

The Complaints Committee had received a complaint that we believe breached Section 9.1.5 of the Standards of Practice.

- Each survey shall have a supporting file kept by the member or survey firm, containing:
9.1.5 the survey contract or client's instructions;

The Complaints Committee further believes that the members of the Association can benefit from this member's trials and have resolved this complaint by having the Surveyor prepare an account of the history of this survey in order to provide the members with a solid appreciation of how easily verbal instructions or inadequate documentation can mislead surveyors and clients to believe expectations that may not be agreeable at the end of a project.

Who Will *Your* Next Client Be?

Land surveyors work with people (their clients) and their client's land, to achieve their client's goals. Sometimes the land is much easier to navigate than the clients themselves. The following is a story of such clients.

As a land surveyor with over thirty years of experience, I have encountered a multitude of clients and have happily maintained good working relationships with the vast majority of them. However, that contentment was seriously and unfortunately challenged within the past few years, with two clients of mine—they are brothers. (For the purposes of this story, I shall refer to them as David and Phillip.)

The job began as so many have before, with a meeting with David, Phillip and myself. We discussed the purpose of the survey, the costs and the timeline required to complete the project. David and Phillip provided me with a Google Earth sketch with their proposed property lines. Each of them had signed the sketch to indicate their agreement and acceptance of the locations proposed. This sketch was their agreement with each other, and it was my duty to survey the boundaries as they had shown on the sketch. The survey was to be completed under section 268 (2)(a) of the *Municipal Government Act*. (This means, that the subdivision would be finalized by sworn statements of the landowners, with each landowner swearing that each lot would exceed ten hectares in size.) To ensure that the invoice for the survey work could be prepared at a lower rate, the brothers requested that I complete the survey work in my "off season" and "fit it in" around other jobs. Phillip agreed to do all the line cutting that was necessary to complete the survey work. (This line cutting did not happen—at any point.) Also, during this meeting, the clients identified three key points, which they wanted us to locate on the ground. Two of these points were to be used to establish a common baseline which would have multiple property lines intersecting it.

The survey itself, involved subdividing a 550 acre parcel of family land—with numerous parcels to go to each brother. The work began on August 28, 2012 and our field surveys were completed within the first year—on or about May 7, 2013. David and Phillip hired a lawyer to migrate their land and this migration was completed five or six years after our survey work began. In the original agreement between the two brothers, David had required an access Easement over Phillip's land. Both brothers agreed to the location and the extent of the Easement. After about six years into the survey, David wanted to extend the Easement another 500 feet, which was not part of the initial agreement. This Easement request caused great animosity between the brothers and

resulted in each of them, having to retain their own (and separate) lawyers. (Their original and “shared” lawyer, had concluded that the current working relationship could not achieve an agreeable outcome. He requested that each brother retain their own counsel—which they did.)

The instructions and directions, that had been provided to me by my two clients during that initial meeting, changed dramatically over the course of the next several years. As already mentioned, my survey team and I, had completed the field surveys within the first year of beginning the work. However, for several years after that first year, there were numerous changes and revisions requested by Phillip. Several pins that had already been set, were set again—some of them as many as four times. (On one occasion, David and Phillip had agreed to a revision to the survey. I planned to proceed with the revision as they had requested; but I received a phone call from David, saying that the revision was no longer needed—he had spoken with Phillip and both agreed that it was unnecessary. Shortly thereafter, I heard from Phillip and he was questioning why the revision had not occurred. I told him what David had said to me, and Phillip became angry. I shook my head in disbelief. Unfortunately, this type of mis-direction and mis-communication happened many times during the work.) The numerous changes were unexpected and at times, seemed unrelenting. The ability of the brothers to communicate effectively was sorely lacking. Phillip continually asked for changes and David just wanted to have the work completed. After the first year of completing the survey work, the ongoing changes resulted in the survey plan needing several revisions in an effort to appease both brothers. Most, if not all of the corner points were moved two to three times, during the work, to try to achieve boundary agreements between the brothers. It was incredibly frustrating.

Following the Easement issue between Phillip and David, our survey work came to a halt, as requested by Phillip. I had detected tension between both brothers, since the beginning of our working relationship, and could sense an even greater tension between them with the Easement issue, which happily, was not directed at me—for the moment. The hope was that each brother (with their respective lawyer) would go to court, and have their land divided (and decided) under *The Partitions Act*. I waited to hear what the outcome(s) would be, and what next direction(s) would be required of myself and my survey company. I waited over a year to hear the outcome of the brothers’ legal efforts. In the spring of 2020, COVID arrived and put a halt on many things—court cases included. I believe David and Phillip were advised by their lawyers that if they wanted their land to be divided, they would have to come to some mutual agreement.

The next communication to me, was a phone call from Phillip—a phone call that was belligerent in word and tone, and directed firmly at me and the survey work that my company had already completed. (I was dumbfounded!) During that phone call, he complained and criticized the work that I had completed, and questioned my competence as a surveyor. (Once again, I was surprised.) Feeling weary with his continual rant, at one point I told him (in very direct terms) to stop stalling and choose a direction—finally—so that the work could proceed. Once again, the communication was incredibly frustrating. Phillip’s unexpected phone call (and his accusatory words) left me feeling that he desperately needed someone to blame for his own failures to achieve agreement with his brother—and his great irritation and desperation led him to point the finger at me.

Following this perplexing and unexpected phone call, I was dismayed to hear that Phillip’s next act was to file a complaint to the Surveyors’ Association of Nova Scotia. In the complaint, he listed twelve items that he claimed that I had not addressed properly. After all that time, energy and dedication on my part to complete their survey, I received direct blame and accusations from Phillip and was now facing a complaint. From the beginning of the work, I had listened to David

and Phillip, and communicated with them on many occasions—via phone, email, and in person. I had tried, for many years, to help them achieve their intended subdivision of the 550 acre parcel of land. My current situation was completely unexpected. (Incidentally, David told me that **he was in complete agreement with the first survey I had produced**. He has had no part in this complaint, and he has paid his portion of my bill. **He has considered my work to be acceptable**.)

During my entire surveying career, I have never encountered such extreme levels of animosity, hostility and bitterness with clients—ever. As I consider this particular job and the brothers (my clients) I am struck by how this “initially typical job” veered so completely off the rails. I had worked diligently and consistently to try and provide the survey work that my clients were requesting—as I had done so many times before. I would have never imagined that two brothers could reach such combative states (with each other) while attempting to subdivide their land. It was an eye-opening event—and it was unprecedented in every way imaginable. I hope to never encounter such clients again.

The Complaints Committee believes that the author’s conflict with one of the clients is a direct result of not having clear instructions. Imagine if he/she had emailed his/her impressions of the sketches and verbal instructions to the clients for approval in the beginning OR prepared a preliminary sketch of the survey for their approval prior to monumentation. Your client must trust that you understand his/her instructions; that...can’t be done verbally. Clearly written instructions or a preliminary plan can achieve that goal. Most surveys will not require proof of a written contract/instructions, however when a conflict arises, the Surveyor is the only person required to prove what their instructions were. Clarity matters! Members are reminded to ensure their clients’ approved instructions are in their files.