Surveying Practice Under the Registry Act (Part II)

(This is the second of a two-part series representing the address given by Richard E. Priddle, Director of Land Registration, Department of Justice, during the Association's 78th Annual Meeting in Windsor, Ontario, on February 12. It is being reprinted in The Ontario Land Surveyor in the interests of the Profession.)

My assistant, Mr. Dillon, my plan examiner, Mr. Vander Schelde and I recently attended part of a meeting of your Association's Council. We discussed a number of matters of mutual concern to which I have to this point referred rather vaguely. I do not intend to be very specific but, I will give you two or three examples of the kind of survey work about which I am concerned. The surveyors' names have been purposely omitted to protect the guilty.

The first example illustrates failure to honour commitments as to the time and cost for completion of a survey project. A surveyor was engaged to complete Judge's Plans under The Registry Act. The surveyor gave an estimate as to time required for completion of about two or three months and an estimate as to costs of about $500.00. That was about seven years ago. The plan has not yet been completed, and the costs paid to date exceed by several times the original estimate.

One of the reasons for the delay beyond the original estimate as to time involves our practice of referring judges' plans to the Examiner of Surveys in the Office of the Director of Titles for examination to ensure compliance with the regulations. The area of survey adjoined a lake which had been flooded many years ago so that the original road allowance is now partly covered by water.

This fact was not recognized by the surveyor, at least until after it had been pointed out to him by the Examiner of Surveys, (who then required soundings, after research as to the extent of flooding to re-establish the original location of the high water mark and the inner limit of the road allowance.) Apparently this was the first time that this surveyor had been confronted with such a requirement, but it is my understanding that the situation is one that should be recognized and dealt with in the course of good surveying practice.

As a second example, I refer to a case of a land developer who acquired the last, or at least one of the last areas suitable for subdivision in an urban area — (not Toronto). After a long delay, the developer obtained approval to his subdivision plan from the Department of Municipal Affairs, but when he presented the plan to the Registrar of Deeds, he was advised that the surveyor had not prepared the plan or performed the survey in accordance with the requirements of the regulations.

The extent of non-compliance was so serious that I referred this plan to the Examiner of Surveys. The Registrar had discovered about 20 points of non-compliance. The Examiner of Surveys discovered many others. A meeting was arranged involving a surveyor from the firm, the subdivider, the Examiner of Surveys and myself. The subdivider was being seriously inconvenienced by the delay in registration, since he had heavy commitments involving large amounts of interest.

Although this was a subdivision plan, the monuments required by the regulations under The Surveys Act were, in most instances missing — that is they had never been planted by the Surveyor. Other matters concerning misclosures, the adoption of unsatisfactory survey evidence around the perimeter, and the inclusion of an unclosed street as parts of the new lots were also involved. To assist the subdivider, conditional approval was given for the registration of the plan involving additional work after registration.

Regulations Similar

At this time, I would like to emphasize that the regulations under The Registry Act are almost identical with those under The Land Titles Act and that the regulations governing monumentation under The Surveys Act apply equally to plans entering both systems of registration. The difference is that the regulations under The Land Titles Act are more stringently enforced.

Again, let me emphasize that, in my view, registry offices should be entitled to rely upon certificates by surveyors as to compliance with the requirements of statutes and regulations. By far the majority of the Registrars of Deeds and the employees of Registry Offices have not had the training to qualify them to examine plans to ensure compliance. Only a few of the registry office employees have received any appreciable amount of instruction. In the areas where those employees work, surveyors are finding that they are being required to do a better job than in the past.

Let me cite as a third example, a surveyor who was engaged to divide a fairly large tract of land into parcels, each just over 10 acres, so that they could be conveyed without any consent under section 26 of The Planning Act. A subsequent surveyor discovered serious discrepancies between the first plan of survey and the field work. The original surveyor was required to amend his plan, with the result that some of the parcels were reduced in area to below 10 acres. Fortunately for the purchasers, the subsequent amendments to The Planning Act validated the conveyances in all but one instance, where the would-be owner's title problems have still to be resolved.

This will serve as an illustration of the consequence to the client of an improperly performed survey. The difference between just above or just below 10 acres, in an area of subdivision control could determine the effectiveness in law of the deed. The purchaser thought he had acquired title from the vendor under a properly executed deed. If, as a result of a surveyor's error, the area of the parcel was under 10 acres, the deed might as well have been a blank piece of paper.

Another Example

Another example with a similar result to the client came to light when a surveyor was engaged by a purchaser of a lot on a registered subdivision plan to survey the lot to ensure that it contained the minimum area required by the municipal by-law for a building permit. To my dismay, I discovered that the Registrar had accepted the plan for registration, even though it exceeded the maximum dimensions permitted; it had a red outline around the area of survey (which is no longer permitted) and the surveyor's certificate was in the form contained in The Registry Act of 1960, and included a reference to a non-existent section of The Surveys Act.

It was reported by the second surveyor that the monuments did not at all comply with the regulations under The Surveys Act, and after examination of the plan, the Examiner of Surveys reported to me that several of the lots misclosed by amounts greatly in excess of the error of closure permitted by the regulations. Here, again the purchasers found they were in the position of having paid for parcels smaller in area than they had bargained for.

Building Lots

My last example involves a surveyor who was engaged by a subdividing concern to perform surveys of large parcels to divide them into building lots. The surveys were purportedly completed in remarkably short time, and the plans were deposited in one or more Registry Offices as reference plans. Each plan was certified as to compliance with The Surveys Act, The Registry Act and the Regulations thereunder, and stated the survey in each case had been completed on a specified date.

