



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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Collecting fees from a former client for unpaid fees is usually unpleasant at best. This month's issue considers a decision in which a court refused to consider the claim because it lacked jurisdiction. This was not because of any flaw in the way the land surveyor had brought the claim, but because of the issues raised by the defendant in her defence. The problem of "no jurisdiction" for certain matters in the small claims courts across Canada is not new, but its benefit for a defendant may well rise to new levels after this decision is considered further.

Collection of Unpaid Survey Fees Hits a Snag

Key Words: *Small Claims Court, fees, jurisdiction*

It is every professional's bane: having to collect fees from a former client after the work and services have been completed. Fortunately, this occurrence does not happen frequently, but when it does, there remain key considerations when attempting to collect through a Small Claims Court action. Moreover, a recent decision suggests that some new and emerging factors should be kept in mind before pursuing payment.

This was encountered in *Berrigan Surveys Ltd. v. Cranston*,¹ a claim by a land surveyor in Nova Scotia for unpaid fees. The decision gives reasons for declining to give judgment, but is remarkably short in how the court concluded that it did not have jurisdiction. This was not because the court could not adjudicate on a potential breach of contract claim – it could – but because the defendant alleged that the work was defective.² This was raised in the defendant's defence arguments, alleging that there was no obligation to pay because the purportedly defective survey work involved a misplacement of a boundary in a location with which the defendant did not agree.

¹ *Berrigan Surveys Ltd. v. Cranston*, 2025 NSSM 16 (CanLII), <https://canlii.ca/t/kbltjj>

² *Ibid*, at para 2

In essence, the defence raised by the former client was akin to saying something like, “I do not have to pay your bill because your survey work was defective.” The court described this defence as more than a mere allegation. It explained,

The claimant performed survey work for the defendant. Its bill is unpaid. The defendant says it is because the claimant’s work is defective. She is vociferous in her views, to the point of posting comments on social media and on her vehicle derogatory to the claimant. She was originally represented by counsel; she dismissed him as being in some sort of concert or conspiracy...³

This description underscores the passion and emotion with which the client viewed the surveyor’s work as having some flaw or being defective. The amount of the unpaid bill was just over \$2,000.00. As such, the claim fell within the monetary limit of Small Claims Court in Nova Scotia.⁴ However, there is also a further overriding aspect of what Small Claims Court can adjudicate. The court summarized the legislation as,

Section 10(a) of the *Small Claims Court Act*, RSNS 1989, c. 430 reads:

10 Notwithstanding Section 9, no claim may be made under this Act

(a) for the recovery of land or an estate or interest therein; (emphasis added)

The opening words are important. Section 10 overrides Section 9. A claim may be monetary, but if it is for one of the causes of action listed in Section 10, this Court does not have jurisdiction.⁵

How then did this claim for unpaid fees get dismissed for want of jurisdiction? The court explained further,

On its face, I have before me a debt action – not a claim “for the recovery of land or an estate or interest therein.” However, that is not the end of the matter. The question becomes whether, in substance, the debt is so intertwined with property issues as to be inseparable. In this case, whatever I may think of the merits of those property issues, whether the defendant owes the debt goes to the impugned quality of the survey work done and for which the account is rendered.

Put another way, if the issue before the Court, of necessity, involves a consideration of substantive rights to land – rights *in rem* – then this Court has no jurisdiction even if title itself (“an estate or interest therein”) is not the specific cause of action or defence.⁶

After citing other cases in which claims were dismissed for lack of jurisdiction, the court reached the same conclusion here. To understand *Berrigan* better, the lack of jurisdiction was

³ *Ibid*

⁴ This limit is \$25,000.00. The limit varies across Canada, with the maximum in Ontario being \$75,000.00.

⁵ *Berrigan Surveys Ltd., supra*, footnote 1 at para 7 & 8

⁶ *Ibid*, at paras 9 & 10

not triggered just because the defendant had submitted a defence. It was because the defence involved an assessment of the correctness of the survey work which, in turn, required a consideration of the spatial extent of property rights (boundaries) depicted on the survey plan.

