief Surveyor of PEI had done significant research a number of years ago and enthusiastically endorses Quebec's system.²⁶

New Brunswick has a Boundary Confirmation Act²⁷ very similar to Ontario's Boundaries Act, and appears to have used it as a template. The only difference with this legislation that stands out is that it explicitly states that the Registrar General of Land Titles has the power to compel the attendance of a witness and the production of any information that they consider relevant. It is also interesting to note that the French language version of this Act is "Loi sur la confirmation du bornage", linking it to the Quebec system.

2.4.6 Other Jurisdictions

I did not receive any response from my Manitoba or Newfoundland. There is no mechanism within the ACLS²⁸.

²³ Land Registration Act, S.N.S. 2001, c. 6

²⁴ Limitation of Actions Act, R.S.N.S. 1989, c. 258

²⁵ James Banks, PEILS, CLS, a-g, in email correspondence with the author, 26 May and 30 July 2010.

²⁶ Serge Bernard, PEILS, in telephone conversation with the author, 28 July 2010.

²⁷ Boundary Confirmation Act, R.S.N.B. 1994, c. B-7.2

²⁸ Tétreault, 29 May 2010.

3.0 Issues

There were a number of common threads throughout the interviews that I conducted. On some topics, there was a wide variety of viewpoints whereas in others, most opinions pointed in one direction with little to no dissent.

3.1 Powers of the Boundary Panel

There is significant frustration among those who have been involved with the Boundary Panel that it can not make a binding decision. As a non-statutory committee of the ALSA, there is nothing in the Act or Regulations that compel a surveyor to follow through on the recommendations of the Panel if he or she professionally disagrees with it. The current terms of reference state that “The Boundary Panel may recommend how the Alberta Land Surveyor(s) may fix the problem but not express an opinion as to the location of the boundary”²⁹. In his “Review of Proposed Panel Terms of Reference and Update of January 28, 2004 Opinion”, David Jardine of Shores Jardine LLP, states:

In my opinion, while some of the proposed changes to the Boundary Panel process raise the risk of liability slightly, the overall risk of liability remains low so long as the process remains a process to provide peer advice based on the evidence before the panel but not a process to make a final determination regarding a boundary uncertainty.³⁰

Many of those that I interviewed felt that this has a crippling effect on the process; some felt that the Panel is a waste of time and effort. Panel members have struggled with the idea of making recommendations without giving an opinion. Participants come to the hearing with the expectation of being given some direction.

3.2 Communication and Continuity

In the course of my interviews, I found that there appears to be a number of communication and continuity issues, as discussed in the following sub-sections.

3.2.1 Membership Awareness

Right from the start, there is a lack of membership awareness of the program. One member that I interviewed stated that he vaguely remembered Ken Allred discussing something about it at an AGM years ago and was unable to find anything on the ALSA website about it. Generally, it is not a solution that comes to mind when a surveyor comes across a potential boundary uncertainty. At the recent Getting It Right seminar held in Edmonton, the attendees were asked to discuss what they would do if they were to find two posts at a corner. After discussing the scenario within each table group, they discussed it as a whole. Only one articling student among 34 attendees even mentioned the Boundary Panel at all, and that was to just throw the idea out there. There is very little information about the Panel on the ALSA website. The information that is there is out of date difficult to find. I had to do a site search to find it myself.

²⁹ Boundary Panel Terms of Reference. Alberta Land Surveyors’ Association, Feb 2009

³⁰ David N. Jardine. Review of Proposed Boundary Panel terms of reference and Update of January 28, 2004 Opinion. Letter to Council of the Alberta Land Surveyors’ Association, Edmonton, AB, 28 May 2009

3.2.2 The Boundary Panel as a Group

The Boundary Panel has never met as a group. Unlike other committees, there is little orientation or training for new Panel members. It is recommended that they attend the Administrative Law seminar that the ALSA presents annually for Council and the Discipline Committee, but this is not mandatory or even strongly encouraged. Panel members that I have talked to who have attended it say that it was a useful experience.

One of the other effects of having never met is that they have not discussed the terms of reference as a group and have not had the opportunity to contribute their input to it. In my experience on ALSA committee, the terms of reference are works in progress that the committee members discuss at the start and end of the Association's year prior and subsequent to Council approving them. At one of the hearings, the conversation appears to have gone off on a tangent while the Panel members discussed the terms.

Another effect of having never met as a group is that it influences the group dynamics of the Panel. When Panel members show up at a hearing, they do not necessarily have a rapport with the other Panel members at the hearing beyond professional and personal relationships. It is arguable that this is not necessary, but I feel that it could affect the Panel's productivity.

