

Surveying Practice Under the Registry Act

(The following is the first 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. The second part will be carried in the October issue.)

The title of this address had to be decided upon before I had any idea of what I was going to talk about, so I decided to call it "Surveying Practice under The Registry Act". I thought that would be vague enough to allow me to talk about almost anything.

The legal profession is one of a very few professions where the principal tools of the trade, so to speak, are words. The only other similar profession that I can think of at this time is the other profession whose members wear the black gowns and clerical collars. Historically, the two are related. A lawyer must consider the various meanings and shades of meaning of each word, whether spoken or written. Sometimes it is more difficult to determine the meaning of words when they are written.

For example, you likely thought that the title of this talk, "Surveying Practice under The Registry Act", meant the process of measuring angles and distances on the ground. For all you know, I could just as easily have intended it to mean "Having a look at what is done under The Registry

Act". The members of every profession "practice". Doctors practise medicine; surveyors practise surveying; and lawyers practise law.

They say practice makes perfect. I guess none of us ever achieves perfection, since we keep right on practising. This probably sounds like nonsense, but it has some bearing on what I will be saying a little later.

I come here, I would like to feel, as a friend of your profession, almost a member of the family. There is no point at all in my coming just to tell you fellows that you are doing a great job — carry on. You probably think that is the case without me telling you so. I'm not going to tell you that. If I am going to speak to you like one of the family, I am going to tell you what you're doing wrong, or at least, some of the things that come to my attention.

This doesn't mean that you are all doing a bad job of surveying; my critical remarks are aimed at the kind of surveyors with whom I come frequently into contact,

whose plans or surveys do not comply with accepted standards.

You may be offended by some of the things I say. If you have any ideas of instituting legal actions against me as a result of what I am about to say, would you please raise your hands so I can see who you are, and prepare my defense.

When I was groping around for a title to this address, I almost became involved in a bit of plagiarism by choosing "The Importance of Being Honest". Our kind of society is founded on law and order. To a greater extent than with other professions, the law and the legal profession become involved in almost every aspect of our lives — our property, our relationships with one another, and just about anything you can think of. The law depends upon the truth. If a witness who swears to tell the truth in a criminal proceeding does not, an accused person who is guilty may be acquitted, or an innocent person may be convicted.

In this present age of relaxed moral
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standards and the continued trend of drifting away from organized religion, there is far less adherence to the old moral standard of honesty. Lawyers, however, still pretend, as do the courts and the various levels of legislative bodies, that a person who swears to tell the truth, really does tell the truth.

We also pretend, I guess, that a person of professional standing who signs a certified statement, without actually swearing, is telling the truth. Your profession is one where the product of your labour — your plan of survey — is required only to be certified. You are not required to swear under oath that you have carried out your job in accordance with the various legislative requirements.

The regulations under The Registry Act require every plan of survey that enters a registry office to be certified by a surveyor. He must certify that he has made the survey and plan in accordance with the requirements of The Surveys Act, The Registry Act and the regulations under those Acts.

Occasionally, through oversight, a Registrar may accept a plan without such a certificate, but by far the majority of plans received are so certified. It alarms me that so many of the plans that are certified as complying with the various legislative requirements do not in fact comply.

The regulations under The Surveys Act (Ontario Regulation 266/61) establish standards and requirements for proper monumentation. Standard iron bars — I am sure you all know what they are, they're the one-inch square, four-foot long variety — are required to be planted at specified positions in the course of a survey.

I have had a shocking number of plans brought to my attention that have been certified as complying with the regulations under The Surveys Act (and each certificate will also state that the survey was completed on a specified date) but the monuments have not been planted — and in some cases it is doubtful that the surveyor or any of his employees ever saw the ground!

What does this indicate? — A trend toward dishonesty? — That the regulations are too demanding? — A lack of knowledge on the part of the surveyor? — Or rationalization on his part? — If he certifies that he has planted the monuments and then puts them in later — well, that's compliance.

What about these things called "cloasures"? We lawyers are only expected to be able to play around with words. You surveyors are expected to be able to play around with figures. When you certify that a plan complies with the regulations under The Registry Act or The Land Titles Act, you are certifying that the

survey and plan comply with the mathematical accuracy required by the regulations.

Sometimes, a Registrar or a subsequent surveyor will find that a certified plan of survey appears to contain errors greatly in excess of the limits permitted by the regulations, and will bring the plan to our attention. In some cases, we have had the plans checked quite thoroughly, and occasionally, some of our crew will perform a field examination.

