graduated Ontario Land Surveyors, especially to Mrs. Lorraine Setterington. This charming young woman has the distinction of being our very first lady Land Surveyor, who not only passed with flying colours, but topped the class in the bargain.

It has been my pleasure in recent months to represent the Association at the Annual Meetings of both the Alberta and the Quebec meeting at Mont Gabriel de Piedmont. The settings in both cases were magnificent and the hospitality without equal.

Perhaps our Association would be well advised to re-consider meeting dates and our "choisir de locale". It has been my observation that one's constitution seems to handle the Social Activities more easily in a lodge type of environment, where fresh air and scenery are abundant as opposed to three or four days confined to a downtown Hotel.

From my conversations with Surveyors across the Province I gather that everyone is having a bumper year, the only complaint being the scarcity of qualified Surveyors and experienced Technicians.

The Board of Examiners has been swamped with a deluge of inquiries from people desirous of becoming Land Surveyors, but whose Academic qualifications are not strictly in line with our requirements. Many of these men have been informed that their training and experience is acceptable and it is hoped that our members will see fit to consider accepting them as Apprentice Surveyors.

Once again I would remind you that the 1970 Annual Meeting is in Windsor, on February 9th, 10th and 11th, next.

Neil Simpson, President

-OLS-

SPECIAL ARTICLE

REFERENCE PLANS UNDER THE REGISTRY ACT

*by J.G. O'Grady**

At the last Conference in London, in May 1965, one of the speakers was Mr. R.E. Priddle, Assistant Inspector of Legal Offices, who spoke on plans and descriptions under the Registry Act, with particular reference to the regulation under that Act that came into force on the 1st of July 1964. Much of the discussion was centred around the methods of preparing descriptions and in particular to Sec. 7 of the Regulation which introduced to The Registry Act the method of describing land by reference to a plan attached to an Instrument.

The 1964 Regulation was almost impossible to implement because: (a) The Plan was very limited in size; (b) The Plan could only refer to the lands in the document to which it was attached; (c) The Plan was not a plan of subdivision. A plan of subdivision is defined in the Act as being a plan, by which the owner of land divides the land into areas designated on the plan. Accordingly every plan of survey which divides a parcel of land into two or more areas could come within the definition of a plan of subdivision.

** Mr. J.G. O'Grady, Solicitor, of the firm of Jeffery, Brown, Beattie and Gunn, London, Ont., presented this paper at the Land Transfer Conference held by the South Western Group of OLS last fall. The Theme of the Conference was "Mutual Problems of Surveyors, Registrars and Solicitors". We thank Mr. C.B. Chapman, Secretary-Treasurer of the Group for submitting Mr. O'Grady's paper for publication in "The Ontario Land Surveyor". - The Editor.*

Whether those discussions in 1965 were of any value or not, only history could tell. Sec. 7, as it was then written, was almost impossible to utilize. Perhaps it was, and I feel it was, the result of that Conference and the efforts put forth by your Association that resulted in a complete revamping of the Regulation.

The introduction of Regulation 139/67 did not improve the situation except that the provision about not being a plan of subdivision was dropped and the Regulation also provided for the deposit of the original plan under Part II of the Act and first made reference to Reference Plans or "R" plans. At that time you could only show on the plan the lands being dealt with one severence of land at a time.

Amendment 179/68 effective July 1, 1968, completely revamped the method of describing lands in accordance with a plan and introduced description reference plans to the Registry system. It is to this method of describing lands that I will direct my remarks.

Any reference hereafter to the Regulation will be referrable to Regulation 139/67 as amended, with the last amendment being Regulation 179/68 which came into force on the 1st of July 1968.

The ancient principle of graphic descriptions can be traced back in Ontario to the first Crown Patent in Book "A", dated May 27, 1797. There the principle was established of describing a parcel of land as a geographic entity based on an official plan, prepared under competent authority and recorded in the public office. The principle is exact and free from all ambiguity.

