for the certification of survey technicians and technologists. We are pleased that we may be of some assistance in this program by offering educational programs which will meet the requirements for such certification.

Yours sincerely,

William G. Davis
Minister of Education

THE MAIL BAG

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The Editor:

O.L.S. Exonerated in Accident Claim

I am enclosing herewith a copy of the 'Reasons for Judgement' pertaining to a recent Court case in which members of my survey crew were involved, which might be of some interest to other members of the Association. The following remarks will help to fill in some of the background of the case.

I was hired by the local County Engineer to carry out a development road survey. The road in question was in a general north-south direction. The transit was set up over a P.I. in the easterly lane of traffic at the base of a small hill. The plaintiff, Thomas K. McLean, was travelling in his car in a northerly direction in the east lane of traffic proceeding up the hill and a Mr. Calvin P. Richards, one of the defendants, was travelling in a southerly direction in the west lane of traffic. The plaintiff, McLean, crossed over into the wrong lane of traffic as he proceeded to round the transit and transit man, and at the same moment Richards came over the small hill, applied his brakes and went into a skid colliding with the McLean vehicle approximately 10 feet from the transit. We had the usual 'Survey Crew Ahead' signs erected at both sides of the survey area, although they claimed that one sign had blown down within a half hour of our checking it. An accident plan of the area was prepared by myself and certified correct by K.M. Wiseman, O.L.S., who was a witness in this case, and is referred to in the Judgement.

Geo. W. Bracken

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SPECIAL ARTICLE

REASONS FOR JUDGEMENT

In the case of Thomas K. McLean and Calvin P. Richards, Plaintiffs and George W. Bracken and Arthur Covell, Defendants, in the First Division Court of the County of Lanark before His Honour Edward M. Shortt, Judge of the said Court, at the Court House, Perth, Ontario, March 20, 1967.

I propose to dismiss this action and counterclaim and in each instance without costs.

My reason for doing so is to perhaps reiterate that it is a faulty conclusion to draw that every automobile accident must of necessity involve civil negligence or for that matter careless driving on somebody's part. This simply is not so and any court that seeks for some shred of shortcoming from the highest standard of that reasonable man who has seldom yet been found behind the wheel of a car does not in my humble opinion correctly apply the law of negligence. What must be found is that the party to be charged with negligence has fallen short of the duty of care which he owes to other persons having regard to the particular circumstances of the incident in that he

has failed to do something which acting reasonably should in that context have done or alternatively he has done something which acting reasonably he should not have done.

I think it is apparent from the evidence that this unfortunate incident was precipitated directly by the mishap which occurred to the sign entitled "Survey Crew Ahead" which was apparently erected to the north of what I think has been described as "Darou's hill." I am satisfied from the evidence of Covell that the sign was in fact erected as described earlier in the day. There was no, of course, contradiction of this evidence and while he has not had any extensive experience in this field he would have to be of very limited intelligence indeed if he did not concur with the opinion of the witness Wiseman that these signs are put up for the safety of the survey crew and not for the general public. It could be that the witness Covell was indifferent whether or not cars ran into each other but I am quite sure he was concerned as to whether cars ran into him and in his own interests he would see this sign was put up as he has described it. I am satisfied with the evidence of Richards and the evidence of the constable that the sign was down immediately prior to the accident occurring. I do not think, however, that the fact the sign was down is per se evidence of negligence on the part of the defendants Bracken and Covell. There has been no explanation offered by the parties in adverse interest. It is quite conceivable there could have been a novus actus interveniens which accounted for the falling of the sign. I cannot in the light of these considerations bring myself to the conclusion that any negligence has been established on behalf of the defendants Bracken or Covell.

With respect to the defendant Richards, he was driving according to his own evidence at approximately the same speed as the constable subsequently testified he himself drove at and had no reason to believe that immediately over what has been described as a blind hill there would be confronting him a surveyor's transit complete with technician and paralleled by a motor vehicle coming in the opposite direction. It may be argued that he should have proceeded to the crest of the hill very cautiously but my recollection of the Rideau Ferry road is such that he probably would not have reached Rideau Ferry yet had he treated each incline and curve in that fashion. I cannot find that his failure to slow down to five or ten miles an hour constituted negligence on his part.

Turning to McLean, it is true that he testified that he had not seen a sign but that he did see the bar with a flag on it and he did slow down (and this is confirmed by the defendant Covell) and proceeded to pass cautiously to the left, out of his own lane, a procedure which even the witness Wiseman said would probably be what he would do himself - the tendency is to go to the best surface and widest portion of the highway in passing a survey crew. While McLean has not given evidence to that effect, I think he would be entitled to assume that there was some warning ahead even in the form of a steel pole with a red flag on it as had warned him. I cannot see that he can be charged with any negligence either and on the contrary acted reasonably under the circumstances. It was not a question of him coming up behind a slow moving vehicle where he should not have pulled out and passed - any driver is familiar with the farm tractor which slowly grinds its way up the hill while the patient motorist drives behind. This transit was not a moving thing; it was fairly small; it was fairly close, four feet or so, from the east limit of the road; it would be I think not at all unreasonable to swing out to the left to go around it, so again I don't think one can point a finger and say McLean did something which he should not have done or failed to do something which he ought to have done and as I have said I, therefore, propose to dismiss both the action and the counterclaim and the third party indemnity claim, all without costs.