

From Our Solicitors . . .

CONCERNING EXPERT WITNESS FEES

The council of the Association of Ontario Land Surveyors has asked for a legal opinion with respect to the witness fee that can be charged by an Ontario Land Surveyor giving expert testimony in legal or quasi-legal proceedings.

The applicable practice can be found in the Ontario Annual Practice 1975 which sets down the rules to be followed with respect to disbursements in legal proceedings and in particular, tariff B deals with conduct money payable to witnesses.

Item 13 of tariff B indicates that in the normal course a witness is paid for conduct money as follows:

- (a) \$25.00 for each day of necessary attendance; and where the trial is held in the City or Town in which the witness resides an additional \$1.00;
- (b) where the trial is within 200 miles of where the witness resides 18c a mile between his residence, the place of trial and return;
- (c) where the trial is more than 200 miles from where the witness resides, the minimum air fare, plus 18c a mile to and from airports, his residence the place of trial; and
- (d) where the witness resides elsewhere than the place of trial and is required to remain at the place of trial overnight \$30.00 for each overnight stay.

The foregoing is with respect to witnesses called in the ordinary course of a County Court or Supreme Court proceeding or any proceeding in which the Ontario Evidence Act is applicable.

In the instance in question which involves one Lawrence G. Woods, O.L.S., Mr. Woods was subpoenaed in Hamilton and paid in accordance with Section 13 of tariff B of the Rules of Practice insofar as he was paid the \$25.00 witness fee for a day's attendance plus \$1.00 for travelling expenses given the fact that he resided within the Town in which the trial was taking place.

Subsequent to that time Mr. Woods, O.L.S. submitted a bill for services rendered in providing expert testimony in the amount of \$100.00 and after some discussion with the solicitor who had subpoenaed Mr. Woods, O.L.S., the \$100.00 was eventually paid.

It is submitted that Mr. Woods, O.L.S. was perfectly correct in his belief that he could render a bill for expert testimony given, pursuant to trial proceedings, and the validity of his position is confirmed by Section 13 (a) (v) of tariff B of the Rules of Practice and

Section 12 of the Ontario Evidence Act.

Section 12 of the Ontario Evidence Act states as follows:

"Where it is intended by a party to examine as witnesses persons entitled, according to the law or practice, to give **opinion** evidence, not more than three of such witnesses may be called upon either side without the leave of the judge or other person presiding".

Tariff B Section 13 (a) (v) states: "A reasonable sum may be allowed for fees actually paid to a witness who appears at a trial and gives opinion evidence, within the meaning of the Evidence Act, up to an amount of \$150.00 for each day of giving evidence and subject to increase in the discretion of the Officer taxing".

Therefore the combination of the provisions of tariff B of the Ontario Rules of Practice and Section 12 of the Ontario Evidence Act indicate that an expert giving opinion evidence, and only a qualified expert can give opinion evidence, is entitled to charge an amount up to \$150.00 for each day of giving evidence and that even this amount is subject to increase at the discretion of the Taxing Officer, and his discretion would be exercised in accordance with the complexity of the evidence which the individual was giving, the amount of preparation necessary and of course the relevance of the expert testimony as to the final disposition of the case at hand.

It is submitted therefore that an Ontario Land Surveyor is an expert in the field of land surveying and that when subpoenaed by a lawyer to give expert opinion evidence with respect to matters within the purview of the surveyor, that the surveyor is entitled to charge for the service which he has rendered in accordance with the aforementioned tariff and that he is not limited to the ordinary conduct money payable to a lay witness from whom is being elicited testimony as to facts within the knowledge of such witness, which testimony is neither opinion evidence nor of an expert nature.

I trust that this will clarify the problem insofar as an Ontario Land Surveyor, so qualified, giving opinion evidence in any trial, such as was the case with Mr. Lawrence Woods, O.L.S. and which gave rise to the question raised by the Association as regards expert witness fees.

Yours very truly,
Robertson, Lane, Perrett
Brian M. Campbell

CONCERNING SNOW VEHICLE TRESPASS

We acknowledge receipt of your letter dated December 30, 1975.

We have reviewed the relevant legislation and concur with your opinion as stated in paragraph 1 of your letter. Section 22 (1) states that every person who trespasses on land while operating a motorized snow vehicle is guilty of an offence and on summary conviction is liable to a fine not exceeding \$500.

Section 22 (2) provides a defence if the person can indicate that permission was given to be on the land, however, said permission must be in writing signed by the owner or occupier of the land.

Section 6 of the Surveys Act provides an exemption for surveyors in the performance of their work to trespass on land. The exemption, however, is open to the surveyor personally and not to the surveyor and/or his means of transportation.

Having regard to the legislation it would be advisable to inform all members of the Association that if in the performance of their duties of a survey it is necessary to operate a motorized snow vehicle the written permission of the owner or occupier of the land should be obtained. Notwithstanding the above, if a surveyor is accused of trespassing on land while operating a motorized snow vehicle Section 6 of the Surveys Act could be used as a defence which in turn would provide us with a judicial interpretation as to whether the exemption extends to include the mode of transportation used by the surveyor in the performance of his duties.

We trust this will prove satisfactory and if we can be of further assistance in this or any other matter please contact the writer.

Yours very truly,
Robertson, Lane, Perrett
Peter R. Brown

NEW REPORT URBAN DEVELOPMENT STANDARDS

A demonstration of the potential for reducing costs is a study prepared for The Programs Section, Local Planning Policy Branch, Ontario Ministry of Housing.

This is available from the Ontario Government Bookstore, 880 Bay St., Toronto. \$2.00 payable to the Treasurer of Ontario.

New regulations under the Registry Land Titles and other acts are in force July 1st. Watch for a Flyer from the O.L.S. office.