



*The Boundary Point* is published by Four Point Learning as a free monthly e-newsletter, providing case comments of decisions involving some issue or aspect of property title and boundary law of interest to land surveyors and lawyers. The goal is to keep you aware of decisions recently released by the courts in Canada that may impact your work.

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Providing land surveying services comes with an expectation that the client will pay for the services rendered. Most often, there is no issue and the surveyor can expect payment after completion of a project, or upon reaching certain milestones that have been agreed to in advance. The relationship between the surveyor and client is contractual, but also attracts professional obligations that are defined in legislation, regulations and a regulator's by-laws. In *Vector Geomatics Land Surveying Ltd. v. Schroeder*,<sup>1</sup> a surveyor successfully sued for unpaid land surveying fees last year. A review of this decision may help in avoiding similar situations for professional surveyors in the future, while still protecting the public and practising within recommended guidelines.

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## Collecting Fees for Surveying: Can the Process be Easier and Remain Professional?

**Key Words:** *fees; retainer; surveyor/client relationship; ethics*

The reported case reviewed in this issue of *The Boundary Point* issues from the British Columbia Civil Resolution Tribunal. It is an entirely online tribunal for the resolution of disputes and, as the Tribunal's home page<sup>2</sup> explains,

We're part of the British Columbia public justice system. We offer an accessible, affordable way to resolve disputes without needing a lawyer or attending court. We encourage a collaborative approach to resolving disputes. If you can't resolve your dispute, a tribunal member can make a decision about it. Members are independent legal experts. Their decisions can be enforced like court orders.

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<sup>1</sup> *Vector Geomatics Land Surveying Ltd. v. Schroeder*, 2023 BCRT 611 (CanLII), <https://canlii.ca/t/jz94s>

<sup>2</sup> <https://civilresolutionbc.ca/>

Other Canadian Provinces have similar dispute resolution “courts”, although most are not online and most are referred to as “Small Claims Courts.” There is also a monetary limit for the disputes which can be dealt with by such courts.

In *Vector Geomatics Land Surveying Ltd.*, the Tribunal explained at the outset that, “This is a dispute about land surveying fees.” Then the Tribunal continued,

...The applicant, Vector Geomatics Land Surveying Ltd. (Vector), says it provided the respondent, Aaron Schroeder, with land surveying services for which it has not been paid. It claims \$227.59 for the services.

Mr. Schroeder says they did not have a binding agreement for Vector to provide them with land surveying services. They say they do not owe Vector anything.

Mr. Schroeder is self-represented, and Vector is represented by an employee.<sup>3</sup>

After explaining that this dispute can be decided without the need for an oral hearing, the Tribunal gave a short summary of the facts and its decision:

The facts are largely undisputed. On May 31, 2022, Mr. Schroeder sent Vector a request through its website for a basic preconstruction survey for a planned addition to their home. On the same date, Vector emailed Mr. Schroeder a proposal with a detailed scope of work and an estimate of \$2,100 plus tax. Mr. Schroeder clarified by email that they likely required less work than what was included in Vector’s scope of work, and Vector responded that a “form survey” would cost in the range of \$1,000 to \$1,500. Vector said it would require Mr. Schroeder’s house plans and a completed Client Information Sheet (CIS) to “set up the file on our end”. The blank CIS was attached to Vector’s email.

On June 1, 2022, Mr. Schroeder emailed Vector the completed CIS and their building plans. On June 3, 2022, the parties agreed by email that Vector would pin the footings at Mr. Schroeder’s property on June 16, 2022. Vector told Mr. Schroeder that it may send someone to their property before that date to do some preliminary work so that it could complete the work on June 16, 2022 faster. Mr. Schroeder did not respond to this email.

On June 15, 2022, Vector emailed Mr. Schroeder confirming that it would be pinning the footings at their property the following day. Mr. Schroeder confirmed by email and asked Vector what time it would be at their property. The parties exchanged more emails that day about the timing of Vector’s work at Mr. Schroeder’s property. At approximately 3:00 p.m. that day, Mr. Schroeder emailed Vector that they had got their “wires crossed” with Vector and another land surveying firm. Mr. Schroeder said they were already committed to the other firm and that the firm’s prices were “more attractive.” Mr. Schroeder said, “sorry for the misunderstanding on my end.” Vector responded, “As we received the house plans and the client information form as approval to proceed we have done calculations and file setup in the office that I will be sending an invoice for...” Mr. Schroeder did not respond to this email.