As with all the ALSA's committees, the membership of the Boundary Panel is composed of volunteers. A screening process is not used to ensure that the Panel is composed of experienced and well respected surveyors. The Chairman does pick the Panel members for each hearing, but can be restricted by availability and geography, as well as other factors.

As volunteers, the Panel can not expect its members to give Panel work higher priority than their livelihood. As a result, Panel work can sometimes get put on the back burner, resulting in delays.

3.2.3 Expectations of a Hearing

There is also a lack of understanding of what is expected of participants appearing at a hearing. One member who had brought a case to the Panel didn't realize that he was expected to make a presentation to the hearing until a week before the hearing was to take place. Even then he was not sure of the format of the hearing. Another member who had been called as a witness questioned the wording on the notice. The notice had "requested" that he attend the "hearing" as a "witness". His first thought was whether he should wear a tie; his second thought was whether he should talk to a lawyer first. He felt that these words were ambiguous. He was not sure of the expectations of the Panel and the level of formality of the hearing. He then questioned the fact that the Executive Director of the ALSA had signed the notice. He was not sure that it was appropriate that the Executive Director request his attendance as a witness at a hearing. He felt that it would have been more appropriate that the Chairman sign the correspondence.

3.2.4 Decision Format

The format of the recommendation of the Panel is not consistent. There have been cases where a recommendation was given verbally at the hearing and then when the written report was delivered, there were significant differences. As well, there has been a wide variety in content of the written report. In one case, the report consisted of one sentence and was written and signed the day of the hearing. The member who has brought the issue forward had put significant time and effort into his case and is frustrated with the brevity of the report regardless of whether he agreed with it or not. In some cases, the written report has taken an excessive time to be written and distributed, causing significant frustration and disillusionment for the surveyors involved as well as their clients³¹. When I interviewed Mike Michaud, the Director of Surveys, he noted that the one report that he had seen lacked detail.³²

3.2.5 Follow Up

There is also a breakdown in communication subsequent to a hearing. This begins with the written report (as mentioned in the previous paragraph), and continues on with ensuring that the practitioners involved do what they say they will do. While the Panel does not have the power to enforce its recommendation, it should be able to expect a professional to follow through with what was agreed to at the hearing. As well, surveyors who had plans affected by a case, but were not directly involved in the solution, have not always been kept in the loop. For example, one of the surveyors involved in case 2007-4 was not aware that it had been dropped (issue of title ambiguity), and so was not certain whether he could file it himself.

Part of this problem is that the Chairman of the Panel is a committee volunteer and has his own private practice that takes precedence over Panel duties. As well, the program is partly administered by the Executive Director of the ALSA, who admits himself that as some one who is not a Land Surveyor, he can not always tell whether every one did what they said they would do. This can range from some one neglecting to do something to some one misunderstanding what was expected and agreed upon.

3.2.6 Director of Surveys

There is not a lot of communication with the Director of Surveys and the Boundary Panel. Some of the cases come to the Panel from the Director's office. One of the cases that came through his office should have been a fairly straightforward case (case 2009-3). As described in the background part of this report, it became excessively drawn out due to lack of communication. As well, the natural progression of some of the cases may be to recommend to Council to forward the case to the Director's office as a candidate for a Section 9 Board of Investigation.

³¹ Jim Maidment, ALS, in conversation with the author, 21 July 2010

³² Mike Michaud, ALS, CLS, (Director of Surveys, Alberta Sustainable Resources Development) in conversation with the author, 20 may 2010

3.2.7 Case Studies

Some of these cases have the potential to be published as case studies for members and articulated students to learn from. Numerous members that I have talked to expressed the interest in having some of these case published. The past and present Directors of Practice Review have shown that cases can be sanitized sufficiently to provide educational value without naming names.

3.3 An Open and Honest Discussion

The Boundary Panel process is reliant on every one participating openly and honestly. Russ Barnes, as the Public Member on ALSA Council, expressed the opinion that it is the professional obligation of every Land Surveyor to do everything necessary to resolve these issues³³. Ideally, when a surveyor encounters a problem with another surveyor's plan, he or she should discuss it with the other surveyor prior to bringing it to the Boundary Panel. A general pattern that I noticed in my research was that surveyors from smaller centres are more likely to talk to their peers. This is supported by the fact that all the cases to date have involved surveyors from Calgary, Edmonton and locations in between.

