

THE TYRANNY OF SURVEY REGULATIONS

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There are signs that long overdue inquiries into the state of their profession are now being conducted by Land Surveyors themselves. The education aspect has been thoroughly investigated at the Colloquium convened last year in Canada, and also by the Wells Report to the Royal Institution of Chartered Surveyors in the United Kingdom. In South Africa, Dr. Biesheuvel has dealt with both the educational and professional aspects of the private practising profession in a challenging article in the South African Survey Journal of December 1959.

Recently, in both Tanganyika and Kenya, the Chairmen of the local R.I.C.S. branches deplored the fact that so few recruits were being attracted to the profession in the countries where they will probably be most needed.

This article attempts to continue the process of introspective inquiry with particular emphasis upon the private surveyor and his activities in the African Continent.

It should be made clear in advance that in most, if not all, of the British Territories in Africa, no matter what their constitutional status, the right to perform surveys for purposes of registration of Title is conferred by means of a Government licence, examinations for which are local, but are generally similar in content and scope in all territories. Thus a professional member of the Royal Institution of Chartered Surveyors (Land Survey Division) is not necessarily a licensed surveyor, and although he may perform fully professional surveys of other kinds, he may not concern himself with surveys for registered title unless he is licensed to do so.

It is most important to realize that he, and indeed any other professionally qualified surveyor, may and should act at all times in the manner laid down by their institutions, but once they become licensed this freedom is removed when they perform a survey for the purpose of registration of title. Where this is done they become subject in every way to local statutory enactments and regulations framed under them, and conflict with proper and accepted professional usage begins.

While many of these regulations are purely technical, and some, but by no means all, are approved by most surveyors, there are others which are purely professional, and should never be administered by anybody other than the professional body itself.

It thus appears that in exchange for the "protection" of the licence, private surveyors have everywhere surrendered their right (and some might say their duty) to control their own affairs. The rules under which the surveyor operates are made for him and he is required only to produce evidence that those rules have been satisfied, irrespective of whether they are in his professional opinion suitable or not for the particular circumstances of the survey he is engaged upon. These rules apply to both work in the field and to methods of computation. The fee is also decided for him, but not by his professional body corporate, and he must charge it or defend himself against a charge of "moral turpitude" before a lay board (i. e. a board untrained in the art of sifting evidence) appointed by the government, and not by his own institution. The compulsory tariff, however, is not employed in Tanganyika, where a refreshingly liberal interpretation of the regula-

tions is noticeable.

It is not proposed to investigate the psychology of the mind which will accept a situation well-nigh incredible to members of other professions, including even medical practitioners under the restrictions of socialized medicine. But there are still people in this world who believe that the highest form of public service is rendered by the practitioner who accepts "unlimited responsibility" for the advice he gives to his client, with whom he must stand upon equal terms in all matters in order to discharge properly his professional responsibility. In the prevailing circumstances it is not surprising that the land surveying branch of the profession is repellent to the would-be recruit who wants to be private in the professional sense of the word.

The writer believes that this regrettable state of affairs arises in the first instance from defects in the land surveyor's education, and that those defects are not confined to the examinations for the licence, but extend to universities as well. The professional bodies may claim fairly that their examinations are designed to train a man to exercise his professional competently and that he must obtain his education elsewhere, before his professional training begins. The duty of the university is to educate, and those colleges that offer highly technical courses in land surveying culminating in a degree cannot, usually in the time allowed, produce a fully educated man as well. The young student of surveying pursues his studies in the belief that the degree when conferred stamps him as an educated man: it is only much later that he realizes that this is not necessarily so.

There is heartening evidence of much disquiet in many quarters about the state of the surveyor's education. All technical courses suffer from the same defect; their curricula are overloaded, allowing less and less time for the "drawing out" process. A high level of technical excellence may be achieved but invariably at the expense of the students' education. An essential requirement in professional life, particularly in private practice, is the possession of a broad and inquisitive mind, and it is regrettably true that in surveying specialization in the technical subjects occurs all too early. The beam of the young intelligence instead of being diffused is brought to a sharp focus too soon, and it is only in much later life that the land surveyor realizes like any good Yogi that he has concentrated too much upon too little for too long. The glimmer of a suspicion crosses his mind that he is a good technician, but very little more, and deeper gloom begins to settle when he perceives that his influence and prestige in the community is manifestly less than that exerted by his colleagues in law, in medicine, and in architecture. These, and other professions, have learned to control their own affairs despite the fact that by no means all their members are private practitioners. To advise the public is only possible for the profession that is itself properly educated, trained in the art of leadership, and, above all, free to lead.

Nothing is more noticeable than the private land surveyor's reluctance to take charge of his own affairs, at any rate in Africa. His life is lived in the shadow of Government Regulations from the moment he makes his first mistake in becoming a licensed practitioner.

It is the writer's firm belief that if the land surveyor's education were to be broader based, more humane and less technical in the early stages, particularly if he is fortunate enough to be able to study at a university, the private profession would in due course escape from its long imprisonment in what Professor Biesheuvel has called the straitjacket of the regulations.

