

Re: Issues Involving Field Notes and Boundary Opinions Being Given By Others

By W.J. Johnston, O.L.S.

(Editor's Note: The following letter was addressed to AOLS Executive Director, Carl Rooth, in response to the Issuing of Field Notes legal opinion published in the Spring 1994 issue of the *Ontario Land Surveyor*, pp 13-16.)

I am in receipt of your recent mailing on these matters for which I thank you.

While I do take issue with and also disagree with some of the opinions offered, I do now appreciate even more the depth of some of these problems, due mainly to two components, namely lack of research and cooperation. While the lack of research problem is emphasized at every opportunity as it should be, I do believe that it is time for much more emphasis to be placed on communication between surveyors over differences of opinion on boundaries. In my letter to you of October 29, 1993, the third paragraph, I suggested a format that might well be considered. This is the format used by the Canadian Institute of Chartered Accountants in dealing with differences of opinion on a matter, before a complaint is initiated at any level.

Some thoughts I have on the headings as set out in (the Issuing of Field Notes opinion).

Description of Problem Scenarios

I do believe that the surveyor requesting field notes should do so in writing, stating the reason for the field note request, be it pending action on a common boundary, second opinion being sought or doing work in the immediate area and needs assistance or guidance in what has been accepted in the past.

I don't completely understand the scenario in the second paragraph. It would appear that one of the surveyors should have had notes from the other before proceeding. Also, does reciprocity not apply in exchange of information? Is the assumption being made that a charge for field notes would negate reciprocal arrangements? If there was not charge for notes and information supplied initially,

and supplied without strings attached, there would appear to be no indication that notes, if any, or report were going to be supplied in return. In my view, this is the type of lack of communication that would tend to put one surveyor against another, one survey firm against the other, complaints to the Association and litigation. Not very encouraging!

Nature of Field Notes

The suggestion here appears to be that all notes supplied should be paid for. In my thirty years of private practice, I have only paid for copies of field notes once or twice and have only charged for field notes once or twice, those instances being when "outside" surveyor firms were doing pipeline work in the area and insisted on paying for the great deal of information supplied. Most of us in this immediate area do not charge for information supplied. However, the information is given on the basis that the requesting surveyor supply a copy of the field notes and plan of the resulting survey. In my view, this may not be enough of a return to the surveyor that supplied the information originally.

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Not very encouraging!"*

I would suggest that, if the surveyor receiving the supplied information finds he is in disagreement with the supplied information, dialogue should then take place with the surveyor supplying the information before any report is submitted to the "finding" surveyor's client or

solicitor. This type of dialogue would go a long way toward defusing actions putting surveyor versus surveyor, either before their peers in our Association or the courts.

With reference to points being made with respect to the value of field notes, I would suggest that their value may be somewhat, or even considerably, lessened now that there are field notes indexed around and considering the relatively free-flow of information that, in many cases, exists between survey firms.

Surveyors Research Activity and Field Notes

Obviously, not a point of contention.

Scope and Terms of Engagement of Surveyor's Services

I find the use of the word *minimum* (page 13, column 3, line 6) quite offensive. Surely it is not to be the case that we only do a minimum amount of field work to produce a Real Property Report. This is certainly not the manner in which they are treated in this office and is at odds with that which has been preached over the past ten to fifteen years.

As you are aware, I do have strong feelings with much of the content in the next three paragraphs. They appear to address some of the matters I have dealt with herein as well as those which precipitated my letter to you last October.

In the first place, what happens when the surveyor requesting the information is not truthful in his reasons for obtaining copies of field notes, does no field work, not even a site visit, no proper research, no dialogue with the "supplying" surveyor, produces a report to the solicitor requesting same and then claims client

confidentiality after a request is made for his findings and report which he says I am now not entitled to? At the Examinations for Discovery in my instance, four lawyers agreed that the boundary in question had been properly established but the Plaintiff wouldn't back down without a settlement. Our lawyer suggested settling to avoid quadruple costs (or more) that would have been the results had this matter gone to trial.

"I believe very strongly about the dialogue that should take place between surveyors before an opinion or adverse report is written to another party, ..."

I have to again relate my own personal experience in response to (the first full paragraph on page 14) under this heading. I again refer you to my letter of October 29, 1993, wherein the surveyor requesting copies of my field notes obtained them under false pretences. Had he been truthful with me, I would have insisted on a copy of his report before the copies were issued. Had I been given a copy of each of the surveyors' reports that were sent to the two different lawyers, all of their statements set out in their letters would have been refuted and it was our solicitor's opinion that we would not have been involved in the Thirty Party Action. Also, I do believe that surveyors preparing opinions on another's work should state unequivocally whether their report is a result of total and complete research as well as a boundary survey or was the result of a limited amount of research and no field work. In my opinion, "half baked" opinions should not be tolerated and that the surveyor involved in the issuance of such a report would not be entitled to compensation through a claim made to our liability insurance, if such a claim was made.

The Field Note Requesting Surveyor Without A Client

In the scenario set forth in the second paragraph of this section, one has to wonder if the first surveyor is not negligent at the outset for not requesting information from the surveyors doing work in the immediate area before proceeding. I would suggest that this is mandatory research but might also suggest that many

surveyors proceed on the basis that they do not need another's notes as there may be the usual friction between their respective firms.

The Field Note Producing Surveyor With A Client Who Instructs Non-Disclosure Of The Field Notes

We are at some odds with the opinion expressed regarding Section 4 of the Surveyors Act.

We feel that the spirit of this section of the Act is being offended by the fact that a surveyor is obliged to exhibit or give copies of his field notes to any surveyor for almost any reason, or sometimes no reason at all, with the exception of the scenario put forth in the last paragraph. Perhaps it is now time to consider dealing with the matter of the requesting and the providing of field note information through the issuance of a bulletin or a revision to the standards of conduct that would encompass this situation which, I consider, is becoming more of a problem all of the time. I have just recently spent a day in court, subpoenaed as an expert witness. I had to first of all defend a survey of mine done twenty-six years earlier and then to deal with two younger surveyors, both of whom used my older survey to produce,

by one, a sketch and, the other, a Real Property Report on adjoining properties. Both surveyors were provided with copies of the my field notes and neither one responded with a copy of theirs until I requested them. The surveyor preparing the Real Property Report advised the solicitor in writing that, if the solicitor's client could provide more funds for more research and time spent on the ground, he thought he could upset the method of my survey of 1968 by using

original plan distances and bearings, perhaps proportioning, and ignoring old evidence. Needless to say, neither of their opinions were accepted but I do find these types of actions incredible!

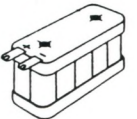
Need For Direction of Policy

My concern has never been the issuance of copies of field notes or other related information. My concern over the past few years has been with the use for which field notes were intended, along with the lack of a reciprocal arrangement, (i.e. a copy of resulting notes and plan from the surveyor, originally requesting information). I believe very strongly about the dialogue that should take place between surveyors before an opinion or adverse report is written to another party, be it their client or solicitor. If a report is written that is at odds with another's opinion, the report should be included with the resultant survey when returned to the "supplying" surveyor.

I trust that the above will be given some consideration in due course towards the dealing with this rather complicated and very serious problem, that exists and must be addressed.



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