Too often, to our dismay, (but in some cases it is anticipated) the monuments that are planted in the course of the survey, as shown on the plan may be in different locations, may be of different types, or may be nonexistent!

Occasionally, we request the surveyor concerned to come in so that we may discuss things with him. You would be amazed at the excuses. The clients were pushing — they had to get the plan on so they could get the advance under the mortgage, or so they could close the deal on a certain date. The draftsman slipped up, or the chainman slipped up, or somebody slipped up, but in most instances, the surveyor who certified that the plan complies with all requirements is pretty well blameless — he thinks!

Now, I realize that during the past few years, in particular, newer methods have been developed for surveying land, many of these involving the use of rather sophisticated equipment. You now have newer equipment available for field measurements of angles and distances, and mathematical calculations. I understand that some of the limits of subdivisions can be laid out by computers, allowing the limits of various lots to be calculated with great accuracy.

I am not suggesting for a minute that you should not adopt the use of modern equipment, but let's not mislead the public when we're doing it!

When a plan of subdivision, for example, is computer designed, and the intended positions of the monuments are shown on the plan, let's not certify the plan to say that it complies with the regulations under The Surveys Act, (which require the monuments to be planted before the plan is completed), if the monuments have not been planted.

Ontario Land Surveyors have always been treated and classified as a professional group. It is the only professional group that, to my knowledge, the government feels must be controlled by legislation and regulations to the extent that it has been. It is the only profession where the government established a group of civil servants to examine the professional work of its members.

Plan examination began in the Land Titles Office in Toronto about 1957. In the spring of 1958, the first Code of Stand-

ards and Procedures for Surveys and Plans was made by regulations under The Land Titles Act. Since that time, all plans of survey entering the Land Titles system, (with certain limited exceptions as to plans originating in other government departments), have been examined for survey evidence and mathematical accuracy and compliance with requirements as to monumentation.

Now, there are other regulations that establish codes for people engaged in various trades, such as electricians, plumbers and carpenters, but there are no regulations governing the activities of the legal profession or the medical profession in the same way that the regulations attempt to control and standardize and improve the work performed by surveyors.

These other groups whose members are controlled, you will note, are groups that are normally classified as tradesman. Sometimes, half-seriously, I mull over whether surveyors are more nearly akin to tradesmen than they are to the other professional groups. The similarities with tradesmen include the use of tools and instruments. A carpenter measures lumber, a surveyor measures land.

On the other hand, included among the responsibilities of a surveyor, is the assessment of evidence, and in this sense, the surveyor exercises almost a judicial function. However, a distinction is that not only does the surveyor weigh the evidence, but he must find it and, in a sense, present it to himself. His adjudication on the evidence brought to his attention is rarely appealable as are decisions, based on evidence, by the courts.

I am sure that surveyors look upon themselves as a professional body, and in fact, they are thought of as one of the self-governing professions. In this category we have the legal profession and the professional engineers. The functions of the Association of Ontario Land Surveyors are similar in many ways to the functions of the Law Society of Upper Canada.

The responsibilities of the governing bodies include the education of members, both before and after qualification to practise, and the disciplining of members who do not conform after they have qualified.

A new Surveys Act was passed during the last session of the Ontario Legislature, which came into force on the first day of this year. Under that Act, the functions of your governing body will be even more similar to those of the Law Society. I am reasonably satisfied, from discussions I have had with several of your members, particularly members of Council, that the profession is concerned about its public image.

Your Association's Council appears to be ready to take measures, through disciplinary action, if necessary, to improve the standard of survey work throughout

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the Province, and incidentally, to improve your public image.

In my view, it should not be necessary for the government to pay the cost of ensuring that the work of a professional group comes up to accepted standards. Regulations should not be required to be as extensive as they are, and it should not be necessary at all for us to ensure that surveys and plans comply with the regulations.

The areas of administration for which I have some responsibility are inextricably associated with and dependent upon the work of surveyors. I commend your Association's efforts for improvement of your public image.

To this end, I have already brought, and intend to continue to bring to the attention of your Association any serious example of professional misconduct, misfeasance or malpractice that comes to my attention.

In this role, you may look upon me as somewhat of an informer. But, on the other hand, if a person in a position like mine takes no action, who will see that matters of the sort with which I am concerned are brought to the attention of your Association, so that disciplinary action may be considered, and taken if the instances are thought to be sufficiently serious?