3.3.1 Formality

It has been suggested that there are some components of the hearing that impede an open and honest discussion. The use of the term hearing and witness and the use of a court reporter and oaths give connotations of a formal judicial body. The best term I have heard was that the Boundary Panel is a "pseudo-quasi-judicial body"³⁴. This is an apt term. While it is based on a quasi-judicial body, it has no statutory authority. The problem is that the more formal that the hearing is, the more likely that the participants will react defensively.

3.3.2 Professional Liability Insurance

The Professional Liability Insurance program has a significant impact on the openness of the process. While discussing a case with a surveyor who had brought the case to the Panel, he noted that one of the other participants was denying any error on his part. *In my interviewee's opinion*, the other surveyor had made an obvious error in judgment. I suggested to him that the other surveyor may have been trying to ensure that he was not jeopardizing his insurance coverage by admitting fault. I emailed Monroe Kinloch and asked if this is a real or perceived issue. His answer was that

This is not a perceived issue. It is true that this aspect of the condition of our (and I think all) insurance programs may handicap the Boundary Panel process by restricting the participants' willingness to freely discuss the issue in case they have a potential claim. The insured is bound by wording in the policy "not prejudice the insurer by admitting liability". The end result in an extreme case of admission could be to lose all or a portion of the claim coverage.³⁵

³³ Russ Barnes (Public Member on ALSA Council) in conversation with the author, 8-9 May 2010

³⁴ Mike Fretwell, ALS, CLS in conversation with the author, 1 June 2010

³⁵ Monroe Kinloch, ALS, CLS (ret) (CCLS Professional Liability Insurance Committee member) in email correspondence with the author, quoted with minor edits with permission, 17 June 2010

3.4 Scope and Funding

The scope of the Boundary Panel is defined in the terms of reference. It states that the process may be initiated when:

- there is a boundary uncertainty in any land within Alberta that is within the legislative competence of the legislature.
- there is a boundary uncertainty that is a result of re-establishment.
- there is a boundary uncertainty as a result of placing a monument or computing a coordinate.
- there is a boundary uncertainty as a result of an alleged error in a field measurement, office computation or drafting.
- there is a boundary uncertainty of a magnitude, which is in excess of the accepted limits of accuracy prevailing at the date of survey.³⁶

It has been left to the Chairman's discretion to determine if a potential case is within the scope of the Panel or not.

3.4.1 Scope

Section 9 of the Surveys Act refers to an "alleged error in survey"³⁷ but does not clearly define the scope of this section. However, the Director of Surveys office has defined this scope quite narrowly. The "Intent and Application" article from the Director does explain their interpretation of "survey error" and gives some guidelines for the application of this section of the Act³⁸. In my interview with the current Director, Mike Michaud, ALS, he stated that in order for him to consider a case as a Section 9 case, it must be conclusive, in his opinion that a Board of Investigation is the best solution to the issue. He told me that he does not consider a disagreement between two surveyors to be a candidate for a Board of Investigation.³⁹ The Boundary Panel has evolved as a cheaper and simpler alternative to this or the Courts and to try to pick up the problems that were not being dealt with by Section 9. In the course of my interviews I found a number of issues that involve the scope of the Boundary Panel.

3.4.2 The Boundary Panel Fund

As stated earlier, in the new funding model, \$2.50 from every iron post and marker post is earmarked for the Boundary Panel. This has resulted in a significant amount of money even in period of decreased post sales, without a proportional increase in expenses for the Panel. It has allowed the ALSA to hire independent surveyors to do investigation surveys for the Panel cases when required, as well as fund this report.

One issue that has not been addressed fully is whether to use Boundary Panel funding directly to resolve issues. In a number of cases, the affected surveyors have put in significant time and effort in trying to resolve the issue, whether prior to the hearing or after. The cost of this effort is currently being born by the surveyor and his or her client.

³⁶ Boundary Panel Terms of Reference. Alberta Land Surveyors' Association, Feb 2009

³⁷ Surveys Act, s. 9, R.S.A. 2000, c. S-26

³⁸ Bassil. Jan 1991

³⁹ Michaud, 20 May 2010

In one case (case 2009-5), the report presented by the member who brought the issue forward was very comprehensive. The consensus of the Panel members who sat at the hearing was that it saved the Panel time and money in eliminating the need for an investigation survey and for any follow up hearings. In another case (case 2009-1), one of the affected surveyors has submitted a quote of the cost for both a monument plan and for a re-survey plan. Currently, according to the terms of reference, the Panel can not award costs⁴⁰.

