

Surveying in Ontario - Have Legislation and Regulations Led to A Responsible Profession?

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ABSTRACT

Since 1785 to the present, surveyors in that part of Canada which now forms the Province of Ontario, have been subject to a myriad of Government legislation and regulations as well as the regulations and by-laws of the surveying association. By tracing the development of surveying under these, it can be shown that the present day Ontario Land Surveyor occupies a unique position, adding to, rather than detracting from, his ability to function and grow within the professional community. This paper will deal with the evolution of surveying under these regulations, to the present day, culminating in the recent high academic requirements mandatory to enter into the profession, and the responsibilities that one has as a member of this self-governing association. The current attack on the professions and our need to defend our "self-regulation" status will be looked at in light of current legislation.

PAPER

"No survey of land for the purpose of defining, locating or describing any line, boundary or corner of a parcel of land is valid unless made by a surveyor or under the personal supervision of a surveyor"

"SURVEYOR" means an Ontario Land Surveyor registered under The Surveyors Act"

(The Surveys Act 1968)

The years since 1785 have seen the development of two separate legislative Acts in the Province of Ontario; The Surveys Act and The Surveyors Act. These compliment each other and have provided the frame-work for the surveying of the lands within the provincial boundaries and for the organization of the Association of Ontario Land Surveyors.

Our present Act states the objects of our Association as:

1. To regulate the practice of professional land surveying and to govern the profession in accordance with this Act, the Regulations and the By-laws;
2. To establish and maintain standards

of knowledge and skill among its members and;

3. To establish and maintain standards of professional ethics among its members, in order that the public interest may be served and protected. (The Surveyors Act 1973).

In recent years, attack on the professions has developed. It appears the popular thing at the present time for those in political positions, is to question the need for the self-regulating professions. It is said that the granting of self-government is not given to a profession to reinforce its professional status. The relevant question is not, do the practitioners of an occupation desire the power of self-government, but is self-government necessary for the protection of the public?

It appears that an opinion is prevalent that in order to protect the public an Association cannot also protect professional interest. There seems to have been a dichotomy between protecting the public and protecting the professional interest.

I believe the truth is, that, to protect professional interest in a proper way, is to protect the public, because the public is served by the profession. It can be properly served by the profession, if the professions are in a thriving condition. Before one can defend the concept of the self-regulating professions, one must look at the present state of one's own profession and association and ascertain if it is indeed worth defending. Government legislation and association regulations have guided growth and development of the Association in Ontario, in fact, any powers of self-regulation which we have, came from government legislation itself.

Let us look at the development of the rights and responsibilities which are enjoyed by the members of the Association. The present Surveyors Act and Surveys Act of Ontario have their genesis in the many and varied enactments of the past. Although the intent of the early statutes was primarily to subdivide the land for settlement, these statutes also laid the basis for the present self-regulated profession of surveying as we know it today.

In time, as the land was taken up and developed, the old statutes were amended and the new ones brought forth, seeking to resolve boundary disputes

and lay down rules for retracement of old survey lines and to locate those lines not run in the original survey. Time also showed the need for precise regulations regarding the surveyor himself. Instrumentation also changed, from the primitive circumferentor to the transit and finally, to the electronic measurement equipment. Qualifications for those engaged in survey activities were established and altered as the years went by.

The purpose then, of a brief historic review, of the old statutes relating to the survey of lands is for the better understanding of the present Act and its enforcement. For those unfamiliar with Canadian History, I would briefly make the following points.

By the Treaty of Paris 1763, Canada was ceded to the Crown of England, and in that year General Murray was appointed first Governor General of the British Province of Quebec. The Quebec Act of 1774 provided for the introduction of the Criminal Law of England, but it declared **"that in all matters of controversy relative to property and civil rights, resort should be made to the laws of Canada"**. Thus the Civil Laws of French Canada were confirmed.

