

SURVEY REVIEW DEPARTMENT

Note: The following is a summary of the presentation given by the Association as represented by Wayne Brubacher and Lorraine Petzold at the six special meetings called throughout the province in September and October. Portions are taken from the proposal prepared by the Association for presentation to the Ministry of Consumer and Commercial Relations.

Background

THE OBJECTS of the Association of Ontario Land Surveyors, as expressed in the Surveyors Act, R.S.O. 1980, Chapter 492 and prior editions of the same Act, state as follows:

- (a) to regulate the practice of professional land surveying and to govern the profession in accordance with this Act, the regulations and by-laws;
- (b) to establish and maintain standards of knowledge and skill among its members; and
- (c) to establish and maintain standards of professional ethics among its members,

in order that the public interest may be served and protected.

Not unlike other professional associations, in the past the Association of Ontario Land Surveyors may have failed to take its objects seriously, especially with respect to professional standards of skill and knowledge. In 1957, this led the Department of the Attorney General, Legal Surveys Division, to the point where it felt that it was necessary to ensure the integrity of survey plans entering the Land Titles System. Marsh Magwood, Q.C., Director of Titles was motivated by poor-quality surveying to implement plan examination for plans being deposited or registered under the Land Titles Act. In 1973, Colin Hadfield, Director of Surveys, implemented plan checking for plans being deposited or registered under the Registry Act.

At the beginning of the 1970 decade, the Association, in cooperation with the Ministry and Land Registry Offices, commenced a five-year study into the quality of survey plans being prepared by land surveyors across Ontario. A vol-

unteer committee of the AOLS received, from each Land Registrar, copies of many plans being deposited or registered under the Registry Act.

Continuous poor work was monitored and recommendations for action were forwarded to the members and to the Complaints Committee of the Association.

In the closing half of the last decade, and until the present, assertive efforts have been made by the Association to bring the professional standards of skill and knowledge up to an acceptable level. Many discipline hearings have been held during that period. As well, a program of retraining has commenced through seminars and individual monitoring of surveyors.

At the beginning of 1985, Vern McCutcheon, O.L.S. was commissioned by the M.C.C.R. to do a review of Plan Examination and utilization of survey personnel in the Legal and Survey Standards Branch of the Ministry of Consumer and Commercial Relations.

In preparation for the study, Mr. McCutcheon interviewed about sixty practicing land surveyors in Ontario as well as officers of the Association and various government bodies. Without exception, the feeling of the profession was that plan examination of some sort was necessary in order to maintain the standards that have been attained by practicing surveyors in the past 25 years, since the introduction of regulations prescribing the quality of plans entering the registry system.

Mr. McCutcheon, in preparation of his report, also discussed the 1956 Annual Meeting with members of the Association. The membership present at the 1956 Annual Meeting went on record as favouring subdivision standards that were enforced by the Association. However, there appeared to be no results in the few years that followed, as the Association did not appear to be monitoring the quality of work. Therefore, the late M. Magwood, Director of Titles, introduced the examination of all land title plans entering the Ministry. This is where the Association lost control of the right to determine the quality, the

standard and even the method of performing surveys that were entering the system. This struck at the heart of the profession.

Surveyors objected to this interference by the Ministry and some indicated that they had the right to choose whether they would follow the Surveys Act and its regulations or not, or how they would prepare their plans. Even today, some of the members believe that the level at which they should compete is somewhere below the minimum standard. They believe that work can only be attracted by tailoring their adherence to the minimum standards to fit a price guaranteed to obtain the work.

In an address to the Association in 1965, Mr. R. U. Priddle, then assistant-inspector of the legal offices said: "Gentlemen, it should not be necessary for my office to enforce professional standards of work upon the members of this or any other profession. Each surveyor should be able to grasp the significance of all requirements of the Act, and further to this, as a matter of professional integrity, should perform his work to meet the required standards."

