

Law and Surveying

Legal Surveys Branch, Ministry of Consumer and Commercial Relations

Registry Act - Report On "Monitoring" Programme

In the September/October 1974 issue of The Ontario Land Surveyor the article that appeared under this heading gave an overview of the Land Description Control Programme and the policy of the Legal Surveys Branch for its implementation.

Item 4 of that article, entitled "Monitoring", gave an outline of the programme of post-registration examination that is being used by this Branch to ensure that quality control is performed to acceptable standards.

Since the institution of this monitoring programme, many members of the profession will no doubt have received copies of the check-list used to evaluate and assess the quality of some of their plans. As pointed out on this checklist, the survey plans have been examined by our Central Office staff on a routine basis without the benefit of additional registry office plans or records and the results reflected on the checklist should be viewed in that light.

The feedback received from surveyors and land registrars on the basis of this monitoring programme has proved fruitful and, it is hoped, beneficial. Some surveyors have objected to the fact that the proper Land Registry Office is informed of the examination results as well as the surveyors. In this regard the dual purpose of the checklist must be kept in mind. Firstly, that it serves as a tool to advise the surveyor of the minimum standards that should be expected of plans entering the land registration system, and to convey some of the interpretations of the regulatory requirements for these plans, and, secondly, that it assists the plan examiners in the various Land Registry Offices to evaluate the quality of their examinations. The checklist can, therefore, be viewed primarily as a means to convey information to both the plan examiner and the surveyor.

The feedback received from individual surveyors indicates that many instances of non-compliance with the Regulations represent incomplete plan presentation rather than serious deficiencies in the actual survey on the ground. It is the aim of this article to touch upon and clarify some of the more frequent areas of non-compliance and it is hoped that the following comments which reflect the policies of the Legal Surveys Branch will be of assistance in the preparation of future plans intended for deposit in Land Registry Offices. Here then are the more common items of non-compliance and it is the intention to point out the pertinent highlights rather than to deal with the applicable regulations in detail.

1. Incorrect or Lack of Title or Schedule. (Reg. 780, R.R.O. 1970, Sec. 36).

The main point to be kept in mind here is that the title block should enable the Land Registrar to make entries relating to the plan in the proper Abstract Index. This necessitates the "designation of every subdivision unit the whole or a portion of which is included within the area to which the plan applies". Here it is important to bear in mind that in cases of township lots it is of the utmost importance that the original geographic township be listed even though this may no longer be a municipal designation.

In the cases of annexations and amalgamations, such as can be found in recent regional municipalities, a duplication of lot and concession numbers can frequently occur within the same municipality and similar consideration must be given to lots on plans of sub-division where a duplication in the registered plan number could occur unless the plan is further distinguished according to the system in use in a particular Land Registry Office. In addition to the above, the regulations also require the inclusion in the title block of the current municipal references. In cases where several subdivision units are affected by a survey or where congested areas are encountered, it is always helpful and frequently absolutely essential that a schedule be shown on the face of reference plans or expropriation plans, relating the various Parts to the underlying subdivision units. (Reg. 780, R.R.O. 1970, Sec. 7(4) & 58(1)).

2. Incorrect Weight of Lines (Reg. 780, R.R.O. 1970, Sec. 23 & 24):

While the sections dealing with this topic are self-explanatory, some plans come to our attention from time to time where it is difficult to discern at a glance the extent of Parts because of insufficient contrast between the linework of the actual Part limits and the underlying framework. Also, the outer limits of the land dealt with are frequently not shown in a heavier weight than the interior Part limits. The necessity of contrasting weight also applies to the designation of Part Numbers and the lettering of underlying subdivision units and instruments. These, of course, are merely drafting matters that can be evaluated when the plan is first prepared.

3. Underlying or Abutting Instrument Numbers not Shown.

Section 23 of Reg. 780 requires sub-

division units and parcels of land described in instruments registered under The Registry Act or The Land Titles Act, the limits of which join or intersect the perimeter of the land surveyed, to be identified on the plan of survey by parcel or instrument numbers. This requirement may be waived only to the following extent:

(a) Where a common boundary between the land surveyed and the adjoining land is a division line between township lots or sections, or a division line between separately patented aliquot parts of a township lot or section, the instrument or parcel number for the adjoining land can be omitted from the plan, if the instruments affecting the land surveyed and the adjoining land describe the division line as the boundary and if the division line is clearly labelled on the plan.

(b) Where the land adjoining the land surveyed is a lot according to a registered plan, the instrument or parcel number for the lot can be omitted from the plan, if the lot and plan numbers are indicated on the plan and the line between the land surveyed and the adjacent lot is clearly labelled on the plan.

(c) Where the land surveyed is a part of a lot on a plan of subdivision, the instrument or parcel affecting the remainder of the lot need not be identified on the face of the plan if the instrument or parcel number is set out in a schedule on the plan.