3.4.3 Proportioning v. Evidence of Occupation

Several members that I interviewed made reference to an era when the Director of Surveys office would only accept re-establishments by proportioning. I asked John Ironstone ALS, formerly of the Director's office about this. He explained that during the 1970's and early 1980's, there was a *tendency* among the plan checking staff to be *more likely* to accept proportioning and *tended* to question re-establishment based on fence lines. This may have led to a perception among surveyors that this was official Director of Surveys policy.⁴¹ An article from Ontario expresses this issue quite well:

The outstanding differences in the two modes of retracement may be expressed in general terms as follows:

- (a) Under the Registry Act, many surveyors show the fencelines or other lines of occupation as the boundaries, without sufficient investigation for survey monuments, and often without sufficient regard for whether or not title has always accompanied occupation.
- (b) Under the Land Titles Act, many surveyors adhere strictly to the measurements and bearings on the register, without sufficient investigation for survey monuments and with complete disregard for occupational evidence.

Both concepts are entirely erroneous and in fact the differing systems of registration have no bearing, or should have no bearing, whatsoever on the duties of a surveyor in retracement work.⁴²

I would suggest that applying either technique, while disregarding the other would very likely lead to a boundary problem. The number of plans that were produced during this period that involve re-establishment is an indication of a potential source of Boundary Panel cases.

One surveyor that I interviewed went one step further and said that when doing a quote for a job, if he sees that there has been any re-establishment of section evidence on a registered plan, he assumes that there is a potential boundary problem, which will require further investigation⁴³.

⁴⁰ Boundary Panel Terms of Reference. Alberta Land Surveyors' Association, Feb 2009

⁴¹ John Ironstone. ALS, in conversation with the author, 18 June 2010

⁴² W. Marsh Magwood, QC. "The Law and the Surveyor." The Canadian Surveyor, ed. Canadian Institute of Surveying. Ottawa, ON, volume 15, No 5, Nov 1960

⁴³ Fretwell, 1 June 2010

3.4.4 Re-surveys

Another issue that involves the scope of the Panel involved a survey done by an ALS that I had interviewed. It involved a small town that has never expanded beyond its pre-1911 townsite survey. Needless to say, the evidence in town was difficult to find. Doing a Real Property Report in the town was cost prohibitive. I know from personal experience that there are a large number of small towns in Alberta with similar problems. He had considered doing a re-survey under Section 48 of the Surveys Act⁴⁴, but opted to register a monument plan as he felt the time and effort would make it too costly⁴⁵. Depending on how broadly we define the scope of the Boundary Panel, these are another potential source of Panel cases.

Similarly, in an urban setting, in two of the existing cases, the best solution would have been a re-survey of the subdivision. This is also a likely source of potential Panel cases.

⁴⁴ Surveys Act, s. 48, R.S.A. 2000, c. S-26

⁴⁵ Tim Martin, ALS, in conversation with the author, 8 June 2010

4.0 Recommendations

The Boundary Panel is a good alternative to the Courts and to a Section 9 Board of Investigation. It can be cheaper and faster than either of these. Most people that I interviewed felt that it is a good concept. However, due to a variety of reasons, it is not living up to its potential. Most cases are either not being fully resolved or are taking an excessive amount of time to resolve. There are a lot of things that can be done to help speed the process along. Until then, members will be reluctant to bring issues to the Panel⁴⁶.

4.1 Powers of the Boundary Panel

As stated in a section 3.1 of this report, there is significant frustration with the fact that the Panel can not make a binding decision. Any time that an interviewee suggested that the Panel needs to have greater power, I asked them how they would give a non-statutory body the power to make a binding decision without changing legislation.

Many members suggested that legislative change was the only way to give it this power, and some endorsed doing just that. This is a big step. If Council feels that the Boundary Panel needs to have the power to make binding decisions, they will need to contemplate legislative change. Otherwise, we will have to work within the constraints of the current legislation. When I interviewed Ken Allred, ALS, MLA, he had reservations about supporting legislative change. He pointed out that we have a section in an existing Act to deal with boundary uncertainty; we should try to make it work. If we can not make it work, only then change it to make it work.⁴⁷

I did receive a few suggestions of how to give the Panel more power without changing the Surveys Act. It was suggested that a Boundary Commission be created. This may require a new piece of legislation to create. While this avenue is a possible long term solution, it would require extensive research beyond the scope of my report to determine its feasibility. It might be along the lines of Ontario's Boundary Act or New Brunswick's Boundary Confirmation Act or perhaps similar to Quebec's bornage system. It should be noted that Ontario's Act can be related to Alberta's Section 9 of the Surveys Act, not just in intent but in the fact that it is a costly, cumbersome process⁴⁸. We are looking for practical solution; creating another body that has the power of a Section 9 Board of Investigation, but a broader scope only solves half the problem if it costs just as much and takes just as long.