In a subsequent discussion with the surveyor, he admitted, (in the presence of

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your Secretary,) that none of the monuments shown on the plans had been planted prior to deposit of the plans. He excused himself by stating that competing surveyors in his area did the same thing, but he said that he knew that he had a moral obligation to plant the monuments at a subsequent date, before the individual parcels had been sold. By so doing, he rationalized that he was justified in certifying that his plans and surveys complied with the pertinent regulations. This, and perhaps others of my examples, will illustrate what I mean by playing with words, and what I fear is a current trend toward dishonesty.

Some of your members argue that there are so many regulations these days that it is impossible to keep up with them, despite the fact that your Association's Secretary forwards copies of all such regulations for inclusion in your manuals.

Not Familiar

The first survey regulation under The Registry Act came into effect on July 1, 1964, and the revised regulation came into effect on July 1, 1967. On the basis of discussions I and members of my staff have had with surveyors, it is apparent that they are not at all familiar with the requirements of the regulation under The Registry Act. In fact, it would appear that, in some instances, the surveyors do not even know of the existence of the regulations.

In order to simplify things for the benefit of your profession, the Examiner of Surveys, Mr. Colin Hadfield, and I are hoping to obtain legislative authority fairly soon so that one Code of Standards for Surveys, Plans and Descriptions may be made relating to The Land Titles Act, The Registry Act, The Certification of Titles Act, The Boundaries Act, and The Condominium Act. The regulations prescribing survey standards under The Land Titles Act, The Registry Act and The Certification of Titles Act are almost identical and could quite easily be combined in one regulation.

This is only one area where we have been attempting to make procedures under the two systems of land registration more nearly similar. Amendments have been made during the past few years to The Land Titles Act and The Registry Act in an attempt to standardize procedures under both Acts. Those of us who are involved in the administration of the two land registration systems agree with the thinking (or what appears to be the thinking) of the legal profession and others to the effect that we should have only one system of land registration in Ontario.

Committee Formed

Over two years ago, we formed a committee to develop a scheme for converting both present systems to one new system. The work of this committee was progressing quite satisfactorily when the whole subject of the law of real property was undertaken as a project by the Ontario Law Reform Commission. Land Registration is one of the several compartments into which the Commission has divided this project. It was decided at this point that the work of our committee should be suspended until such time as a report had been prepared by the Commission.

Those of you who attended the seminars last year will remember that Professor Risk of the University of Toronto Law School was engaged by the Commission to do research work to form the basis of the Commission's report. The Attorney General was hopeful that the Commission would present their report to him this spring, but my latest information is that the report will not be presented for several months.

Although I have no real inside information, I am predicting that the Commission will recommend one system of land registration more nearly similar to the Land Titles system than to the Registry system. I am also predicting that the Commission will place a greater emphasis on proper surveys. If my conjectures prove to be well founded, they will coincide to a large extent with the thinking of our committee.

System's Weakness

One of the weaknesses of our present land titles system is that quality of title is guaranteed, but quantity of title is not. In other words, we guarantee that you have a good title, subject only to specified encumbrances, but you find that land! It is anticipated that the recommended new system of land registration will include a guarantee as to extent. In that event, serious thought will have to be given to whether it will be possible to change horses in mid-stream.

We are seriously concerned at this time with the quality of the surveys you perform, because we had hoped that we would be able to convert from the present systems, particularly the registry system, to a new system very quickly, parcels of land that had been recently surveyed. On the basis of my experience, it would seem that only surveys and plans that have been subjected to examination, (that is, mainly plans under The Land Titles Act) could be relied upon to be sufficiently accurate for us to gamble on guaranteeing extent. Too many of the plans filed in the registry offices are unreliable. A thorough examination of all plans would be involved before reliance could be placed upon any of them for our purposes.

I am hopeful that, through the combined action and co-operation of your Association and our officials, survey standards (particularly in areas where The Registry Act prevails) will be improved even though this may involve prohibiting certain of your members from further practice. If we become involved in a new system of land registration under which a greater number of surveys are required, there may well be a serious shortage of surveyors able to perform the required work unless more speedy survey methods are developed or a greater number of students qualify as surveyors.

Summarizes Challenge

When I first agreed to talk to you today, it was suggested to me that I say something to provoke discussion. I hope that I have done just that, without encroaching too much on the time allowed for discussion. My remarks were supposed to be challenging. Let me briefly summarize my challenges to you.

I last dealt with the possibility of a new land registration system involving a greater number of surveys. My challenge to you in this area is to develop a scheme for producing a greater number of better surveys quicker and cheaper.

Before that, I dealt with serious instances of non-compliance with regulations. My own view is that we should not be required to introduce into the registry system a full-fledged examination system such as we now have under The Land Titles Act. The cost of establishing or extending such an administration is practically prohibitive.

I think that you should assume the responsibility for ensuring that each of your members performs his work in accordance with the requirements of the law. This may involve more disciplinary action under your new Surveyors Act and the imposition of serious penalties. I would suggest the establishment of a Compensation Fund, such as that now maintained by the Law Society to compensate clients in instances where the surveyor engaged does not complete the job to acceptable standards, particularly where an owner suffers financially or otherwise as the result of sub-standard survey work.

As a third matter for your consideration, you might deal with my first real point, honesty. A charge of perjury cannot be laid under the Criminal Code on the basis of an untruthful statement made by a professional person in a certificate. However, if we were to revert to the former practice of requiring a surveyor to certify his plan under oath, the penalties provided for perjury would apply after a successful prosecution.

Personally, I would prefer not to have to revert to a sworn statement. My view is that the certificate of a professional person should be capable of being relied upon, and that if the statements made in such a certificate, particularly one required by or under legislation, are shown to be false, but made deliberately, the client or any subsequent owner of land in the subject area should have a right to indemnity either from the surveyor or the Association. My challenge to you is to develop a system to enforce professional honesty.

The author deviated from a portion of his text and discussed other subjects of interest to the membership.