Five years later, in 1970, the AOLS Professional Standards Committee was formed which had the following Terms of Reference:

1. To evaluate and report on the professional standards of surveys and/or plans prepared by members of the Association, as laid down by Section 3 of the Surveyors Act, R.S.O. 1969, are being upheld in order that the public interest may be served and protected.
2. To obtain and examine plans and to arrange for a formal examination where (in the opinion of the Committee) such is necessary. Examinations by the Committee will include field examinations where deemed necessary.
3. To refer specific cases to the Complaints Committee for their consideration and action.
4. To make administrative and statistical reports to Council.

The preamble of the By-law setting up this Committee is of interest as it re-affirms the responsibilities of the Association in establishing the Survey Review Department.

"WHEREAS it is deemed necessary for the Association to consider the extent and interpretation of all Regulations affecting the preparation of Surveys and plans of survey for filing in any way in the Registry Offices in the Province of Ontario.

AND WHEREAS it is deemed necessary for the Association to examine the current practices of the membership of the Association in the application of existing regulations."

The Committee undertook exhaustive work over a five-year period. The following are quotes from their annual reports.

"We are experiencing excellent cooperation for the Surveyors and Registrars and, of course, our own Secretary and his staff. There has been very little static from anyone in connection with the plan examination thus far, but I expect as time goes on, we are likely to have a few surveyors unhappy about the results of examination of their plans.

"The only recommendation the Committee can make at this time is to carry on with the plan examination program."

"By early summer, it became apparent that most of our time would soon be taken up with 'Referrals'. A growing trend to refer plans and surveys to this Committee by concerned members, governmental agencies and the Complaints Committee became more and more effective as the year progressed. In the remaining six-month period we concentrated our efforts on field investigations and plan examinations where reported malpractice and substandard work was presumed or suspected. In some instances, these presumptions proved quite unfounded in that a logical explanation could be provided by this Committee on behalf of a questioned surveyor."

"Another important motion passed by our Committee and referred to Council of Management was the recommendation that a full-time Ontario Land Surveyor be employed to assist the Association, the Complaints Com-

mittee and the Professional Standards Committee in carrying out field examinations and other related duties.

"One of the reasons for this requisition is the delay in time which is involved in Committee work. We found we were not acting swiftly enough to carry out the necessary field examinations to upgrade the standards of our Association."

The Committee was, unfortunately, curtailed in 1975 not because the by-law setting up the Committee was rescinded, but rather by a lack of follow-up action on the work of the Committee. In 1975 the Committee asked for a full-time administrative position on staff to assist them in checking plans and acting on the results of this checking. It is unfortunate that this Professional Standards Committee folded in 1975 because a perusal of their files would show that they were beginning to achieve a considerable amount. It is only because of the amount of work that had to be undertaken by them and the lack of action on those results that the Committee came to an end.

During his interviews, Mr. McCutcheon noted that the surveyors made the following points:

1. Plan examination played a major part in improving the quality of plans.
2. Poor survey methods are concealed behind expertly-prepared plans.
3. Too little concern was shown for the constant offenders within the system.
4. Some came to perceive the M.C.C.R. plan checking service as a crutch for "lame business practices".
5. Some of those interviewed believed that by checking or improving a plan before deposit or registration in one way or another, some responsibility for that plan would be less attributed to the signing surveyor.
6. Professional pride has helped as much as regulatory measures to upgrade the level of surveys and plans.
7. Generally, it was the opinion of those interviewed that it was the right time for the AOLS to accept greater responsibility for the quality of their plans of survey.

In March of 1983, the Association took a major step by publishing the Stan-

dards for Surveys as a document outlining the precepts to which each surveyor was required to adhere. These standards were, for the most part, a reiteration of the regulations pertaining to surveys and surveyors under the various acts, together with the accepted standard of care employed by the Complaints and Professional Practice Committees. These Standards for Surveys were subsequently endorsed by a substantial majority of the membership and currently fall under the Code of Ethics and Standards of Conduct required by Section 12 of The Surveyors Act.

