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SUBJECT: Dual Registration of Public Land Surveys

Introduction

I have been asked to provide a legal opinion on the following question:

Does the *Surveys Act* (RSA 2000, Chapter S-26) require disposition survey plans to be registered at the Land Titles Office (LTO) when statutory iron posts are placed?

Background Facts

The policy of the Director of Surveys of the Province of Alberta has been for decades that a survey plan for a public lands disposition did not require registration at the LTO. This policy has been maintained by successive Directors for several reasons:

1. All disposition survey plans are registered with Sustainable Resource Development and adequate public access is provided. To require additional registration at the LTO would result in unnecessary duplication.

2. By not registering disposition survey plans the surveyor's client is saved additional registration expense.

3. There is no legal requirement to register public lands disposition survey plans with the LTO.

The Alberta Land Surveyors' Association (ALSA) has recently informed their membership that they are required under the *Surveys Act* to register disposition survey plans with the LTO when statutory iron posts are used as monuments. This is despite the fact that the Director of Surveys' position is clear that such registration is not required.

Analysis

Legislation

The relevant legislation on the question of registration of public disposition surveys is the *Surveys Act*.

Section 1(p) of the *Surveys Act* defines monument as follows:

- (p) "monument" means a brass tablet, iron post, wooden post, mound, pit or trench, or anything else used by a surveyor to mark a boundary, corner or line;

This is a broad definition that encompasses anything used to mark a boundary, corner or line.

The use of iron posts as monuments does not give that survey any specific significance.

Section 44(3) of the *Surveys Act* reads:

- (3) A surveyor who establishes a corner of a section, quarter section or legal subdivision that was not previously marked by a monument, or re-establishes the position of a monument in accordance with subsection (1) or (2),
- (a) shall mark the position with a new monument, and
 - (b) shall, within 90 days after completion of the survey, prepare and submit to the Registrar a plan of survey showing the method by which the position was re-established.

This section deals mainly with the re-establishment of a Part 2 survey monument. Section 46(3)

of the Act deals mainly with the re-establishment of a Part 3 survey monument. It reads:

- (3) A surveyor who re-establishes the position of a monument in accordance with subsection (1) or (2), or establishes a corner that was not previously marked by any monument in a survey made pursuant to this Part,
- (a) shall mark the position with a new monument, and
 - (b) shall prepare and within 90 days after the completion of the survey submit to the Registrar a plan of survey showing the method by which the position was re-established and shall certify that the survey was made in accordance with this Act.

These sections require surveyors to register surveys with the LTO or the Métis Settlements Land Registry whenever a survey re-establishes a Part 2 or Part 3 monument.

Interpretation of legislation

Statutory iron posts are not defined in the *Surveys Act* or elsewhere in legislation. There is no special status bestowed upon statutory iron posts. The use of a statutory iron post as a monument does not automatically require registration at the LTO of that survey plan.

Survey plans of public lands dispositions are not specifically required by the Act to be registered at the LTO, unless they meet the criteria listed in sections 44(3) and 46(3). Sections 44(3) and 46(3), as they relate to Part 2 or Part 3 monuments, require registration with the LTO when a survey establishes or re-establishes a relevant monument. Such occurrences on public lands are rare.

Examples where surveys are not registered

Not all survey plans must be registered at the LTO. There are several types of plans that are registered elsewhere. These include:

- Well site control traverse plans prior to December 1, 1997, were registered with the Director of Surveys Office. These plans used statutory iron posts as monuments.
- Métis surveys, also monumented with statutory iron posts, have been registered at the Métis settlement Land Registry since 1991.

- Federal land surveys, of boundaries common with Provincial lands, monumented with statutory iron posts are registered with Natural Resources Canada.
- Disposition surveys monumented with iron bars or spikes are registered with Sustainable Resource Development.

There is therefore, precedent for excluding public lands disposition survey plans from being registered at the LTO.

Results of ALSA's opinion

The ALSA's opinion of registering all survey plans at the LTO which use statutory iron posts would have some very negative consequences. If all surveys monumented with statutory iron posts must be registered at the LTO, then all surveys using iron bars and spikes must also be registered at the LTO. The *Surveys Act* does not distinguish between statutory iron posts and iron bars. They are all listed as "monuments".

The result of this opinion would be that tens of thousands of disposition surveys annually would be registered at the LTO, yet the Land Titles Act would have no effect upon these dispositions. These surveys would be simply duplicates of plans already registered with Sustainable Resource Development. Such waste and duplication is not the intent of the *Surveys Act*.

Conclusion

The intent of the *Surveys Act* is to have survey plans be of public record. The Director of Surveys has the authority from the *Surveys Act* to determine how best to accomplish this. The Director's duties include:

- 5 (a) co-ordinate the establishment, maintenance and preservation of the land survey system for the purpose of determining the positions of boundaries that govern the extent of interests in land,
- (c) co-ordinate the establishment and maintenance of a mapping system for Alberta,
- (d) co-ordinate the development and maintenance of a land-related information systems network for Alberta,

Except where it is specifically stated in the *Surveys Act* that a survey plan must be registered at the LTO, the Director has the authority to determine that the plan can be registered elsewhere.

There is no requirement that survey plans for public lands dispositions must be registered at the LTO except where a monument is established or re-established in accordance with sections 44(3) and 46(3). Therefore, the ALSA requirement that all public lands dispositions that use a statutory iron post as a monument must be registered at the LTO does not have any legitimate basis in legislation and is contrary to the policy of the Government of Alberta.

Recommendations

There are two options available to the Director to clarify the practice for surveyors with regards to public land disposition registration.

1. If the Director determines that the number of plans re-establishing or establishing monuments on public land dispositions is low, then those plans can continue to be registered at the LTO. Other surveys on public lands dispositions do not have to be registered at the LTO as they are already registered with Sustainable Resource Development. The ALSA's Manual of Standard Practice should be amended to clearly indicate that the *Surveys Act* does not require duplicate plans to be registered at the LTO.
2. If the Director determines that the intent of the *Surveys Act* is met with the registration of the public lands disposition survey plans at Sustainable Resource Development, then duplicate registration is not required at the LTO. The ALSA's Manual of Standard Practice should be amended to give surveyors the option to register at the LTO.



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