

## A Client's Obligation

By Alec McEwen — This article appeared in the June issue of *Geomatica*, Vol. 58, No. 2, 2004 and is reprinted with permission. Copyright 2004 by the Canadian Institute of Geomatics.

When a land surveyor provides an estimate of the cost of performing a survey, the client is entitled to expect that the final bill will be reasonably close to the estimated figure. Yet the client is not entitled to withhold payment on the grounds that he or she disagrees with the surveyor's findings, provided the surveyor has given the client an opinion that accords with the prevailing professional standard. *Morris Land and Engineering Surveys Inc. v. Goldsen* (2002), 217 Nfld. & P.E.I.R. 65, a small claims action heard by the Prince Edward Island Supreme Court, Trial Division, dealt with both those issues.

The plaintiff company sought payment of the cost of surveying services provided to the defendant, in respect of which it issued an invoice, dated December 17, 2000, in the amount of \$1,747. The invoice clearly stated that it is "Payable Upon Receipt" and that there will be interest charged at 2% per month on all overdue accounts. According to the statement of claim, as at July 31, 2001, the defendant owed the plaintiff \$1,999.34. In addition, the plaintiff sought interest calculated at the rate of 2% per month from July 31, 2001 to the date of judgment, and thereafter at the post-judgment interest rate in accordance with the provisions of the *Supreme Court Act*, R.S.P.E.I. 1988, c. S-19. The plaintiff also claimed costs.

Mrs. Goldsen, the defendant, disputed the claim. She alleged that the plaintiff breached the contract to provide her with an accurate survey plan, and that the plan she received was seriously flawed in its representation of her shore property and its boundaries. She stated that she had presented evidence to the plaintiff showing that the survey was wrong,

and had asserted repeatedly that she would pay the account if the plan were corrected. Mrs. Goldsen filed a counter-claim in the amount of \$8,000 for, among other items, the loss of property and its value resulting from the erroneous boundary determination.

In 1970 the defendant and her husband (now deceased) purchased a 65-acre farm at Point Prim, on which they subsequently built a house. They apparently had no survey made of the property at that time. In 1999 the defendant became aware of a survey plan produced in 1996 by Albert J. Wright, PEILS. This plan, prepared for one of Mrs. Goldsen's neighbours, included land which she believed to be part of her own property. She disputed the accuracy of the Wright survey and requested Dave Morris, PEILS, of the plaintiff company to survey her property, informing him of the dispute. Morris quoted an estimate of \$1,500 and received a deposit of \$500.

Morris stated that he began by studying all the available deeds and plans. He made a title search of three properties (including Mrs. Goldsen's and her neighbour's) going back to the original grant in 1806. He testified that he found the original deeds clear in their description of the boundaries. Based on his research and field survey, Morris prepared a plan, which to his client's dismay, excluded the land she believed to be hers.

Chief Justice DesRoches emphasized that the issue before the court was not the accuracy or otherwise of the plaintiff's survey plan. The sole question to be answered was whether or not the contract had been breached. The judge went on to describe the role and responsibilities of the land surveyor.

A land surveyor essentially is a gatherer of facts. Based on those

facts he is required to form an opinion as to the location of all boundaries and the extent and shape of the property in question. The general standard of care expected of a surveyor is that of a reasonable surveyor performing a similar survey. It is that of a careful, generally accepted and competent practice. Like any other professional, a surveyor is responsible if he or she fails to do the work undertaken with an ordinary and reasonable degree of care and skill.

The chief justice explained that if a contract for surveying services contains specifications and standards of performance that exceed the standard normally required by the surveying profession, the surveyor will be held to those higher standards. In the present case, the oral contract between the surveyor and client did not specify any higher standards of performance. The defendant maintained that when Morris discovered that his survey excluded the piece of land in dispute he should have consulted her and given her the opportunity to instruct him not to complete the plan. Morris received no such instructions. Although aware of the dispute, Morris was simply asked to survey the property, of which his preparation of the plan formed the final stage.

Mrs. Goldsen disputed the accuracy of the Morris plan, and also contended that the Wright survey was mistaken. She advanced detailed arguments in support of her position, citing not only her deed but also the deeds in her chain of title. Chief Justice DesRoches acknowledged the possible validity of her arguments, pointing out that a land surveyor's opinion is always open to challenge. Ultimately a court may have to either affirm the surveyor's opinion



or substitute its own opinion and fix a disputed boundary by court order. Yet a person who retains a surveyor to conduct a survey without providing any limiting instructions cannot refuse to pay the surveyor's invoice on the grounds that he or she does not agree with the survey results.