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<sup>3</sup> *Vector Geomatics Land Surveying Ltd. v. Schroeder, supra*, footnote 1 at paras 1-3

On June 23, 2022, Vector emailed Mr. Schroeder an invoice for \$227.59, due July 23, 2022, which Mr. Schroeder has undisputedly not paid. This is the amount Vector claims in this dispute.

Mr. Schroeder says they never entered into a binding agreement with Vector, because they never intended to be bound by their email communications. They say that in their 9 years working as a structural engineering consultant, they have always had a formal contract with a land surveyor before the land surveyor began providing services. Mr. Schroeder alleges Vector's emails were unclear and that they often had to ask Vector follow-up questions. They say this shows the parties did not agree on essential contract terms.

In contrast, Vector says the parties' emails formed a binding agreement. It says that by sending it the completed CIS and their building plans, Mr. Schroeder accepted Vector's estimate and confirmed that Vector would complete the work. For the following reasons, I agree.<sup>4</sup>

From this brief summary, it appears that the defendant had prior dealings with land surveyors through his work as a structural engineering consultant. The work represented by the invoice for \$227.59 was for services related to an addition to the defendant's home. But this was not the single factor which appeared in the Tribunal's reasons. The key test used by the Tribunal in its analysis was whether or not a contract existed. It found that a contract did exist in reasoning that,

For a contract to exist, one party must make an offer that the other party accepts. The parties must agree on all essential terms, which must be clear enough to give a reasonable degree of certainty (see *0930032 B.C. Ltd. v. 3 Oaks Dairy Farms Ltd.*, 2015 BCCA 332). This means a formal written contract is not necessarily required to prove the parties reached a binding agreement.

I find the email communications in evidence are clear that Vector offered to provide Mr. Schroeder with a form survey for between \$1,000 and \$1,500. I find that by completing the CIS and sending it and the building plans to Vector, Mr. Schroeder accepted Vector's offer. On the CIS Mr. Schroeder indicated that they wished to receive invoices by email. I find this is strong evidence that Mr. Schroeder expected to be billed for Vector's services. I also find the fact that Mr. Schroeder agreed on a date for Vector to complete the work is strong evidence that they intended to be bound by their email communications.

On balance, I am satisfied that the parties entered into a binding agreement for Vector to provide land surveying services to Mr. Schroeder for between \$1,000 and \$1,500.<sup>5</sup>

A defence raised by the defendant was that Vector did not collect a "retainer" as set out in the guidelines published by Vector's regulator, the Association of British Columbia Land Surveyors. The Tribunal described this submission as follows, and also found that it had no merit:

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<sup>4</sup> *Ibid.*, at paras 10-15

<sup>5</sup> *Ibid.*, at paras 16-18

Mr. Schroeder also alleges that the Association of BC Land Surveyors (ABCLS) requires land surveyors to collect a retainer before providing any services or incurring any expenses. They say that since Vector did not collect a retainer from them before starting its work, it failed to follow the ABCLS guidelines. I infer Mr. Schroeder says that since Vector did not follow ABCLS guidelines, they are not required to pay the invoice. In support of this allegation Mr. Schroeder submitted the ABCLS Code of Ethics which, among other things, requires its members to follow all applicable standards, policies, procedures, and practices established by the government, the Land Title and Survey Authority, and the ABCLS. Mr. Schroeder also submitted an information page from the ABCLS website entitled “Land Surveyors’ Fees” which includes a description of a retainer.

However, as Vector notes in its submissions, the top of the ABCLS information page states that the ABCLS does not set land surveyors’ fees and that there are no fixed rates for land surveying services. It states, “Following are some common billing practices”, which includes collecting a retainer. I find there is no evidence that the ABCLS required Vector to collect a retainer from Mr. Schroeder before beginning its work, and so there is no evidence Vector failed to follow ABCLS guidelines or breached the ABCLS’ Code of Ethics.<sup>6</sup>

While the Tribunal found the defendant liable, in this dispute, for the amount claimed as fees for the land surveying services provided, readers might wonder if there could have been a practice or guideline which, if it had been followed, might have avoided this need to pursue a claim altogether. In fact some readers may even recall having encountered a similar situation to the one giving rise to this dispute.

While each engagement of the services of a land surveying company’s services is unique and the law is Province-specific, some reminders might help in reducing instances of finding one left unpaid for services that have been properly rendered. Below are a few pointers to bear in mind. The list is not exhaustive and emerges primarily from a consideration of the decision in *Vector Geomatics Land Surveying Ltd. v. Schroeder*.