Since 1980, the Association has been directly involved with the Ministry of Natural Resources and the Ministry of Consumer and Commercial Relations with respect to the deregulation of certain responsibilities pertaining to surveys and surveyors. It is currently the belief of the members of the Association, their Council and the Ministries involved that the Association has reached a level of maturity and responsibility in that it is competent and capable of administering its affairs and governing the profession of surveying in the best interests of the public which it serves.

A new Surveyors Act was brought before the House during the most recent sitting of the Legislature as Bill 63. This Act, resembling closely the Engineers and Architects Acts, embodies the current thinking and legislative machinery to provide clear direction for professional associations. The acceptance of this new Act has been verified by the membership. The new Act, through the regulation-making powers contained therein, requires that Standards for Surveys, Standards of Conduct and the Code of Ethics be embodied within the regulations. Deregulation by the various Ministries is now predicated upon the passage of the Act as well as the creation of appropriate regulations and the embodiment of our current standards.

Plan examination by the Ministry of Consumer and Commercial Relations is now being viewed with respect to an analysis of the value added after examination compared to the cost of such examination, in light of the generally satisfactory level of survey plans now being tendered for deposit or registration. The review of the Plan Examination process in the Ministry by Vern McCutcheon, O.L.S. recommends that plan examination under Land Titles and plan

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checking under the Registry System be greatly reduced to the point that actual survey contents would not be normally assessed.

The present Council of the Association has endorsed a plan to fully accept and carry out its professional responsibilities to the public with respect to the general quality of surveys. It is considered a natural and timely evolution in the development of this Association to take on this responsibility as the culmination of a lengthy process to raise the ethical and professional standards of the Ontario Land Surveyor through:

- (a) discipline and education
- (b) the development and adherence to professional standards
- (c) the development (in conjunction with the Ministry of Natural Resources) and the support, by the membership, of the newly-proposed Surveyors Act and
- (d) the embodiment of ethics, Standards of Conduct and Standards for Surveys in the regulations under the new Act.

The Survey Review Department and the Referral System:

The Association recognizes its responsibility to the public, as set out in the Surveyors Act, to maintain the standards prescribed by regulation and policed these many years by the M.C.C.R. The Association further recognizes that the maintenance of standards must continue through perseverance in the pursuit of these high standards so that the public may be served and protected. The lessening of plan examination with its associated vigilance as provided previously by the M.C.C.R. must be compensated with some positive action by the AOLS.

- * In what direction can the Association's limited resources be focused in order to achieve a satisfactory level of public protection?
- * What additional professional staff are required by the AOLS and what will their responsibilities be?
- * How will the extra staff and the existing professional staff relate regarding the various component responsibilities of the Association?

- * What, if any, new committees or restructuring of present committees will be required?
- * What action will AOLS examiners take as a result of the reviews?
- * What educational facilities and opportunities will be made available to the membership so that all but a few incorrigibles can offer their services to the public with a satisfactory level of competence?

Recognizing that many of the recommendations in Phase One of the Review of Plan Examination by the Legal and Survey Standards Branch have been approved or modified and are being implemented expeditiously by the Ministry of Consumer and Commercial Relations, and also recognizing that the Association must act to preserve and enforce professional standards in order that the public good may be served and protected, the following is recommended (and I might add that this proposal is already being acted upon by the AOLS and in response by M.C.C.R. as to refinements):

1. That a new department be formed within the Association of Ontario Land Surveyors, and housed at its head office. This department will be called the "Survey Review Department". The purpose of the department will be to receive referrals from various government survey departments and others contracting survey work from the private sector as well as from O.L.S. committees. These referrals will concern plans that appear to represent sub-standard survey work or consistently poor submissions. In addition, this Department will regularly review plans by all survey firms and government survey departments on a rotating basis to ensure that each survey company and each survey department has its surveys checked for educational purposes, on a fair and regular basis.
2. The existing Practice Advisory, Educational and Complaints Committees of the Association would have to be altered to conform to the new manner of processing referrals through the system. This will require augmenting the continuing education and monitoring facilities presently available through the Association of Ontario Land Surveyors and will also result in the slight modification of the Practice Advisory and Complaints Committees. No staff person will be a member

of these committees and therefore will not take part in any decision made in respect to a referral.