The Constitutional Act of 1791 divided the Province of Quebec into Upper and Lower Canada with separate legislatures and Governors. Later the British North America Act came into effect which, among other matters, provided for one Dominion (Canada), with four Provinces, Ontario (Upper Canada), Quebec (Lower Canada), New Brunswick and Nova Scotia.

In researching those regulations or ordinances in effect prior to 1763 when any surveying would have been governed by the laws of France, no such records were available to me. However, there were no doubt many such ordinances. Sketches survive from that era up to 1785, outlining model townships and villages which probably had their origin in regulations of the day.

In 1785 the first Statute relating to Surveying and Land Surveyors, was passed in the British Province of Quebec. Although its title was long, "AN ORDINANCE CONCERNING LAND SURVEYORS AND ADMEASUREMENT OF LANDS" the statute itself was not containing only ten sections, which can be summarised as follows:

1. requires the annual testing of survey instruments
2. restricts the practice of surveying to qualified persons appointed by the Surveyor General,
3. requires every surveyor to give security to the Crown for the performance of his duties and to swear an Oath of Office;
4. requires every survey assistant to swear an Oath for faithful performance;
5. returns the unit of land measurement in respect to grants prior to 1760;
6. provides that the boundaries of lands surveyed shall be plainly marked;
7. requires every surveyor to keep record of his surveys and to issue copies to persons concerned;
8. provides a penalty for the unlawful removal of a boundary marker;
9. relates to admission to practice;
10. provides that all the records of a deceased surveyor shall be lodged in the Court as public documents.

Looking at The Surveyors Act and The Surveys Act in effect in 1977, one can see these same provisions expanded by time and altered as the need has arisen. These ten sections form the nucleus of the establishment of our Association as a self-regulating profession. Although the Association itself did not exist until the late 19th Century, this first Act limited the performance of surveyors to those qualified by The Surveyor General. A stipulation in this early regulation regarding the keeping of records and the lodging of notes has proved invaluable over the years in the development of a regulated surveying profession in the province.

In 1798 the Parliament of Upper Canada passed its first Survey Act which specified the planting of "Stone Monuments", or monuments of durable materials at township and concession corners. This Act also provided "Death without benefit of Clergy" for those persons who had been judged guilty of knowingly and wilfully defacing, altering or removing these monuments. Research has failed to turn up any cases in which this drastic punishment was ever carried out. The Surveyor General at this time was completely responsible for surveying in Upper Canada.

The Ordinance of 1785 was repealed with respect to Upper Canada in 1818 and a new Act was passed, which contained the first provisions for the examination of surveyors. This Act provided that every surveyor was to be examined by the Surveyor General or the Deputy Surveyor General as to his fitness and capacity.

The first Act dealing with incompetence on the part of a qualified surveyor, was passed in 1839, and it provided for cases of ejection or compensation as a result of unskillful surveys.

An important right was given to the licenced surveyor in 1842 when the Act gave him the authority to administer Oaths to persons giving information as to the boundaries or monuments. These Oaths in writing were filed in the Registry Offices of the day, and upon reading, we find they contain valuable survey information. The Act of 1818 also contained a clause which the surveyor in Ontario today accepts as a natural right. The Act declared a misdemeanor to interrupt, molest or hinder a licenced surveyor in the discharge of his duty. Conviction for those convicted of such a misdemeanor was punishment by either a fine or imprisonment. One can see that up to this time in history, the land surveyors' existence in Ontario was dependent upon appointment by the Surveyor General.

The Surveyor's status as an independent professional man began to unfold with the passing of new legislation in 1849, which repealed all previous Acts. A Board of Examiners was established to serve both Upper and Lower Canada, and the subjects for examinations were specified. The apprenticeship system was also introduced with the term being three years of consecutive service. The Board also had the power to dismiss or suspend a surveyor for gross negligence or corruption. A joint Board for the two Provinces of Upper and Lower Canada must have proven inconvenient, as in 1851 separate Boards were provided, one to meet in Toronto and the other in Quebec City. A Standard Measure for comparison was to be kept by the Board and a compared copy was issued to each qualified licenced surveyor. The Brass Bar containing a standard yard obtained in 1860, is still a proud possession of the Association of Ontario Land Surveyors.