The effect of this broadening of the mind would be felt immediately. Out-of-date, unimaginative, repressive and impertinent regulations would be unable to withstand the critical analysis and determined assault of an educated fraternity.

It has happened, possibly by accident, that in exchange for the "protection" offered by the licence, land surveyors in much of Africa have devoted their activities almost exclusively to surveys for title purposes. They have been content to leave all other types of surveys to others whom they have tended to regard as unqualified merely because they are unlicensed. In this limited licensed world the endless repetition of mechanical measurements in the fulfilment of techniques which have scarcely changed during this century must eventually cause a sense of frustration. This they must attempt to disperse by perversely exalting the regulations under which they work (and may yet die unless changes are effected). In this way a fetish is made of accuracy, and while this is always desirable it is often far from necessary for the purpose of the cadastre.

Because of this, the subject of photogrammetry has not commended itself to private practitioners, and as the licensed fraternity has influenced the pattern of survey instruction in Southern Africa to a very great extent in the past, this expanding science has been gravely neglected by the teaching institutions. It is ironical, to say the least, that the subject at which private practitioners (and at one time governments themselves) turned up noses made fastidious by the incessant pursuit of unnecessary accuracy, should be the one which could inject more interest and excitement into their drab cadastral lives than any other.

Outside the private licensed wall, tremendous developments in the photogrammetric, topographic and instrumental fields have been taking place. "Unqualified" men have contributed much to these new developments and have become proficient in applying many new techniques. The private surveyor, however, engrossed with his theodolite and chain, and compelled by law to perform his surveys in much the same way as they were done 100 years ago, has played little or no part in these new developments, and it is questionable whether his professional undertaking "to do all in his power to advance the science of surveying" has any real meaning, though it was honestly intended.

This distressing state of affairs could possibly continue as long as controlling governments continue to resist the march of progress, and insist upon the application of outmoded regulations to all title surveys. But there is happily some evidence that this will not be so. In Kenya hundreds of thousands of individual titles to land will eventually be issued to the new class of African farmer that is being created by the remarkable Swynnerton Plan, and the surveys required for this purpose are certainly not being made in accordance with the cramping regulations which still apply to other areas. Thus two systems of survey for title purposes, each vastly different in technical requirements and cost to the landowner, at present co-exist in one country, albeit in different areas. It would be idle to suggest, and folly for the government to acknowledge, that the inexpensive title was not in every way as secure as its expensive counterpart. One of the two systems of survey will have to go, and it is not difficult to guess which it will be.

When this stage is reached, a new charter could emerge for private practitioners, provided they seize the opportunity to make a less depressed future for themselves by broadening their interests. Their mistake has been to devote themselves exclusively to title surveys, and in so doing they have played into the hands of the Governments whose regulations so rigidly circumscribe their professional lives.

There are many other kinds of survey work awaiting their attention, and if this continent develops as it is hoped it will, the revolution in land tenure systems throughout Africa will provide an ever-increasing volume of ancillary work for which the pernicious licence is not at the moment required. There will be engineering surveys of many kinds, highway, hydrological and mining surveys, land use and conservation surveys and many others. Even teaching might claim the attention of a few practitioners. But they should be in no doubt that unless they are vigilant, united and determined, new means of bringing their activities under government control will again be devised.

It rests with the profession itself whether it will eventually take its proper place in public life, and play a more respected role in the life of the community, for which, despite excessive and unwarranted restrictions, it has done so much in the past.

E D I T O R I A L

Ownership and Copyright in Architects' and Engineers' Plans

An interesting case involving ownership of Professional Engineers' Plans and a legal opinion thereon has come to the attention of the Editor. In reviewing the subject as reported in the "Proceedings of Council", page 8, January 1961 issue of "The Ontario Land Surveyor", the Engineering case would appear to have some relevance for Ontario Land Surveyors. A summary of the case follows:

A consulting Engineer was engaged some years ago to design and prepare drawings of a structure which the client subsequently had built. This year the same client desired to enlarge the structure by an extension which was a repetition of the original design. Before proceeding with the work he sought a legal opinion as to the respective rights of the ownership of the plans and the right to reproduce and use them, as between himself as owner and the Engineer who prepared the plans and for which original plans the owner had paid the Engineer.

The owner's solicitor accordingly prepared the following legal opinion:

"In Halsbury's Laws of England, Third Edition, Volume 3 in dealing with the liabilities of architects and engineers, there is this statement: "1063. Property in plans. Plans and drawings prepared by architects and engineers are, in the absence of a special agreement, the property of the person who pays for them, and even if there were a custom that the architect should retain them, such a custom would be unreasonable. But, in the absence of a special agreement, the architect or engineer owns the copyright in the plans, and in the design embodied in the owner's building."

"The Canadian text in common use is "Engineering Law" by Laidlaw, Young and Dick; on page 104 deals with the ownership of plans, thus: "5.4 - Plans and Specifications If the ownership of the original plans and copies or prints from them is not to rest with the owner but with the engineer, this arrangement should be clearly stated in the contract."

"The Canadian Copyright Act, R. S. C. 1952, chapter 55, Section 2 (n) reads: " 'Literary work' includes maps, charts, plans, tables and compilations;"

"Plans, therefore, come under the Copyright Act of Canada.