Another suggestion was to get the participants to agree prior to the hearing to accept the decision of the Panel. This was met with mixed reactions. In order for this to work, all participants would have to have complete confidence in the Panel's ability to make a fair and sound decision. This may work someday, but I believe that the membership is not ready for that right now.

⁴⁶ Maidment, 21 July 2010

⁴⁷ Ken Allred, ALS, CLS, MLA in conversation with the author, 23 June 2010

⁴⁸ Bruce Clark ALS, OLS in conversation with the author, 9 July 2010

One of the main issues with giving the Panel more power is that the ALSA may take on liability if the Panel were to tell surveyors where the boundary is. It has been suggested that the ALSA should carry professional liability insurance in order to offset this risk. As the Panel evolves, the ALSA's lawyer should be consulted again to see how far it can go without assuming excessive liability.

In the long term changing existing legislation or creating new legislation may be the best way to resolving boundary uncertainties. However, there are a lot of things that can be done right away to make the Boundary Panel function up to its potential within the constraints of the current legislation.

4.2 Communication and Continuity

The communication issues are crippling the potential of the Boundary Panel. Few members are aware of the Panel and those that are aware of it are reluctant to go to it because of the costs in time and effort to get their problem solved. The general pattern is that an issue does not get brought to the Boundary Panel until a problem is unavoidable. By then, the case may involve many active, retired and deceased land surveyors who either were not aware of the problem, or were legitimately able to avoid it for the purposes of their work.

4.2.1 Membership Awareness

There are a number of things that can be done to improve membership awareness of the program. Although not stated in my terms of reference, I assume that there is an expectation for me to write an article in ALS News giving the membership an overview of the results of my research. I am prepared to do so in the fall issue if Council wishes. This can be supplemented with a presentation at Regional Meetings or the "lunch bucket" sessions that the Professional Development Committee is proposing. The ALSA website needs to be updated to give the membership the information that they need if they are considering bringing a potential case to the Panel. It needs to be placed in an intuitive location on the site. It should give the membership some examples of types of cases as well as an idea of the procedure and the current Terms of Reference. The Getting It Right seminar can be updated to make better mention of it.

4.2.2 The Boundary Panel as a Group

I was surprised to find that the Boundary Panel never meets as a group. I believe that there would be significant benefit if the Panel were to meet as a group *at least* once a year to discuss the terms of reference and procedures of hearings. As well as the formal aspect of these meetings, the informal aspect of the meetings will encourage greater rapport among the Panel members.

I have already suggested to Brian Munday, ALSA Executive Director, that he highly recommend to Panel members who have not attended the Administrative Law seminar presented by David Jardine that they do attend the upcoming session. Beyond that, it may be worth the time and effort to get Mr. Jardine or another presenter to create a seminar that is more focused on the Boundary Panel's situation than the current seminar.

A Boundary Panel Handbook could be created to give new Panel members a better idea of what to expect.

The image of the Boundary Panel is reliant on the respect that the participants have for the Panel members' experience and judgment. More thought and effort needs to be put into selecting the members who volunteer for the Boundary Panel. This is not to say anything against the judgment of the past or current Panel members. I observed the hearing for Case 2010-3, where one Panel member had significantly less experience than most other members. I noted that he carried himself with as much professionalism as any other member, contributing productively to the discussion. Council may consider setting a minimum level of experience for membership on the Panel, as well as other criteria that relate to a surveyor's image among the membership of the Association.

Panel members should be paid a significant honourarium for their time and effort of participating in a hearing. This would place a greater expectation on them to fulfill their obligations. The Chairman, in particular, who has additional duties before and after the hearing, should receive compensation for this, as should the member who writes the report, if delegated by the Chairman.

It might be difficult to accept the above two recommendations when there are statutory committees that currently do not have an official screening process or offer an honourarium for its members. However, while not a statutory committee, no other committee within the ALSA has nearly the same direct impact on the public and their land. This places the Boundary Panel in a unique category of committee and I believe justifies the above recommendations.

4.2.3 Expectations of a Hearing

More can be done to assist a member who is going to be at a hearing in preparing himself or herself for the hearing. This can be done not only with more information on the website, but also with a more complete package being sent to participants. All correspondence with participants in a hearing should be signed by the Chairman of the Panel.