4. Differing Measurements from plans or deeds Incorrectly Shown:

Section 26 of Reg. 780 requires that differences between actual measurements and values indicated in deeds or on underlying plans be shown. This section is self-explanatory and the only difficulty arises where a deed does not quote actual bearings but states that lines run at certain angles or parallel to other lines. In these cases the surveyor will have to use his discretion as to the best way of conveying the particular differences. It may be worth noting that normally only true differences require comparisons, e.g. those cases where the angular relationship does not agree with the previous deed or plan. Bearing differences resulting merely from a difference in the bearing reference do not require a comparison.

5. Proper Measurements not Shown to Natural Boundaries:

The requirements for these measurements are spelled out in sections 15 and 31 of Reg. 780. While the regulations are quite clear in this regard, some of the more frequent non-compliances are:

(a) Distances to the offsets are sometimes omitted along the traverse lines and without these the ties become meaningless. The surveyor has the option of showing point to point distances, plus chainages or of using a note such as "Unless otherwise shown all distances along traverse lines controlling the ties to ... are at ... foot intervals".

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(b) Bearings are very often omitted from the offset ties. Again, this could be covered by note form that all ties are at right angles unless otherwise shown. Split angles should be indicated appropriately on the plan in order to avoid ambiguity.

(c) Frequently the natural boundary is not properly identified or designated on the plan. The remedy here is an easy one in that all that is required is the labelling of the line to which the ties are taken (e.g. "Normal Ordinary Water's Edge", if such is the case).

6. Insufficient Data to Permit Closures of Each Subdivision Unit created by the plan:

Section 27 of Reg. 780 is quite specific as to what is required to be shown on the plan. The omissions in this regard may vary between missing bearings or distances or both. Where there are hanging lines, it will be necessary to note on the plan that these have been verified and this note applies to all surveyed lines on the plan and not only to the limits of subdivision units being created. In many cases extraneous measurements such as ties to lot corners are just as important to the survey as the actual Parts. A deed tie that has been laid out incorrectly could invalidate the entire survey.

7. No Tie to Lot Corner: (for an interpretation of the term "Lot" see Reg. 780, Sec. 1).

Section 28 of Reg. 780 prescribes that a tie be given to a lot corner where the survey forms part of a lot. This requirement has been interpreted to include the following options:

(a) A distance from the corner of the lot to an angle of the Part surveyed.

(b) A tie to a street intersection.

(c) A tie to an intersection of a lot line with a Highway, (shown on a plan of survey registered or deposited in a Land Registry Office) provided the plan itself is tied to a corner of the township lot.

(d) A distance to a registered plan lot corner, provided the registered plan is related to the township lot corners. Ties may be derived from previous plans or deeds rather than actual survey, however, in those cases the ties should be qualified accordingly. If a tie is based on actual measurement, it will be necessary to show the evidence on the plan.

8. Improper Monumentation:

Reg. 807, R.R.O. 1970 under The Surveys Act is quite clear as to its requirements, however, it should be pointed out that easements are frequently not monumented in accordance with Sec. 5 which requires S.I.B.s or equivalent monuments at certain key points. Another area of non-compliance involves O. Reg. 29/74 which permits the use of round iron bars,

but provides that the symbols and designations prescribed by Reg. 807 be used, followed by the word "round" or the symbol \emptyset . If the monuments shown on a plan are further identified in a note or legend, care must be taken to avoid any possible ambiguity as to the nature of the monuments.

9. Lack of Survey Evidence shown:

This is perhaps the most frequent serious non-compliance encountered in the monitoring programme. Reference should be made to sections 11 and 25 of Reg. 780, with special emphasis directed to section 29 (2) which states: "*Every plan shall contain a true copy of the field notes of the survey*". Failure to show survey evidence strongly suggests to an examiner that the actual survey is sub-standard. Rather, it may well be the case, however, that the signing surveyor was unaware of the full implications of the regulatory requirements, and that consciously or inadvertently details as to the survey evidence had been omitted from the plan. Again, while the regulations speak for themselves, your attention is drawn to the fact that section 25 requires the showing of "the position and form of *all* survey monuments and *other evidence found, conflicting or otherwise*". Many surveyors seem to be under the impression that only original or primary evidence need be shown on the plan, Sec. 25 is quite specific in that all evidence should be indicated. This may vary well include some secondary evidence such as fences, the split of road grades, occupational evidence or building ties from previous surveys, to name but a few. The main point is that the *best available evidence* used for the survey is shown on the plan.

Some surveyors appear to be hesitant to show their own previously planted monuments as "found". This practice is quite acceptable provided of course that the previous surveys were based on sound evidence.

Some of the criticism received with regard to plan examination as it relates to evidence turns on the fact that some plan examiners in the Land Registry Offices have not had job oriented survey training. Accordingly, the plan examiners in these offices are not expected to assess the validity of the evidence shown on the plan, however, during the monitoring process at the Legal Surveys Branch the plans may be questioned in this regard. Thus, while Registry Office plan examiners are not expected to question the nature or validity of the evidence shown on the plan, they are expected to question plans where insufficient or no evidence is shown. It does not take great expertise to recognise the complete lack of evidence.