3. The quality-control program of the Survey Review Department be implemented coincidentally with the M.C.C.R. modifications to its Plan Examination Committee. In order to allow the AOLS to set up the program and financially accommodate the expense of doing the plan examinations the Association asked for a grant from the Ministry to set up the program and is anticipating that this grant will be given.
4. The on-going cost of the program be funded by requiring membership support of the quality control program. The permanent attachment of a sticker to each plan of survey prepared for eventual deposit or registration in the Land Registry System will be required. The Code of Ethics and Standards of Conduct are being amended to require support of the program by the AOLS membership. Such stickers will be purchased from the AOLS.
5. The stickers be sold to the membership by the Association for a fee sufficient to cover the on-going costs of the program. The budgeted fee for the first year was preliminarily set by Council at \$10.00 but remarks at the meeting suggested that the members felt the fee to be too low to be realistic and that a fee in the amount of \$15.00 to \$35.00 is more realistic. As the time draws nearer for the setting of the fee, it is evident that a fee in the nature of \$15.00 will be likely.
6. By the Spring of 1986 the Survey Review Department of the Association be totally self-supported by the fees collected by the Association in respect to plans entering the land registration system.
7. Proof of support of the quality control program be required for all such plans dated later than December 31, 1985.
8. Plans attached to documents to be deposited or registered be exempt due to the complex problem of determining that proof of support has previously been given.
9. The Association strongly recommends that the fees be paid prior to deposit and that M.C.C.R. consider a

regulation by which the sticker be required.

Questions that Arose During the Meeting

Question: What role will the plan examination aspect of the Survey Review Department play?

Answer: The accent will be on survey review. In most instances, the total survey, including field notes and research, will be examined not just the plan itself.

Question: How can the Association replace the plan examination undertaken by the M.C.C.R. with only two employees?

Answer: The Association does not intend to replace the plan examination procedures as set out by M.C.C.R. The Association is setting up a Survey Review Department which will include some aspects of the plan examinations the M.C.C.R. undertook.

Question: Will the Survey Review Department hold up deposit or registration?

Answer: No. Only post-deposit or post-registration plan examination will be undertaken. Actually, the plans under the new system will be tendered just like any other document and only a few items will be checked.

Question: Will all plans be examined by the AOLS?

Answer: Although the Association offices will receive a print of every plan deposited or registered in the province, only a small minority of these will actually be checked by the AOLS. The important number is the number of firms or agencies providing plans rather than the total number of plans. It is the intention of the department to check a number of survey firms on a rotating basis each year by looking at the plans that they submit to the Registry System. In addition, referrals of certain survey firms or certain survey departments will be made and these will receive greater investigation. (This question is answered more thoroughly in the Article.)

The Ministry of Consumer and Commercial Relations will still be examining some plans, such as Boundaries Act plans, plans of subdivision, condominium plans, etc. In addition, they intend to monitor, on a post-deposit basis, a small percentage of the total number of plans.

Question: How picky will the survey review department be? (Will they hang us for minor infractions?)

Answer: The definition of incompetence is well-known to all members as it is contained within the regulations attached to Surveyors Act. This definition of incompetence indicates the continual neglect of and the lack of adequate knowledge. The Survey Review Department will have certain rules and procedures by which they will undertake their checking and while critiquing a plan, they will have guidelines to which to adhere.

Question: Will the AOLS ever get into pre-examination of plans prior to deposit?

Answer: Definitely not. There are many reasons why this cannot be entertained. However, the cost of the same, and the liability of the Association holding up plans are two reasons.

Question: Why the rush? Why not take more time and look at this question more thoroughly before entering into the formation of the Survey Review Department?

Answer: M.C.C.R. has embarked on a plan to revamp their internal approach to plan checking. It only seemed that Council had to determine whether or not they should act at this time or wait until some time in the future. It was believed that the quality of some plans would deteriorate and, within a short period of time, severely affect standards in certain areas. It could mean that much of the work in upgrading by the Association could go down the drain.