4.2.4 Decision Format

I am unconvinced that issuing a written or verbal decision the day of the hearing is advisable. In his seminar at the ALSA 101st AGM, Dr. Brian Ballantyne concisely summed it up as "Ruminate – Sleep on it"⁴⁹. While opinions should be expressed openly during the discussion at the hearing, the final recommendations of the Panel should be made in writing at a later date *within reasonable time*. Each Panel member at the hearing should have the opportunity to submit their thoughts in writing (or email) to the other members, to ensure that each Panel member has had time to think about it uninfluenced by other panel members. The chairman, or some one delegated by the Chairman should then take these and write the report. This report should then be reviewed and endorsed by all Panel members who participated in the hearing. This process ensures that there is

⁴⁹ Dr. Brian Ballantyne. Expertise at the boundary: Vox expertorum. Speaker at ALSA 101st AGM, 22 April 2010.

no inconsistency between a perceived verbal recommendation and the written one and gives a unified recommendation to the participants. There should be a template for the comprehensive written report that ensures that it can stand on its own as a summary of the case. There needs to be deadlines for the report in order to ensure participating surveyors *and their clients* are not unduly impacted by delays. Most of this process is usually being followed, but it should be formalized for consistency. It has been suggested that the report be reviewed by a technical writer or the Association's lawyer. While that may be worth the financial cost, it may increase the lag time by an unacceptable amount.

4.2.5 Follow Up

Similar to the written report, enforceable deadlines need to be set for all other deliverables to ensure that the case gets resolved. This includes field notes and other information from participants being submitted, the report of an investigation survey if applicable, the response by participants to the report and any other activity that needs to be completed to resolve the case. As professionals, it is our responsibility to do what we promised to do. All participants need to be informed of the outcomes regardless of whether they are required to do anything or not.

4.2.6 Director of Surveys

Better communication with the Director of Surveys is necessary in order to ensure that, if a case becomes a Section 9 case, it makes the transition as smoothly as possible. It has been noted that currently, the Boundary Panel has the resources to solve boundary uncertainties but not the power to enforce the solution; the Director lacks the resources to resolve these problems but has the power to enforce them. Ideally, the Boundary Panel can do most of the leg work for a potential Board of Investigation case and then pass the case on to the Director. In order to do this, he must be kept in the loop through the entire process to ensure that all his expectations are met and there are minimum delays. Close liaison with his office is necessary, whether that is added to the terms of reference for the DOS Liaison Committee or through another relationship.

4.2.7 Case Studies

While not all of the cases would be appropriate for case studies, some of them are an invaluable educational tool that has not been utilized. They can be sanitized and published in ALS News. This has the added benefit of increasing membership awareness of the Boundary Panel, bringing this section of the report full circle.

4.3 An Open and Honest Discussion

We need to ensure that all participants come to the table willing to solve the problem.

4.3.1 Formality

In order to function, the Panel has to maintain a fine balance of formality. It must ensure that all participants take the issue as seriously as they should but at the same time every one must feel comfortable to freely express their honest opinion. The Panel as a group, with Council's consent, will have to decide on the formality of the hearing. They will need to consider terms such as witness and hearing as well as whether the benefits of the

court reporter outweigh the costs. Having participants swear an oath adds to the formality and may be redundant as it is a professional obligation to act honestly. As stated in the ALS Oath of Office; “I will...in all things conduct myself truly and with integrity”⁵⁰.

Currently, in a hearing, the Chairman has assumed the role of “Speaker of the House”. He or she is there to lead the proceedings but not to dominate them. This is an effective role of the Chairman. The terms of reference allow for a public member to sit on a hearing. This parallels the Section 9 Board of Investigation. In practice there is not a public member on the Panel. I believe that it would be worth the effort of recruiting a public member for the Panel, even if it would be impractical for them to attend all hearings and meetings.

4.3.2 Professional Liability Insurance

This issue will have to be addressed. In his email, Monroe went on to say that:

...if a practitioner is faced with this situation he should contact the broker to discuss the circumstances. The best procedure is that the claim should be settled first and then the Boundary Panel issues secondly. The ENCON group, our Professional Liability Insurance Committee insurance carrier has a very proactive claims analysis team and can settle most claims within a minimal time frame, certainly faster than my estimated time frame for the Boundary Panel process.⁵¹

While he may be correct about the current time frames for the Boundary Panel, the Panel will need to address this issue.

4.4 Scope and Funding

4.4.1 Scope

Another task for the Boundary Panel as a group, on Council’s endorsement, could be to refine the scope of the Panel. The Panel has had enough experience with a variety of cases since the terms of reference were last revised. The scope should be sufficiently broad to include cases that can not be dealt with by a Section 9 Board of Investigation. It should not be so broad as to bog it down with more cases that they can handle. The scope could be better defined at the Boundary Panel group meeting that I have recommended. The list provided in section 2.1 of this report could provide an initial template.