With the advent of the Registry Act in 1795, the procedure of graphic descriptions have the advantage of divorcing the land in question from the original tract of land and creating a new geographic entity, i.e. Lot 1, Plan 740. The original plans are a matter of public record and are kept in a public office. Unfortunately the graphic description has over the years somewhat become connected to planning of new subdivisions of land. The metes and bounds description has been used for almost all other severences. Some descriptions however do reflect the use of a plan by using expressions therein such as "to a post", "to an iron bar", or "being the lands outlined in red on a survey attached", others do not.

The description reference plan is one further extension in the use of graphic descriptions. To avoid confusion with the original system, the geographic divisions created by the description reference plan are referred to as "PARTS" and is provided for in Sec. 7(3) of the Regulation. Further to avoid confusion with plan numbers, the word "reference" has been abbreviated to the letter "R" and is preceded with an additional letter or letters, so as to distinguish the registry division in which the reference plan has been deposited. This is provided for under Sub-clause "A" of Subsec. 8 of Sec. 7 referred to previously.

Sec. 2 of the Regulation provides that Sec. 7 and Secs. 9 to 36, both inclusive, apply to reference plans. Sec. 7 is the principal section dealing with reference plans, whereas Secs. 9 to 36, both inclusive, deal with surveys and plans, standards of surveys and preparation of plans. The use here of the word "PLAN" is referrable to the plan prepared by a surveyor as a result of a survey completed by him and therefore applies to all those plans commonly referred to as Surveyors sketch, Sketch of Survey, Print of Survey, etc.

A reference plan is defined under Sec. 1(ha) as a plan of survey deposited under Part II of the Act in accordance with Sec. 7 of the Regulation. Sec. 7(1) states that the plan of survey is to be made in accordance with this Regulation and deposited in accordance with Sec. 7. Accordingly the plan must be the result of an actual survey on the ground. Sec. 10 of the Regulation states the surveyor shall refer to all documentary evidence related to the land under survey and the land adjoining the land under survey.

You will note of course that this Sec. refers to all documentary evidence and does not restrict it to registered documentary evidence, although it is still the obligation of the surveyor to make his necessary searches in the registry office. The survey, of course, must also be prepared in accordance with the Regulations under the Surveys Act. Under that Act in determining boundaries between properties the surveyor becomes "Judge and Jury" to decide what is the best evidence of the boundary between the property being surveyed and any adjoining property.

It is my understanding that there is no criteria set out in any Act or Regulation as to how far afield a surveyor must go in showing evidence that may exist on the ground showing a difference between a possessory limit between properties or a title limit. In other words, if in establishing a line as described in a title deed, the surveyor finds evidence of an occupational limit 5 feet away, should he show this on his plan of survey? Can he act on other evidence and in his capacity of "Judge and Jury" ignore the existence of the occupational limits? Should he show only the deed line on his plan of survey, so that the party for whom he is preparing the survey or his solicitor would not be aware of this potential discrepancy between title and occupation? If the occupation limit 5 feet away can be ignored does the same apply to an occupational limit one foot away? six inches away? What is the criteria?

I would suggest it is the duty of the surveyor to his client to disclose all evidence of occupational limits within a reasonable distance from the title line, taking into account in making any judgment the standard of the surveys previously made in the area and the availability of either primary or secondary evidence of the original survey or surveys and the possibility of upsetting long established possessory limits. I would suggest further that occupational evidence within 5 feet of a deed line is within a reasonable distance. In this regard reference should perhaps be made to Subsec. I of Sec. 15 of The Conveyancing and Law of Property Act which provides, and I will paraphrase, that every conveyance of land, unless an exception is specifically made therein, includes all houses, out houses, barns, etc. trees, woods, underwoods, fences, hedges, ditches, ways, waters, water courses, etc. to such land belonging or in anywise appertaining, or with such land demised, held, used, occupied and enjoyed or taken or known as part or parcel thereof. In the case of Fleet V. Silverstein, reported in 1963, I, Ontario Reports, at page 153, which was a case dealing with the problems where a conveyance to the plaintiffs included a parcel of land, but did not include a parcel of land varying in width from 7 feet 4 inches in front to 5 feet in the rear, which had been used and enjoyed along with the parcel described for more than a statutory period. The new owners of land adjoining, whose deed included the strip of land 7 feet 4 inches in front and 5 feet in the rear tried to claim title under their deed. The plaintiffs brought action to claim title by possession. Chief Justice McRuer, as he then was, held that the plaintiffs were entitled to the lands even though they had not been conveyed to them on the basis of adverse possession for the statutory period aginst the defendants' predecessor in title. He went on to point out as follows:

> "That being the conclusion that I have come to it is not necessary for me to express a definite opinion as to the application of s. 15 of the Conveyancing and Law of Property Act R.S.O. 1960, c.66, as an answer to the argument put forward by Mr. Rolls that it is necessary for the plaintiffs to show a conveyance from Mrs. Osborne of her rights in this disputed strip in order to maintain the continuity of the possessory title as against the defendants. My present view is that the conveyance of the house and the lot on which it stood would by virtue of s. 15 of the Conveyancing and Law of Property Act carry with it land "held, used, occupied and enjoyed...as part or parcel thereof". This land was enjoyed as land within the curtilage of the house and was purchased by the plaintiffs as such. As I say, although I do not have

to come to a definite conclusion on it, my view at present is that the conveyance of the land on which the house sat would be quite sufficient to carry with it all the rights which Mrs. Osborne had and had acquired by possession or otherwise over this strip of land which was enjoyed and used as part and parcel of the property connected with the house erected as No. 2351 Chisholm St. in the Village of Bronte."

I believe in the light of the above statement, although it may be 'obiter', that title does not always govern and we should watch carefully possessory limits. You will note of course that this possessory limit extended beyond the 5 foot difference previously mentioned.

It has been said that a graphic description preserves evidence of the extent of title. A simple plan of this type will show all the evidence on which the survey is based; all conflicting evidence; all evidence of adverse possession; numerous indications of secondary evidence on which the retracement of the parcel may be based should the primary evidence disappear; and complete descriptions of the type and location of all primary evidence found or created in the course of the said survey.

In addition to the foregoing a complete picture will be presented showing the relationship of the parcel in question to all adjoining or adjacent parcels of land. The foregoing obviously cannot be prepared in verbal form without preparing an essay which in some cases would extend to several volumes.

All information above noted is shown on a simple plan which is kept for all time in a public office.

The 1968 Regulation opens the doors for better use of description reference plans which now may contain as many parts as the person depositing the same wishes and the person dealing with land is only limited by the size of the plan that may be deposited.

It should be noted that a reference plan is the expression of the intention of an owner as to the manner in which he proposes to deal with his land or a part thereof. Sec. 7(11) of the Regulation states that a reference plan may not be withdrawn from deposit once the receipt has been signed by the Registrar or his Deputy. I would therefore suggest that in dealing with reference plans that the parties are sure that this is the way in which they wish to divide the land and that the deposit of the reference plan should be withheld to just prior to the registration of documents dealing with the same. If the reference plan includes more land and more parts than is the subject matter of the present transaction by the owner, then the reference plan and the parts shown thereon become binding upon him for the future division of the land, unless he deposits a new reference plan amending or redividing the portion of the lands included in the reference plan and which is now the subject matter of the transaction by the owner.

Reference plans are deposited under Part II of the Registry Act, they are not registered. As mentioned previously a reference plan with more than two parts may very well be a plan of subdivision. However not being registered they are not a registered plan of subdivision within the meaning of Sec. 26 of The Planning Act. The requisition for deposit may be signed by anyone but I would suggest should be signed either by the owner, his surveyor or his solicitor. As previously mentioned, a reference plan is the expression of the intention of the owner as to the manner in which he proposes to deal with his land. I would therefore suggest that in those instances where a proposed purchaser has ordered a survey of lands, being the subject matter of an Agreement of Purchase and Sale, and the survey is prepared as a reference plan then it would be prudent, for both the surveyor doing the work and the solicitor for the purchaser, to request that the reference plan be deposited at the request of the owner or his solicitor so as to indicate the approval of the owner thereto.