1. **A Written Contract** – Although a contract need not be in writing to be enforceable, there is nothing like a signed contract that can pointed to as evidence that a contractual relationship existed.
2. **A Start Date and Defining Scope of Work** – A contract can cover the cost of providing an estimate or quote for the work, but it must say so, thereby making the “start date” for billing retroactive to cover the effort in coming up with an estimate for a client. A client may not know the complexity of the work you are asked to do, so you will often help both yourself and the client in carefully describing the scope of work.
3. **Retainers** – This expression will almost always arise in contracts between lawyers and their clients; but in two ways. First a “retainer” can refer to the contract for

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<sup>6</sup> *Ibid.*, at paras 19-20

services and when the relationship begins. Second, a “retainer” can refer to an amount paid to a land surveyor by a client in advance of work starting, and to be applied to fees for services as a pre-paid credit. Monetary retainers may be impressed at common law with a “trust” so you may need to be careful about where the money is held and how the payment is reported in your Province for tax purposes.

4. **Code of Ethics and Professional Guidelines** – Licensed Surveyors are not mere service providers selling their skill and expertise; they are members of a regulated profession in the Province where they practice. The interesting defence in *Vector* should alert us to the fact that members of the public do read information found on regulators’ web pages. However, it also reminds us that the relationship between surveyor and client is not only informed by the terms of contract, but also the spirit and requirements found in practice guidelines and codes of ethics.
5. **Past Practice with the Client** – Over time, the attention to a formal agreement for every project with a long-term client may feel unnecessary. It becomes wearisome and completely unnecessary. The parties proceed on the basis of trust, and all is mostly fine – until it is not. Two thoughts come to mind when dealing with the same client over many years. First, it may help to just “paper” the fact that the relationship is a continuing one and the only changes on a project by project basis is the scope of work. A “short form” reference to the terms agreed to in the past and that all that is needed going forward with new projects is an agreed description of the scope of work might suit both sides well. Second, might there be a version of “Standard Terms” for the contractual relationship that can be incorporated into a short contract by simple reference thereto? For example, there exist standardized documents in the building industry across Canada, which are developed through a consultative process with representatives from all sectors in the construction industry.<sup>7</sup> Should such a standard agreement be developed with input from the public, the private sector, regulators and professional surveyor organizations?

Readers will appreciate that a standard written contract for use in defining every surveyor’s relationship with clients is not likely to be possible – each needs to be adapted to what a client needs. However that is not the same as using this as an excuse in saying a written contract is pointless; it takes too much time and not worth the effort for a small “project.” The amount of fees at issue in *Vector* was only \$227.59.

*Editor:* Izaak de Rijcke

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<sup>7</sup> <https://www.ccdc.org/>

## Cross-references to *Principles of Boundary Law in Canada*

Ethics and the relationship between a land surveyor and the client is discussed in *Appendix 3: Boundaries and Ethics*.

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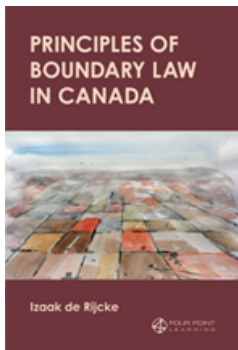
### FYI

There are many resources available on the **Four Point Learning** site. These include self-study courses, webinars and reading resources – all of which qualify for *formal activity* AOLS CPD hours.<sup>8</sup> These resources are configured to be flexible with your schedule, range from only a few hours of CPD to a whole year’s quota.

#### **Course: *Survey Law 2***

***Survey Law 2*** builds on *Survey Law 1* with a special emphasis on evaluation of evidence and special circumstances encountered in problematic and natural boundaries. This course will be taught online Wednesday evenings by Izaak de Rijcke, starting January 8, 2025. For more information, consult the [syllabus](#). Please go to Four Point Learning to [register](#).

#### ***Principles of Boundary Law in Canada***



In the context of (1) the complex and ever-evolving nature of boundary law, (2) the challenges of doing legal research in this area, and (3) the constant interplay between land surveying practice (as a regulated profession with norms codified in statutes) and common law principles, land surveyors need a current reference work that is principle-based and explains recent court decisions in a manner that is both relevant and understandable.

See [Principles of Boundary Law in Canada](#) for a list of chapter headings, preface and endorsements. You can mail payment to: **Four Point Learning** (address in the footer of the first page of this issue of *The Boundary Point*) with your shipping address or [purchase](#) online. (NB: A PayPal account is not needed.)

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<sup>8</sup> Please note that the designation of CPD hours is based on the estimated length of time for the completion of the event. The criteria used are those set out in GeoEd’s Registered Provider Guide for Professional Surveyors in Canada. Other professions may qualify under different criteria. References to AOLS are to its Continuing Education Committee. Elsewhere in Canada, please confirm your eligibility for claiming CPD hours.