4.4.2 The Boundary Panel Fund

While no one is suggesting that the Boundary Panel fund pay land surveyors to fix their own mistakes, there are numerous scenarios where the best solution is to spend some money and get the problem solved. There is a big gray area between the two ends of this spectrum and care needs to be taken in setting precedents. The Boundary Panel has a significant fund that can be used to solve boundary issues. A policy should be explicitly

⁵⁰ Oath of Office. Alberta Land Surveyors’ Association

⁵¹ Kinloch, quoted with minor edits with permission, 17 June 2010

set by Council with limited discretion by the Boundary Panel Chairman. It should dictate whether funds can be used:

- to reimburse practitioners who have put in a significant amount of time and effort into preparing a case
- to assist a practitioner in resolving a case when the issue was not a result of his or her own actions
- to assist a municipality in doing a resurvey under section 45 of the Surveys Act
- to cover other costs at the discretion of Council

Having funding available to do investigation surveys is an invaluable resource to the Panel. This should continue, but care should be taken in ensuring consistency in the work and the report of the independent surveyor. Explicit guidelines should be set by the Boundary Panel as a group, and endorsed by Council. It should dictate how these contracts are awarded, the general scope of the investigation, the format of the report, and how any necessary follow up is handled.

4.4.3 Proportioning v Evidence of Occupation

I would suggest that this is a significant source of potential cases. Any technique of re-establishment that is blindly followed without due regard to other possible solutions is a recipe for boundary uncertainty.

4.4.4 Resurveys

Re-surveys under Section 48 of the Surveys Act are a legitimate solution to some Boundary Panel cases. One problem with this is that under section 43, the municipality is responsible for the costs of the re-survey. It is likely that, without significant taxpayer/voter pressure, any municipality would be reluctant to request this. Another problem is that not only is the technical side of a re-survey onerous, the legal side is quite involved. It requires notice be published to give all affected land owners opportunity to have their input, and needs the confirmation of the Minister.⁵²

If the scope of the Boundary Panel were to be broad enough, they might be able to use Boundary Panel funds to help solve these problems. The funds are there and a large portion of those funds are not currently being tapped. In an urban setting, this has been a proposed solution for two existing cases and a potential source for more cases in the future. It is less likely for the small town scenario to come before the Boundary Panel on its own as a discrepancy between two surveys, but this could be pursued as a source of cases in a slower period for the Panel. Discussions with Alberta Urban Municipalities Association may be worth pursuing on this issue.

⁵² Surveys Act, R.S.A. 2000, c. S-26

4.5 Boundary Panel Manager

Brian Munday first proposed the idea that there is a need for a full time employee of the ALSA to manage the Boundary Panel's activities⁵³. When he mentioned this idea to me, I visualized a position parallel to the Director of Practice Review. They would not be a member of the Boundary Panel, having "half an arm's length" from the Panel; managing things in the background. It has been suggested that these duties could be merged with the Director of Practice Review, but I believe that the Boundary Panel needs to be a full arm's length from the PRB, and the Discipline Committee as well as from Council. This is to avoid conflicts of interest and to keep the discussions at hearings from becoming defensive. Council needs to be kept informed on the workload and budget usage of the Panel and the progress of the cases. Council should not be privy details of the specific cases in to maintain confidentiality and in the extraordinary case that a disciplinary case results out of a Boundary Panel case.

There are many things that a full time Boundary Panel Manager can do to address the issues and implement the recommendations in this report. They can:

- work to improve the membership awareness.
- assist the Chairman in organizing Panel group meetings and hearings.
- provide a sense of continuity between the cases
- ensure that obligations are fulfilled and followed up
- assist the Chairman and Executive Director in selecting and working with independent surveyors contracted to do investigation surveys
- provide a liaison with the Director of Surveys on boundary issues, and with AUMA.
- write cases studies of finalized cases
- research larger issues such as the Professional Liability Insurance issue and the possibility of legislative change.

It has been questioned whether the Panel requires an ALS to act as a manager or just a dedicated administrative support staff member. An administrative assistant would be able to provide some of the support required, but I believe that a surveyor would be able to fill much more of the tasks required and would be worth the cost.

I am reluctant to recommend creating a position that becomes such a key component of the process that the ALSA ends up in a similar position that they were in a couple of years ago with Practice Review, desperate for some one to fill the Director's position. I believe that there is enough work to be done to keep a Boundary Panel Manager busy for at least a year. Beyond that, I do not know whether there will be a continued need for this position or whether the Panel will be able to operate on a voluntary basis. I recommend that the Council create this position for a one year term and re-assess the needs at that time.