It should be stressed that a reference plan is a method of describing lands and

is not a plan of subdivision within the meaning of the Planning Act. A reference plan is deposited, it is not registered as is a plan of subdivision. Accordingly if the lands, the subject matter of the reference plan, are subject to a subdivision control by-law or a part lot control by-law, it is still necessary to get the consent of the Committee of Adjustments to deal with the lands.

Once the reference plan has been deposited the description of the severence from the geographic entity is again reduced to the simplest and most exact form, namely "that part of Lot No. 1, in the 2nd Concession of the Township of White, in the District of Black and being designated as Part 5 on a plan of survey deposited in the Registry Office for the Registry Division of the District of Black as BR-72".

In this present day and age we hear a lot about the generation gap and everything is blamed upon the lack of communication between people. Here is a new method of describing lands which to me is one of the greatest advances under the Registry Act in the last several generations. It is only with publicity that description reference plans will be widely accepted by those parties dealing with the division of the land. It is there that you as surveyors become preachers of the new gospel, disciples of the new light, to enlighten principally the legal profession and I would say in many instances some of your own profession and of course registrars. With proper education and publicity as to the use of description reference plans, the work of the registrar would be eased tremendously. Adherence to the Regulation would become more uniform and perhaps that happy day would arrive when iniquitous Sec. 4 of the Regulation which permits the Registrar to accept a description not strictly in accordance with the Regulation could be repealed.

To what use can a description reference plan be put? I have with me a copy of a reference plan filed in the office of Land Titles at Toronto, showing the division of 18 lots for the purpose of semi-detached houses. The location of the houses is shown thereon, sideyard clearances, setbacks, etc. Therefore we then have on title a record of the survey of the property showing the location of the house and should any primary evidence disappear then there is sufficient data thereon by which the primary evidence can easily be re-established. Another use for a description reference plan is to describe the exterior boundaries of a plan of sub-division when the owner is only subdividing a portion of his holdings and the limits thereof are very irregular. Another wide use of the same is the conveyance of the easements to the utility companies especially on plans of subdivision. The description reference plan shows the location of the easements and eliminates the confusion which sometimes arises from the schedules describing the easements when one endeavours to relate the same to the plan of subdivision.

I previously made reference to Sec. 10 of the Regulation that the surveyor should take into consideration evidence of occupational limits that may exist on the ground. I would draw your particular attention to Sec. 44 of the Power Commission Act which states that notwithstanding any other Act where any right, interest, way, privilege, permit or easement has heretofore been or is hereafter acquired by the Commission then the land remains subject to that right or interest etc. Under this Section, I understand the Hydro Electric Power Commission of Ontario feel that they are not obliged to register on title all easements that have been granted to them. Accordingly, it may be sometimes found, that when you take your eye away from the gun of the transit and look around it may be noticed that there is a hydro easement running across the land which may not be necessarily disclosed by the registered title. In the same regard when dealing with a part of a highway which has been stopped up and closed, one should remember the provision of Sec. 459 of the Municipal Act. Any by-law stopping up and closing an original allowance for a road leading to any stream, lake or other water, must have the consent of the Lieutenant Governor-in-Council before the by-law is effec-

tive. You will note it is to any river, stream, lake or other water. The Sec. does not mention navigable and I would suggest that perhaps the words "other water" might be broad enough to include the most minute water course. Unless the surveyor, who has been on the ground, discloses to the parties involved that the portion of the road closed leads to a body of water of some kind, even though the same may be somewhat outside the confines of the survey in question, then it may well be that a solicitor would be certifying title to an improper road closing on the basis of the information that has been supplied to him by the surveyor.