In the case where direct evidence is unavailable, the plan should then convey the method of the survey, e.g. whether plan angles were turned, deed distances laid out, proportioning was used or whatever approach was taken. Although the local plan examiners are not expected to be conversant with all aspects of surveying and evidence assessment, the

plan should nevertheless be capable of withstanding the subsequent scrutiny of the monitoring process.

10. Proposed Usage Shown (Reg. 780, Sec. 33):

This particular item in the regulations should not present any difficulty, however, the occasional reference plan is received containing a note or designation that certain Parts are intended for particular purposes. While at times it will be of assistance to the plan examiner to know the purpose of the plan, this information should not appear on the plan itself, but should be conveyed to the plan examiner separately, either verbally or by letter.

11. Incorrect or Lack of Bearing Note (Reg. 780, Sec. 16):

This is perhaps the most frequent, although not the most serious non-compliance encountered on plans received for monitoring. Section 16 states that bearings shall be astronomic. This relates to the nature or "family" of the bearings used and in itself does not imply any particular degree of accuracy. The main point raised here is that bearings should not be of magnetic origin or assumed in the sense of merely guessed at.

Where bearings have been determined by astronomic observation it will be necessary to include the reference meridian in the bearing note so that bearings having differing reference meridians can be related through the application of convergence. Sec 22(2) states that "Bearings may be derived from a line of known astronomic bearing *if survey evidence of such line exists on the ground in its original position and is shown on the plan*". Most non-complying bearing notes fail because (a) they refer to a "previous survey" without specifying same, (b) they refer to a plan, but do not specify the reference line used, or (c) they give the governing or reference line but fail to show the necessary evidence on the plan.

Bearings should not be derived from a description in an instrument unless a plan is attached thereto. In this case mention of the plan should be made in the bearing note together with a reference to the instrument number.

Where bearings are derived from co-ordinate control monuments, it will be necessary to state the control monuments in the bearing note if the monuments are of official record. Otherwise the appropriate co-ordinates should be stated for the monuments used for bearing purposes, the appropriate grid and zone identification given and, if at all possible, the location of the control monuments shown on the face of the plan.

12. Easements or other Rights-of-Way (Reg. 780, Sec. 35).

Easements or other rights-of-way existing at the time of the survey should be shown on the plan. The practice of

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showing these easements as Parts has been long established under the Land Titles system where the regulatory requirements are identical. The Legal Surveys Branch interpretation of Sec. 35 of Reg. 780 is that separate Parts should be created to designate existing easements or rights-of-way.

This requirement of Parts for existing easements has thus been incorporated in Guide No. 2 On Reference Plans under Reg. 780. A copy of this guide was distributed to all members of the profession in 1968. It should be remembered that a Part on a plan is a graphic description replacing the conventional metes and bounds description. The creation of Parts for easements is the most practical way of protecting the interests of those persons for whom the reference plan is ultimately being prepared. The only exceptions to this general requirement for easement Parts would be (a) whether the easement width is indefinable; in such cases sufficient information must be shown on the plan employing the principle that the easement be capable of survey retracement, (b) where the interest in the easement would merge with the fee of the surrounding and underlying land. Where an easement is created which is affected by an existing easement, no Part would normally be required for the overlapping portions, providing that no transaction involving the fee is intended.

Finally, it should be mentioned that the Director of Land Registration has extended to the Director, Legal Surveys Branch, his authority under Sec. 9 (2) of Reg. 780 to approve plans that do not strictly comply with the regulations. In view of, this any questions with regard to unavoidable non-compliances should be referred to a member of the Legal Surveys Branch in your area. The Legal Surveys Branch will advise on the merits of the particular case and may endorse an appropriate non-compliance certificate if this is justified. — H. ROESER, Services Co-ordinator, Legal Surveys Branch.

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June 6, 7 & 8

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Program Highlights

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| Speaker | — R. B. Watson
Survey & Mapping Section, City of Toronto |
| Topic | — Introduction to the Concept of Integration;
Control Networks and Legal Surveys |
| Time | — Friday - 2:35 p.m. |
| Speaker | — John Kerr, O.L.S.
Control Surveys Agreements Officer,
Ministry of Natural Resources |
| Topic | — Background and recommendations of Task Force
on Geographical Referencing. Reports 1 and 2
— Discussion on any ongoing mapping program
— Discussion on Automated Cartographic Systems
under study |
| Time | — Friday - 3:00 p.m. |
| Speaker | — Representative of the Ministry of Consumer
and Commercial Relations, Legal Surveys Division |
| Topic | — Proposed Future Revisions to Land Registry Systems |
| Time | — Friday - 4:00 p.m. |

Saturday, June 7

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| 10:00 a.m. | — Business Meeting |
| 11:00 a.m. | — Visit Exhibits |
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| 2:00 p.m. | — Introduction Board of Directors |
| 2:15 p.m. | — Address by Mr. G. T. Rogers, President A.O.L.S. |
| 3:00 p.m. | — Panel discussion
'Future Role of the Para-Professional' |
| 4:30 p.m. | — Open Forum |

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