From its creation until a formation of the Association in 1892, the Board of Examiners granted commissions to applicants who passed written examinations in such varied subjects as Geometry, Mensuration, Geology, Drafting of Affidavits, as well as many others. A certificate of sobriety and probity was also required, as well as a performance of practical operations in the presence of the Board.

Several of the prominent land surveyors in 1886 organized a meeting of Provincial Land Surveyors in Toronto, to discuss the formation of an association. On reading the Annual Report for this first meeting, one smiles at the problems

which, hopefully, these early surveyors expected to be solved by the formation of such an association. Many of them sound like the problems of the surveyors today. Legal recognition was attained in 1892 with the passing of an Act incorporating the Association of Ontario Land Surveyors. From this date, the Association became the official voice of land surveying in the Province and was charged, among other things, with the task of examining and admitting candidates to the profession. The old Board of Examiners was absorbed by and reconstituted under the new Association. The Provincial Government still retained the right to appoint lay members to this Board.

The Government, with the passing of the first Surveyors Act, granted to our Association, certain powers to govern and to regulate, not only the quality of surveys, but the quality of the surveyor. The Association has accepted this responsibility and the obligations that are associated with it, in order that the public interest may best be served.

In order to ensure to the public that the surveyors who are members of the Association are qualified and have sufficient knowledge and skills to serve the public, it has been necessary over the years to continuously review and revise our educational program. The candidate in 1892 was faced with some eighteen examination areas, a three year period of apprenticeship, and a performance of practical operations in the presence of the Board. In 1897, six additional subject areas were added. In 1911, the obtaining of a Bond in the amount of \$1,000 was necessary for membership. 1925 saw the basis of educational requirement being Grade 10 before any preliminary examination could be tried. In 1931 the level was raised to Grade 12 and then eventually to Grade 13. The extensive curriculum changes necessitated the raising of minimum standards. In 1956 the required applicant was required to have a Grade 13 standing as required for admission into a course in Civil Engineering at the University of Toronto. The examinations at that time consisted of twenty-four, being the Intermediate, Part I and Part II Examinations. The articling time was four years with at least two of these years being spent in the field. Many of the present Ontario Land Surveyors obtain their commission under this system.

In 1962, the University of Toronto introduced a Four Year Civil Engineering Course with a Survey Option. Although a graduate of such a course required only one year of articles, few graduates from this course entered into the field of legal land surveying.

A major change in the education of the surveyor in Ontario came about in 1973 when Ontario Regulation 35/73 was passed. This provided the legislation requiring an approved university degree or its equivalent as the base for the educational requirement for the present articulated student.

Close co-operation between the University of Toronto and the Association resulted in the formation of the Survey Science Program at Erindale College. Many misgivings were voiced by members of the Association of that day. It was feared that the length of the course would discourage prospective members of the Association. It appears to date that young people are being attracted to the course and many older students who have been in the surveying field for several years, have returned to the College. Non-graduates may still study and write university equivalent examinations in lieu of the Degree. The apprenticeship system has been retained with the articulated student having a two year term after all academic requirements have been fulfilled. It is believed that the combination of academic standards and the practical experience of articling will provide the type of surveyor who will operate in the best interest of the public.

At the completion of the term of articles, the student comes before the board for a Professional Examination presently being both written and oral.

Today's critics of the professions tend to feel that the profession should not be too severe in their admission standards as this is one way of curtailing competition. One other provincial association has recently been queried on why some of their students failed. Are they perhaps not too harsh? The profession has taken its responsibility in the field of education, as allowed for by its own Act, seriously. It has attempted to upgrade its expertise in a manner which we feel is the best interest of the public. Surely, a man well read and fluent will be of greater value in dealing with a client, than one who has less.

