

The Scene from 6070

BY LORRAINE SETTERINGTON

This being my first report to you as Secretary, I could promise many things. However, promises are too often broken. I will instead briefly outline a few of the major concerns which have occupied the office staff during the past few months.

Articled Students:

Many surveyors had expressed concern over By-law 95, articled students who are having difficulty obtaining the necessary credits. During the past three months a complete review of all students still articled under this by-law has been carried out. Approximately thirty students have attended at the offices for assistance in setting up courses of study so that they can complete their studies prior to the 1980 termination date of the by-law. The stumbling block in the past has been the necessity of home-study and the writing of an examination set by examiners who are isolated from the student. Over 30 of the 50 students articled under by-law 95 will be attending night courses at Erindale this fall and will be sitting for the A.O.L.S. University Equivalent Examinations. For those too far away from Toronto to commute, course outlines for several of the courses are now available from the Association offices. In addition to the By-law 95 students, we now have 31 students articled under O.Reg. 35/73, the majority of whom have completed all their academic requirements.

Annual Report:

Excuses, excuses. Once again, the projected target date of August 1st has come and gone, however the report is now being printed and should be mailed to the membership before the end of September.

Annual Return:

The \$64,000 Question has to be "What is an Annual Return". In June, the Annual Return was mailed to all members in accordance with By-law 76-5. However on August 1st some 219 members had failed to reply. A notice to these members prompted a flood of phone calls and letters mainly stating that the member had paid his annual dues. Here we are, well into September, and we are still missing some 175 returns, requiring of course, another mailing, with duplicate returns. This all takes unnecessary time and expense. Surely, a little better cooperation could be expected. Also it would help if the returns did contain your name (some 50 did not).

Annual Dues and Interest:

Some members have been disgruntled that interest has been insisted upon as part of their dues, Council has reaffirmed their stand that the interest forms part of the fee and cannot be waived. In 1977, however we will be sending out three interim billings which will have both the annual fee and interest outlined. Hopefully in this way, sufficient notice will be given to all members.

During the next few months, particular attention is going to be given to the preparation of a new private practice list, the up-dating of the Certificate of Authorisation files, and the initial preparations for the Annual Meeting. The Association offices, in cooperation with the Communications Committee and Archives Committee will be preparing an exhibit for a long-term loan to the new Ontario Agricultural Museum in Milton. We are also in the midst of planning renovations as A.C.S.T.T.O. has now moved to their offices on our first floor. Do feel free to drop in when in Toronto to discuss any problems, in which the Association offices may be of assistance, or write concerning the same. Many thanks to those members who have

been so helpful and patient in these first few months.

Changes in the official register.
May 31, 1976, No. 771, Lackstrom, Eric Johannes, Suspended.
July 6, 1976, No. 980, Lowe, George Merton, Suspended for non-payment of fees.
July 6, 1976, No. 1041, Merrick, William George, Suspended for non-payment of fees.
July 15, 1976, No. 1424, Fencott, Robert James, New registration.
July 15, 1976, No. 1425, Jason, Ronald McLean, New registration.
July 15, 1976, No. 1426, Tamblyn, William Bryan, New registration.
July 29, 1976, No. 859, Jackson, Lloyd Derwent, Deceased.
July 1, 1976, No. 660, Jeffrey, Alexander, Retired.
July 1, 1976, No. 649, Troup, Gordon Newell, Retired.
August 5, 1976, No. 1129, Grant, Gary Joel, Deceased.
August 10, 1976, No. 539, Ure, Douglas Gordon, Retired.
August 27, 1976, No. 832, Leeper, Robert Patrick. Suspended for non-payment of fees.

From Our Solicitor

The Association Solicitor, J. D. Bogart, has recently drawn our attention to a recent case in Ontario which relates to the applicability of the Mechanics' Lien Act to the services provided by a surveyor.

"Although there has not been a case on point, it was generally thought that surveyors were not entitled to a claim for a mechanics' lien. This view was based on numerous cases relating to architectural services. The rule is stated by Macklem and Bristow, **Mechanics' Liens in Canada** (1972) at p. 98:

... the architect is entitled to maintain a lien for the cost of plans prepared by him if he superintends or directs the erection of the work or building according to such plans, but, at least in most jurisdictions **he is not entitled to a lien for the cost of preparing plans alone where the building is not proceeded with.**"

The basis for this distinction, in the words of the Act, is that unless the architect also supervises construction, there is no work or service in respect of the "making, constructing, erecting, fitting, altering, improving or repairing" of the buildings or lands. It was therefore thought that there was a requirement of a physical improvement to the land or buildings.

The recent case of **Ambro Materials & Construction Ltd. v. 230056 Investments Ltd. et al**, 60 D.L.R. (3d) 63

HAVING TROUBLE COLLECTING THAT ACCOUNT?

HERE IS ONE POSSIBLE SOLUTION.

dealt with a claim for a lien based on engineering services. Plans were prepared for water mains, sewers and roadways, which were approved by the municipality, but construction had not begun on the project. It was held that the engineering firm was entitled to a mechanics' lien. The cases dealing with the plans of architects were distinguished on the basis that architects' plans could be used on other lands and therefore were not inextricably linked to the land on which the lien was claimed. The Judge pointed out that the engineering plans could not be so separated from the land and in fact the approval of such plans would enhance the value of the land. In the case of a survey, it will of course be "inextricably linked" to the property surveyed and in most cases it would enhance the value of the land especially where a plan of subdivision is prepared."

Mr. Bogart pointed out that the above mentioned case is a single decision of a County Court judge and as such could be overruled or ignored by a higher court in Ontario. He also points out that in his opinion the case provides some judicial support to a claim for a mechanics' lien by a surveyor and such a claim could now be asserted in good faith under colour of right.

If any of the members have any questions regarding this matter, please forward the same to the Secretary at the Association Offices and they will be referred to our Solicitor.