
February 19, 2013

Winter Pinning Advisory

Forward

It has come to Council's attention that some of our members holding a Certificate of Authorization, as issued by the Association of Newfoundland Land Surveyors, has taken it upon themselves to introduce a practice of "Winter Pinning". It is understood that these surveyors issue regular plans and descriptions during the winter months, with symbology indicating that survey monuments have been placed at the corners of the property; while in actual fact they have not - the practice being that the surveyor would have a field crew revisit the respective sites in the Spring to set the corner makers.

Council of Management for the Association of Newfoundland Land Surveyors wish to go on record and advise members that deferred winter pinning is not in compliance with the current regulatory regime for legal land surveying in the province of Newfoundland and Labrador, in fact this practice if challenged may be considered as a fraudulent act and it is in violation of real property common law.

Reasoning

Land Surveyors Act 1991

The Land Surveyors Act 1991 defines "*Land Surveying*" as "*the interpretation of boundary evidence, the spatial measurement, the demarcation and the textual and graphical definitions of either or both boundaries and points on, over or under the earth or a combination or all of those;*" Key to the discussion at hand is the definition of *demarcation*, which means "*the process of deciding on and setting the boundaries of a piece of land*". This would lead one to understand that demarcation is the setting out of boundary lines, which involves the activity of marking the boundaries with corner monuments.

By-Laws (Land Surveyors Act, 1991)

By Law 19.4 states, "special survey marker must be placed at each corner of a survey or restake where an iron pin can be placed."

Manual of Practice

Section 6 of the Manual of Practice deals with Boundary Monumentation by defining what a monument is and stating that "All property corners shall be monumented, where possible". Some may very well rely on the "where possible" wording, but Council and the Discipline Committee has interpreted this as meaning obstructions created by permanent physical features, such as buildings, bedrock, etc.) It was never intended to provide a convenient means of pinning when the snow conditions improve. Further to the above, Section 2.3 of The Manual

of Practice presents what is recognized (case law and common law) priority of evidence in boundary retracements, and it has "original monumentation" only surpassed by natural boundaries. Deeds/measurements/coordinates are the lowest on the priority list - so how can we as individual surveyors, without a legislative change to create integrated survey areas, promote a survey plan and description to such high esteem as to replace the need for original monumentation. Chief Justice Cooley, wrote that no matter how "erroneous may have been the original survey, the monuments that were set must nevertheless govern...for parties buy, or are suppose to buy, in reference to these monuments, and are entitled to what is within their lines, and no more, be it more or less..."¹. This has been the foundation of real property common law since the 1800s.

Fraud (Criminal Law)

Simply put a **fraud** is an [intentional deception](#) made for personal gain. When a land surveyor leads someone to believe that their property has been monumented, when in fact it wasn't, no matter what the reason, is approaching this simple definition of fraud.

The Canadian courts have held that the offence consists of two distinct elements:

- *A prohibited act of deceit, falsehood or other fraudulent means. In the absence of deceit or falsehood, the courts will look objectively for a "dishonest act"; and*
- *The deprivation must be caused by the prohibited act, and deprivation must relate to property, money, valuable security, or any service.*²

*The [Supreme Court of Canada](#) has held that deprivation is satisfied on proof of detriment, prejudice or risk of prejudice; it is not essential that there be actual loss.*³

Council of Management has considered this issue at several of our meetings and discussions have been very emotional; however, that don't change the simple fact that we have to abide by the legislative regime which we have all sworn to uphold. Council, while understanding of the quandary that some of our members find themselves in during the winter season, finds that its responsibility has to be first and foremost to "protect the public" and that winter pinning is in our opinion in violation of our Act, Bylaws, Manual of Practice and Common Law. Furthermore, knowingly indicating that boundary monuments have been placed when they haven't is approaching dangerously close to fraud, which is an offence under the Criminal Code of Canada. Remember, those who would readily accept documents prepared with "winter pinning" would most likely be the first to object to same and turn their back on you if a real estate transaction failed or if they were formerly challenged by their peers.

Please guide yourself accordingly.

Respectively presented
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¹ The Judicial Function of Surveyors - Justice Thomas M. Cooley, Chief Justice, Supreme Court of Michigan, 1864-1885

² Tony Wong. ["The Law of Fraud and White Collar Crime in Canada"](#). Blake, Cassels & Graydon LLP. [http://www.blakes.com/pdf/Calgary/white collar/Tab 4The Law of Fraud and White Collar Crime in Canada.pdf](http://www.blakes.com/pdf/Calgary/white%20collar/Tab%204The%20Law%20of%20Fraud%20and%20White%20Collar%20Crime%20in%20Canada.pdf). Retrieved 2012-04-22.

³ *R. v. Olan et al.*, [1978] 2 S.C.R. 1175. Full text of [Supreme Court of Canada](#) decision at [LexUM](#)