In order for the public to have confidence in the profession, the Association has always had the responsibility and has been in a position of maintaining certain standards of conduct. In 1892, a surveyor could be suspended for gross negligence or corruption in the execution of his duties. Council heard such evidence and made the ruling. In 1911, the Complaint under Oath had to be filed with the Secretary of the Association and suspension could also be effected for any member who had been convicted of any crime. Re-admission was then provided for. A summons under the hands

of the President and two members of the Council had the force of a subpoena of the High Court. In 1937, the Act changed quite radically, and the words "Professional Misconduct" first appeared. Expulsion from membership, in addition to suspension, was not allowed. Transcripts of all Hearings had to be made available, and the conducting of these Hearings began to become more formal.

Our new Act is quite clear on the type of Hearing that should take place. With the emphasis on individual rights in the past few years, the Association has made definite strides towards improving the manner, setting, etc., of its Hearings. Though the Hearing is constituted under its own Act with the members of the Council of Management forming the Discipline Committee, care is taken to see that legal rights are preserved. One of the Lay Councillors, quite emphatically pointed out to those present at the 1976 Annual Meeting of the Association, that there was no whitewashing of members by those sitting in judgement. In fact he found them to be conscientious and fair.

Our present Act not only allows us to discipline our members, it also enables us to prosecute, in Criminal Court, any person who holds himself out to the public, or conducts himself in any way as a member of the Association, or who engages in the practice of professional land surveying. This right is conscientiously practiced. The present Act gives us the tools with which to maintain a disciplined organization. It is up to us to see that the conduct of our members, both in business practice and in survey practice, is exemplary. In this day of consumerism, more and more of the public feel free to complain. The Complaints Committee processes each and every complaint received and forwards on three or four on to discipline hearings each year. A detailed study and report on our disciplinary procedures was reviewed by Council in the past year and accepted. The responsibility of policing of our own profession is a precious one and must be seriously guarded at all times.

Our rights and responsibilities have accrued to us over the years. Although we accept them as being every day, one only has to read where other sister organizations are attempting to gain these rights that are unique to only a few jurisdictions. The right to enter onto lands in the performance of one's surveying duties is indeed a special one. Since 1841, when the land surveyor himself was not to be hindered while surveying township lines, concession lands, etc., this right has been expanded to allowing the surveyor in 1897, to pass along any line

or limit. In 1920, the right was extended to include assistants and also the right to enter buildings. The Section was rewritten in 1958, and remains the same today, outlining that the surveyor is liable for any damage occasioned. This section is printed on the back of the Annual Membership Card carried by all members of the Association, and as those in private practice will attest, has proven to be used several times a year when the public objects to one's entering onto their lands.

Section 6 of The Surveys Act R.S.O. 1970, Chapter 452 reads:

1. A surveyor or a person in his employ while making a survey may:
 - (a) at any time enter and pass over the land of any person; or
 - (b) at any time suitable to the occupant of a building, enter the building,and do any act thereon or therein for any purpose of the survey, but the surveyor is liable for any damage occasioned thereby.
2. Every person who interferes with or obstructs a surveyor or a person in his employ in the exercise of any of the powers conferred by subsection 1 is guilty of an offence and on summary conviction is liable to a fine of not more than \$100."

The regulation under The Surveys Act have provided over the years the mandatory use of standardized monumentation. Why standardized monumentation has not been adopted by all organizations of surveyors and outlined by government legislation, is difficult to fathom. Generally, the cost of a standardized iron bar differs little and adds little cost to the total survey as compared to the many other monuments used in the past. Just how does one satisfy oneself that the monument was really planted by a surveyor who was qualified, if it is a piece of pipe, old axle, or one of those many other monuments used in days gone by, and apparently still used in some areas.