To rule otherwise would put the legitimate livelihood of many professionals in peril. It would mean, for example, that someone who seeks a legal opinion need not pay for the work if he or she disagrees with the opinion rendered. Such a result is not tenable.

The judge found that since Morris had performed his survey in accordance with the proper surveying practice, no breach of contract had occurred. As to the accuracy of the survey, no judicial pronouncement was possible. The neighbour whose boundary is disputed was not a party to the action, nor did he participate in it. Surveyor Wright did not testify as to how he formed his opinion as to the boundary lines of the neighbour's property. Without hearing testimony from at least those two witnesses, any ruling by the court on the accuracy of the Morris survey would be inappropriate. The defendant established no valid grounds for refusing to pay the plaintiff's account, even though her payment does not mean that she accepts the results of the survey.

Although the plaintiff estimated the cost of the survey as \$1,500, the final invoice came to \$2,100. Deducting the \$500 deposit and applying GST of \$147, left a balance payable of \$1,747. The defendant submitted that she authorized no additional work beyond the quoted estimate, and that she should not be required to pay the additional \$600, which on the plaintiff's invoice is said to be for "Additional Work Above Scope of Work as per Quote." In the chief justice's view, when it became apparent that additional work would be required, it was incumbent on the surveyor to inform

the client of the revised scope of work, and to provide her with a revised estimate for the cost she would incur. The client would then have had an opportunity to either authorize the extra work or to instruct the surveyor not to undertake it. The judge went on to say that although an estimate is a representation of the cost of the work to be undertaken, the final account should not deviate substantially from the estimate that was relied upon when the contract was entered into. The additional \$600 is a substantial deviation and cannot be allowed.

The court ruled that the plaintiff is entitled to judgment for fees of \$1,000 (\$1,500 less the \$500 deposit). The plaintiff is also entitled to interest on the overdue account, at the rate of 2% per month. Although the invoice dated December 17, 2000 is stated to be payable upon receipt, it would not be overdue until at least 30 days after that date, so the interest should be calculated from January 17, 2001 until the date of this judgment. Even though, in the judge's view, an interest rate of 2% per month "seems somewhat excessive," the plaintiff's clients receive ample notice on the invoice of the charges payable on overdue accounts. The interest on \$1,000 calculated from January 17, 2001 to August 17, 2002 is \$456.79, so the amount to which the plaintiff is entitled as fees is \$1,456.79. In addition, the plaintiff is entitled to \$25 for the cost of filing the notice of claim, plus \$100 as a reasonable amount of legal fees. The plaintiff's total judgment is \$1,581.79.

For reasons stated, the court declared itself unable to rule on the accuracy or otherwise of the Morris survey, so it dismissed the defendant's counter-claim.



**Dr. Alec McEwen is actively engaged in Canada and internationally as a freelance consultant in various aspects of Land Administration, including cadastre, land titling, land tenure, and land law. He can be reached by email at :**

**amcewen@telusplanet.net**

## Calendar of Events

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### October 6th to 8th, 2004

GIS in the Rockies  
Denver, Colorado  
[www.gisintherockies.org](http://www.gisintherockies.org)

### October 27th to 28th, 2004

CIG/ACSG Montreal Branch  
Geomatics 2004 -  
A Strategic Choice  
Montreal, Québec  
[www.geomatics2004.com](http://www.geomatics2004.com)

### November 7th to 10th, 2004

URISA Annual Conference  
Reno, Nevada  
[www.urisa.org/annual.htm](http://www.urisa.org/annual.htm)

### November 17th, 2004

World GIS Day  
[www.gisday.com](http://www.gisday.com)

### December 2nd to 3rd, 2004

AOLS Examinations  
Toronto, Ontario

### February 13th to 16th, 2005

2005 GeoTec Event  
Vancouver, British Columbia  
[www.geoplace.com/gt/htm/default.asp](http://www.geoplace.com/gt/htm/default.asp)

### February 23rd to 25th, 2005

AOLS Annual General Meeting  
Huntsville, Ontario  
[www.aols.org](http://www.aols.org)

### March 7th to 11th, 2005

ASPRS 2005 Annual Conference  
Baltimore, Maryland  
[www.asprs.org](http://www.asprs.org)