

Falsification of Survey

By Alec McEwen

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Forging a building location certificate, uttering a false document, fraudulently claiming land belonging to another person, and removing a boundary mark are unlawful acts any of which the land surveying profession may encounter from time to time. Remarkably, all four situations occurred in a recent case in which criminal proceedings were brought against the person alleged to have committed the acts.

R. v. Porter, (unreported), heard by the Supreme Court of British Columbia in February 2001 as Victoria Registry Docket 102699D, concerned adjacent properties on Mount Newton Cross Road, Saanichton, Vancouver Island. Norman Porter, owner of Strata Lot 4, Strata Plan 469, wished to build a garage on the eastern side of his lot. He believed, mistakenly but honestly in the court's view, that an old fence line marked the boundary between him and his neighbour Eastgate, owner of Lot 3, Plan 18836.

Following his preparation and submission of a plan showing the construction and location of the proposed garage, Porter received a building permit from the Municipality of Central Saanich in November 1996. The court considered Porter to have the training, background and skill to prepare construction drawings. Porter then engaged St. Pierre, a framer, to pour the concrete foundation, set the building corners and undertake some other parts of the construction.

Porter pointed out the fence corner and an old iron pipe to the contractor, and also gave him a copy of a plan, dated 1967 or 1968, showing the limits of his property at that time. Porter had subdivided his land into Lots 3 and 4 in 1989. Lot 4, which he retained, had an initial frontage of 60.702 metres.

During the subdivision, surveyor Orrico shifted Porter's southwest corner 4.345 metres west, to accommodate a structure, and marked the new location with a survey monument. None of this more recent information was supplied to St. Pierre, even though Porter apparently expected him to ensure that the garage was built inside Lot 4. The construction proceeded in accordance with the building permit, but no survey measurements or calculations were made to determine accurately the location of the garage. The municipal building inspector, responding to an inquiry from Eastgate as to the garage's possible encroachment on his land, referred the question to Porter who in turn engaged Orrico to carry out a survey. Orrico prepared for Porter a plan, dated November 14, 1996, which confirmed that the garage did indeed encroach. He later testified that Porter had requested him not to give a copy of the plan to anyone else.

A second plan, also dated November 14, 1996 and purporting to be made by Leonard Schofield, a licensed surveyor, showed Porter's garage to lie entirely on his property. No person named Leonard Schofield was at that time, or had ever been, a British Columbia Land Surveyor. Except with respect to the garage location, the two plans were virtually identical. Both the municipality and Eastgate, upon being presented with the Schofield plan and unaware of the Orrico plan, were satisfied that the garage did not encroach.

In July 1997, Eastgate sold Lot 3 to Henderson who decided to fence his boundary with Porter and retained surveyor Claxton to establish the line. In January 1998, Claxton discovered that the survey monument intended to mark the southeast corner of Porter's property was 3.7 metres too far east. He

found no monument at the true corner. Both the Claxton and the Orrico plans agreed with respect to the garage encroachment, and as a result of the surveyors' investigation the Schofield plan came to light.

Claxton returned to the site in September 1998 to mark the actual southeast corner of Lot 4. During the survey he found this corner now marked by a monument, whereas the monument he had previously discovered 3.7 metres to the east of the corner no longer existed in that location. The evident removal and replacement of the monument, together with a comparison between the Orrico and Schofield plans, led to the bringing of proceedings against Porter, charging him with offences under the Criminal Code.

The four counts in the indictment were fraud, forgery, unlawful removal of a boundary mark, and uttering a false document. Mr. Justice Melvin dealt in turn with each of those counts.

Fraud, under section 380, means to deprive by deceit. Deprivation may be satisfied by prejudice to the victim's economic interest, but actual economic loss is not necessary. In the present case, the subject of fraud constituted the triangular sliver of land, lying between the true boundary and the false boundary shown on the Schofield plan.

Forgery, under section 366, is committed by a person who makes a false document, knowing it to be false, with the intent that it be used or acted upon as genuine to the prejudice of another person. In this instance the building location certificate, allegedly made by Schofield, was the false document.

Removal of a boundary mark, under section 443, means the wilful removal of a boundary mark lawfully placed by

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a land surveyor to mark a limit, boundary or angle of land. The boundary mark in question was the one placed at the southeast corner of Porter's property.

Uttering a false document, under section 368, is committed when a person, knowing that a document is forged, uses, deals with or acts on it, or causes or attempts to cause any other person to use, deal or act on it, as if the document were genuine. The Schofield plan represented a false document.

After reviewing all the evidence, the court was satisfied that the Crown had proved its allegations beyond a reasonable doubt, and it found Porter guilty

as charged on each of the four counts. It rejected Porter's arguments that St. Pierre, not he, was responsible for the encroachment, the forged Schofield plan, and presumably the removal of the boundary monument. It also heard evidence that when the building inspector compared the Oricco and the Schofield plans and accused Porter of altering the former document and moving the survey monument, a "panic stricken" Porter on two separate occasions unsuccessfully approached Henderson for an easement to accommodate the encroachment.

In March 2001, the court sentenced Porter to one year's imprisonment. His

appeal against sentence was dismissed on June 14, 2002. Speaking on behalf of the British Columbia Court of Appeal, Mr. Justice Finch said "the appellant refused to accept any responsibility for his conduct."

Porter could have escaped prosecution if, instead of forging the Schofield plan, moving the survey monument and attempting to suppress the Oricco plan, he had sought appropriate relief when he discovered the garage encroachment. Upon an application made under section 36 of the Property Law Act, R.S.B.C. 1996, c. 377, the Supreme Court may at its discretion, and subject to the payment of compensation, grant an easement over land encroached upon by a building or fence, or vest title to such land in the encroaching owner.