Time does not allow the listing of all the monuments that have been legislated, however, it is interesting to note that the first legislation outlining the size and placing of a four-foot monument in the 1930's stated it was to be planted three feet six inches below the ground. The legislation was amended the following year to clarify that the bottom of the monument was to be three feet six inches below ground. Wood stakes, generally of oak, were used by surveyors for many years. These were two feet by two inches - two feet in length. The one-inch square iron bar, four feet in length, was the first survey bar used in great quantities by surveyors. This generally was the

monument used at lot corners. In the 1960's the regulations underwent dramatic change making the survey bars of different dimensions mandatory in all surveys. The wooden stake was no longer acceptable. The iron survey bar has to be marked or imprinted with the membership number of the surveyor planting the same, or the number of the surveyor in charge of the survey.

Is this another unnecessary expense caused by government legislation? Not really. Time and expense is saved the client and the surveyor when one can readily ascertain just whose survey bar he has found.

Our survey notes are open to other surveyors for a reasonable fee. Very few complaints reach the Association offices of a fee being other than reasonable. How can a surveyor operate without access to another surveyor's notes? This right given by legislation is not as widespread as one might think. To have to retrace every survey to the original without regard for survey work that has taken place in the interim seems like a foolish waste of the client's money and the surveyor's time. Rather than infringing on our rights, this legislation allows us the right to operate in a professional manner with fellow professionals. The by-laws of the Association have allowed the formation in the Toronto area of a survey notes and records index. This index is mandatory for those operating within the specified area, and a computer write-out each month lists all the survey plans which have been filed with the Central Index. Since the original Surveys Act was passed in the late 1800, legislation has been provided for the placing of field notes of a deceased surveyor, if the estate has not arranged for these notes to be bought by another firm. In this manner, most field notes records have been preserved in the office of the Surveyor General and are accessible.

A Code of Ethics is, of course, a vital part of any professional association. The teeth to enforce the Code is equally important. Ontario Regulation 35/73 passed in January of 1973, defines professional misconduct as **"Any conduct in the practice of professional land surveying that would be reasonably regarded as distasteful and dishonourable by professional brethren of good repute and competence including, without limiting the generality of the foregoing, (a) a violation of the Code of Ethics of the Association."** This enables the Association to bring before its Discipline Committee any members who are found to be in violation of the Code. The result of such a disciplinary hearing can range from a reprimand to cancellation of membership in the Association. This responsibility is carefully tended so that

not only is the public interest guarded, but the professional interest of the Association as well. The Code, I am sure, differs little from the Code of sister associations throughout not only Canada, but the United States. We do forbid advertising, however, except by business cards.

Although our by-laws previously contained a tariff schedule or guidelines for surveying fees, the Combines Investigation Act which came into effect on July 1, 1976, prohibited agreement to lessen competition unduly, thus eliminating tariff schedules of the Association.

Our present Code states **"No member of the Association shall engage in competitive bidding for any work"**. The question still has to be answered on whether the above mentioned Combines Investigation Act nullifies this section of our Code of Ethics.

This brief review of the rights and responsibilities which have accrued to the Ontario Land Surveyor as a result of Government legislation and Association regulations, points out, I feel, that we do have the effective tools with which to have a self-regulating responsible association. Our basic right to have the mandate regarding all legal land surveys in the Province enables us to effectively enforce the standard of conduct of those carrying out land surveying in the Province. Being only human, there are times

perhaps when our responsibilities as a self-governing association have not been taken seriously enough. I think that day is long past.

The Ontario Land Surveyor is the beneficiary of an orderly progression of Surveys Acts, and Surveyors Acts from that early one in the 18th century setting out the ten basic points which have formed the basis of today's survey association.

We must not become complacent, we must ensure that our regulations are changed as the years go by to reflect the changing society. We must also remember that certain things cannot be legislated that are equally important, our humanity, our discretion, our impartiality and our integrity. We must be aware that increased interest on the part of governments has demanded more accountability on the part of our profession. We must safeguard and ensure that the rights and responsibilities which we have, which we feel are in the best public interest, are preserved. We must not forget that a government which grants powers through legislation may also modify or eliminate them.

We must ensure that the views of our profession, not only in Ontario, but elsewhere, are heard, not only by our governments, but by the public with a view of ensuring that the profession will survive for the general wellbeing of the public.

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