I would further draw to your attention in this matter of road closing the provisions of Subsec. 8 of Sec. 459 of the Municipal Act which requires that any by-law stopping up or closing or altering or diverting a highway or any part thereof which was shown on a registered plan of subdivision registered after the 27th day of March 1946, is not effective until it has been approved by the Minister of Municipal Affairs. On several occasions, when inquiring as to the approval of the Minister to such a by-law, I have received the reply that the Municipality was unaware of the requirement. This of course results in not being able to certify title to the lands.

Inquiries made at the various Registry offices in Southwestern Ontario indicate that, up until the 1st of July this year, reference plans were used mainly by utility companies and expropriating authorities. However, the description reference plan by private individuals seems to be obtaining wide acceptance since the advent of the new Regulation on the 1st of July and many have been registered in Essex, Kent and Middlesex.

As previously mentioned, one of these plans (1) shows the division of lots for the purpose of erecting thereon semi-detached houses and shows the location of the houses. Another shows the division of existing lots according to a plan into new building units. In other words dividing ten lots on a registered plan into eight new building units. Another shows the location of Bell Telephone and Public Utilities easements, granted in accordance with the Subdivision Agreement, on a new plan of subdivision. You will note that it shows the various easements at the rear or along the side of each lot according to the plan of subdivision as a Part. Each Part is given the same number as the corresponding lot on the original subdivision plan; that is, the utility easement at the rear of Lot 10 on the registered plan is Part 10 according to the reference plan. You will note further that there is not too much detail given on the plan. Rather there is a note on the side indicating that the plan is a copy of the registered plan, that the measurements and bearings thereon govern, that each Part is numbered identical with the lot number according to the registered plan and that each Part is 4 feet in width, unless otherwise specifically designated. This of course eliminates the need for a lot of fine detail to be shown on the plan. I would suggest that this plan coupled with the registered plan, is sufficient compliance with the regulation and one in which the Registrar could properly exercise his discretion under Sec. 9 (b) of the Regulation and allow the same to be deposited.

I have taken the liberty of adapting the method of describing lands under the Land Titles system by description reference plans, to the Registry system. Copies of the draft descriptions (2) are available to anyone wishing the same. I thought that these would be of assistance in developing a uniform method of describing lands by way of reference plans in the various Registry Divisions, if of course, the descriptions are acceptable to the various Registrars.

(1) Mr. O'Grady refers to a number of prints of reference plans under Land Titles which he displayed.

(2) - A copy of the draft descriptions referred to is published on the next page.

SAMPLE GRAPHIC DESCRIPTIONS - REFERENCE PLANS

Reference Plan over Township Lot

That part of Lot **10** *in the* **4th** *Concession in the Township of* **London** *in the County of Middlesex, and being designated as* **PARTS 1 and 2** *on a plan of survey deposited in the Registry Office for the East and North Riding of the County of Middlesex as MR-200.*

Reference Plan over Registry Office Plan

In the Township of **London** *in the County of* **Middlesex** *and being those parts of Lots* **506 and 507** *as shown on Plan 3020 filed in the Registry Office for the Registry Division of the* **East** *and North Riding of the County of Middlesex and designated as* **PARTS 1 and 2** *on a plan of survey deposited in the said Registry Office as MR-100.*

Right-of-Way

TOGETHER WITH A RIGHT-OF-WAY *for all those now and hereafter entitled thereto, over, along and upon that part of Lot* **507** *on the said Plan* **3020** *and designated as* **PART 3** *on said* **MR-100** *and subject to a right-of-way at all times in common with all others entitled thereto, over, along and upon that part of said Lot* **507** *on the said Plan 3020 and designated as* **PART 2** *aforesaid.*

Public Utility Easement

In the Township of **London** *in the County of* **Middlesex** *and being that part of Lot* **10** *as shown on Plan* **970** *registered in the Registry Office for the Registry Division of the East and North Riding of the County of Middlesex and designated as* **PARTS 5 and 6** *on a plan of survey deposited in the said Registry Office as* **MR-150.**

SUBJECT TO *an easement in favour of* **The Bell Telephone Company** *of Canada over the said* **PART 6** *on Plan* **MR-150** *for the purposes as set out in Instrument 176542.*