Some may view this as profoundly unfair – the claim for money should not be comingled with issues involving rights to land. After all, the plaintiff was now left with two undesirable choices: (1) just abandon the claim, or (2) pursue the matter through the superior courts – and at far greater costs.

On the other hand there have also been known to occur even more dire consequences for professionals in general, as a result of pursuing a claim for unpaid fees. The refusal to pay a land surveyor's bill may belie a resentment or a negative perception by a client which, if no claim through the courts is pursued, will remain just that – a resentment that is benign and goes no further.

From the limited information reported in the *Berrigan* decision, it becomes apparent that the resentment was deep and had taken on strong negative emotions – the client was "... posting comments on social media and on her vehicle derogatory to the claimant."⁷ It is unclear whether this was known to the plaintiff or not before pursuing the claim. It matters not.

However, the potential dire consequences referred to above are specifically the possible risk of:

1. The former client making a formal complaint against the professional's regulator. Whether the complaint has merit or not is secondary to a defendant (former client) being compelled to pay for the surveying fees. What is perceived by the former client is the ability to reclaim or assert power in the former relationship with the professional when faced with the risk of liability for fees when the work was viewed as defective or flawed. The consequence for the practitioner is having to respond to the regulator and expend the time and effort in explaining what was done and responding to the allegations.
2. The former client making a claim or counterclaim in negligence by simply alleging the work was defective or flawed. Assuming there is sufficient detail of the acts complained of which amount to negligence, the matter needs to be defended and the monetary amount could well be far in excess of the amount claimed for fees. The claim also needs to be reported to one's insurer, regardless of how lacking in merit the practitioner may think the allegations are.

Readers may well wonder if it is best to just "let sleeping dogs lie" and to never bother to pursue a claim for unpaid fees. This commentary is not legal advice. Instead of a binary approach of either "never pursue" or "always pursue", a preferred approach might be to

⁷ *Ibid*, at para 2

carefully weigh a myriad of factors. If a former client is already besmirching your reputation, it seems probable that the client will raise issues in the client's defence that are collateral to the duty to pay your bill. The former client's defence is then used to set-off liability to pay against a claim to pay for flawed work.

Some readers might suggest that the solution is a simple adoption of a policy that always insists on payment in advance. However, this can lead to other potential problems, including client expectations that this will be the full and final cost, and more time devoted to managing the surveyor / client relationship. In particular, documenting and communicating in detail the professional duties of the land surveyor, and that the payment is a deposit (and not full prepayment) become indispensable.

Certainly communications along the way, an explanation of your role as a land surveyor, and a written agreement that defines the project and helps the client in managing their own expectations will all help to avoid similar instances.

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

The subject matters considered in *Berrigan Surveys Ltd. v. Cranston* are discussed in Appendix 3: Boundaries and Ethics, and at page 512: *Does the Code of Ethics cover all that is required to Ensure an Ethically Appropriate Response when Engaged in Practice?*

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.⁸ These resources are configured to be flexible with your schedule, range from only a few hours of CPD to a whole year's quota.

⁸ 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.

Education Day by ERG

The Eastern Regional Group (ERG) of AOLS is hosting an “Education Day” at the [Donald Gordon Hotel and Conference Centre](#) in Kingston, ON, on May 1, 2025. Accommodations are available for out of town guests. The theme for the event is ***Adverse Possession (and Prescriptive Interests) in the Land Titles Environment***. Attendance for the day qualifies for 8 formal activity AOLS CPD hours. Cost for the day is \$185 and space is limited. Please email the Chair of ERG, simon@aksurveying.com or call 613-735-0764 to reserve one of the few remaining spaces.

SaGES Conference

The British Columbia Institute of Technology (BCIT) is hosting the 29th biennial [conference](#) of the Surveying and Geomatics Educators Society (SaGES) set to take place between June 15 and 19, 2025 in Vancouver. Approximately 50 papers and presentations are scheduled to be delivered from geomatics educators across North America, making this a very worthwhile event.



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