⁵³ Brian Munday (ALSA Executive Director) in numerous conversations with the author May-July 2010

5.0 Conclusion

The Boundary Panel serves an important function within our Association, and within Alberta's cadastre as a whole. Ideally, we should not need it, but errors exist and differences of professional opinion do happen.

The Director of Surveys interprets Section 9 of the Surveys Act narrowly and there are boundary uncertainties and alleged survey errors that fall outside its scope. A Section 9 Board of Investigation has the power to make binding decisions but lacks the resources to deal with issues quickly and economically.

The Boundary Panel, if employed effectively, has the resources but lacks the power. To give the Panel greater power would probably require legislative change. In the long term, this issue will need to be dealt with.

It is difficult to estimate the number of cases that may come up in the future. Looking at how well the Panel has been able to solve its past and current case load, without a number of improvements, it would be hard pressed to handle any more cases than it has been over the last couple of years. Short of legislative change, there are things that can be done in the short term to help the Panel function to its potential within its limitations. By improving the communication and continuity of the Panel, it may be able to handle more than it has.

The scope of the Panel could to be defined better to ensure that it is broad enough to solve what ever problems it has the ability to solve, but not so broad as to get bogged down in its own workload. The Panel, with a broad scope, is capable taking on cases that are outside the scope of Section 9 as well as lay the groundwork for potential Boards of Investigation.

A full time Boundary Panel Manager would help the Panel achieve its potential. If more cases start getting resolved quickly and efficiently, it will encourage member to bring other cases to the Panel, and more of these issues will get resolved.

Some of these recommendations are long term solutions to fundamental issues that limit the Boundary Panel's function. However, many of the recommendations are things that can be implemented quickly to help the Panel function at its best within its current limitations.

Appendix: Summary of Recommendations

For Council: there are a number of issues that Council, as the governing body of the Association needs to address. In the short term, to ensure that the Panel is able to function to its potential within the current limitations, I recommend that Council:

- endorses terms of reference, scope of cases and hearing procedures updated by the Boundary Panel as a committee
- considers setting a criteria for membership on the Panel
- considers a significant honourarium for Panel members that participate in a hearing, particularly the Chairman (and the member who writes the report if delegated by the chairman)
- considers recruiting a public member for the Panel
- set a policy for directly using Panel funds to solve boundary uncertainties
- endorses guidelines developed by the Boundary Panel as a committee concerning hiring an independent surveyor to do an investigation survey
- creates a full time position within the ALSA to manage the Boundary Panels activities on a one year contract and re-assess the needs at that time

In the long term, Council will need to address the issue of the powers of the Boundary Panel. If Council decides that legislative changes are needed, thought and research must be put into a number of issues to:

- consider giving the Panel itself more power without narrowing its scope
- considering changing Section 9 to broaden its scope without losing its power
- consider creating new legislation to deal with the issue of the Panel's power
- ensuring that it remains a simple, inexpensive, quick and effective method of resolving boundary uncertainties
- ensuring that the ALSA is not opening itself to excessive liability

Boundary Panel: there are a number of activities that the boundary panel should do in to improve their ability to function up to their potential within its limitations. I recommend that the Chairman and the Boundary Panel Manager should:

- improve membership awareness through ALS News, the website and Regional Meetings and the AGM
- encourage Panel members to attend the Administrative Law Seminar
- consider creating a seminar tailored to the Boundary Panel and creating a "Boundary Panel Handbook"
- organize Panel committee meetings and hearings
- provide better information to participants of what to expect at a hearing
- provide a sense of continuity between the cases
- continue to play the role of Speaker of the House during hearings
- select and work with independent surveyors contracted to do investigation surveys
- allow Panel members the opportunity to sleep on their decision, and be able to express their opinion without influence from other members
- while ideas should be freely expressed during the hearing in front of the participants, ensure that a verbal decision is not given at the hearing that may change in the final written report

- create a template for the written report to ensure that it can stand up on its own as a case summary
- ensure the report is written in a reasonable period of time
- set enforceable deadlines for all deliverables from all participants and Panel members
- ensure that all participants are kept informed whether that are required to do anything or not
- improve communications with the Director of Surveys to ease transition from a Panel case to a Section 9 case if necessary
- publish case studies of appropriate resolved cases
- consider creating a liaison with AUMA, depending on the scope of the Panel
- research larger issues such as the Professional Liability Insurance issue and the possibility of legislative change.
- Liaise with other Associations to ensure that ideas are shared

The Boundary Panel should meet at least once a year to discuss:

- updating the terms of reference
- clearly defining the scope of the Panel
- hearing procedures to ensure a balance of formality
- other issues as set by the Council, Chairman or Manager

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