Questions were raised at some meetings that perhaps the department should only be set up for three to six months to see how it worked. It was answered by the members of the Association present that this was not feasible as competent staff had to be engaged and it was unlikely that people would leave their present jobs to take on a temporary position for three to six months.

Question: Will our dues increase because of the Survey Review Department?

Answer: No, not because of the department. It will be a user-pay system.

Question: What if it fails, or it won't work?

Answer: If it fails or if it simply will not work, the Association will have to drop the Survey Review Department. At that time, the Ministry will have to look into whether or not they will re-enter the plan examination business. If this is necessary some time in the future, it will cost the Ministry a great deal to re-start the plan examination system and obviously, there will be much controversy regarding the same.

Question: Won't discipline increase because of the Survey Review Department?

Answer: No. This is the first time that a positive step has been taken in the direction of education. The thrust is remedial, not punitive. Committee structures will be revamped and hopefully, many opportunities will be given to the sub-standard surveyor to improve his work.

Question: What assurances can be given that referrals won't end up in discipline?

Answer: None. Just like the system is now, the Association, once it is aware of sub-standard or unethical practice, must proceed.

Question: Where do present and future staff fit in?

Answer: An outline was given to the special meetings that two additional OLSs would be engaged to form a survey department. The manager of the Survey Review Department would be responsible for the other surveyor in his department. In addition, a word processor operator and a clerk will be engaged for the department.

Question: Has a budget been struck for this Department?

Answer: Yes. The budget covers salaries and benefits, travel for staff, postage, printing and stationery, office equipment and leasing, consultant fees for field inspections and auditing, legal, telephone, office services and space in the AOLS office. The budget is based on a \$15.00 deposit fee per plan.

Question: To whom is the Department responsible?

Answer: The staff of the Department will be under the administration of the Executive Director. As well, the Department will be the responsibility of a Zone Councillor.

SURVEY REVIEW DEPARTMENT PROCEDURES

General

The Survey Review Department will be set up in December of 1985 and will have two members of the AOLS and clerical staff.

The Department will be managed by an OLS who is responsible to the Executive Director for the staff of the Department and its functions.

Procedural guidelines will be adhered to by members of the Department when undertaking reviews of plans, surveyors and field investigations.

Method of Notification and Review

A) The Survey Review Department will make arrangements to receive one print of every plan deposited and/or registered. Each private practice firm, government agency or others submitting such documents, will have their plans reviewed on a rotating basis.

The random review will consist of plan review and/or survey review and/or field investigation of certain plans pulled from those on file. The author of the plan will be advised of the areas of possible concern and requested improvement.

If such random reviews reveal areas of serious concern, a more detailed investigation of the survey practice will be undertaken, including examination of non-deposited or non-registered plans.

B) The Survey Review Department will receive "referrals" from AOLS committees, government agencies and others. These referrals will consist of written notification to the Survey Review Department of the surveyor who appears to be doing sub-standard work. In most instances, the referral will also indicate and/or include the plans with which there have been problems. The Survey Review Department, at that time, will randomly choose plans prepared by this surveyor from those on file. The necessary plans and survey checks will be made, as well as on-site inspections, if necessary.

The authors of the plan will be advised of the areas of investigation.

Method of Reporting

The senior OLS of the Survey Review Department will have the responsibility of preparing reports regarding the investigations undertaken as a result of a referral or the reviews that are to be done on a rotating basis. These reports will outline the areas in which the plans and survey work are deficient and those areas in which improvement is necessary. The reports will be specific as to the facts that have been found.

The senior OLS of the Survey Review Department will be responsible for presenting these reports, either to the Practice Advisory Committee or the Complaints Committee, outlining the review that has been undertaken and the facts that have been discovered. He will be required to attend meetings of the Practice Advisory Committee and the Complaints Committee in order to review his reports with the same. It is expected that most of the files will be given to the Practice Advisory Committee. However, in instances of unethical conduct, fraud, misrepresentation or gross deviation from standards, the file may have to be taken to the Complaints Committee.

Final Disposition of Report and Review

The Practice Advisory Committee, upon receiving a report from the Survey Review Department, will, as a committee, have to decide the manner in which they will deal with the surveyor who is the subject of the review. They will have available to them the various monitoring and educational facilities of the Association and these will be, in most instances, referred to. In rare cases the Practice Advisory Committee may send the file to the Complaints Committee, especially in the matter of surveyors who either won't or who are unable to change their practices.

The Complaints Committee, in reviewing the report brought to it by the senior OLS of the Survey Review Department, will have to review the same and determine whether a Complaints Session will be held, whether the matter will be dealt with at the Complaints level or, in certain cases, if the matter should proceed to Discipline. If the matter is held in-house, the Complaints Committee may make certain requirements of the surveyor in order that the matter can be successfully completed. If the matter is to be sent to Discipline, the Complaints

Committee will undertake, with consultants to the Committee, additional investigation in order to substantiate that discipline charges are required.

It would be pointed out that before any matter proceeds from the Complaints Committee to the Discipline Committee, it will be reviewed by the person sitting on the Review Board. The purpose of the Review Board is to take a second look at all recommendations of the Complaints Committee that lead to Discipline. Only a small percentage of complaint matters are forwarded on to Discipline. Upon completion and closing of the file, the Practice Advisory Committee and the Complaints Committee will report the disposition of the matter to the Survey Review Department.

Education and Monitoring Services

In order for the Survey Review Department to function effectively, the Education Department of the Association will have to be expanded. This is being planned at the present time. Educational seminars, as well as home study, must be available to those who need re-educating. Also, members of the profession who are suitable to act as monitors must be identified and arrangements must be made accordingly.

COMMON CRITERIA FOR REFERRALS TO THE SURVEY REVIEW DEPARTMENT FROM GOVERNMENT SURVEY DEPARTMENTS AND OTHERS CONTRACTING SURVEY WORK FROM PRIVATE PRACTITIONERS

1. The checking of survey plans and procedures is the responsibility of the signing surveyor. Therefore, continuing submissions of marginal quality work is an indication that the surveyor responsible requires remedial education and is grounds for a referral of the surveyor's work and his general practice to the Survey Review Department. Depending on the degree to which the work submitted is sub-standard, blatantly poor submissions will be grounds for a referral to the Complaints Committee or the Survey Review Department.
2. The AOLS will formally request that the Survey Departments to which these criteria relate submit such referrals to the Survey Review Department.

3. Prospective survey contractors must be made aware through one or more of the following avenues that marginal or sub-standard work may be grounds for referral:

- (a) General notification through an AOLS bulletin.
- (b) Notice in Invitations for Proposals or Invitations to Tender by the contracting department.
- (c) Notice in the general Instructions to Contractors.
- (d) Notice in the actual survey contract.

4. Where the nature of the relationship between the contracting Survey Department and the Contractor is such that an on-going relationship exists, the Survey Department will advise the surveyor, if possible, that his practice may be referred to the Survey Review Department in advance of the actual referral. Where such notification appears to rectify the situation, referral to the AOLS department will not be incumbent on the Survey Department.

5. There will be no exceptions to the requirement that proof of support of the AOLS quality-control program be evident on the face of the original plan being submitted with respect to all plans entering the Land Registry System. It should not appear to the public that government survey plans are handled differently in that the lack of such proof on certain plans may infer that an unfair monetary preference is being given to those plans prepared by certain government agencies.

6. The proof of support of the program shall be either attached on the face of the plan in the form of a partly transparent sticker, or as a Requisition-to-Deposit form. The contracting departments will make it a requirement that the survey contractor supplies such proof with the submission of the returns.

7. The AOLS will hold a meeting at least annually with such survey departments and other bodies to which these criteria refer. AOLS staff members and designated members of Council will attend this meeting for the purpose of reviewing the referral system

and general adherence to the survey standards, exchanging information and collecting any recommendations for changes in the standards.

TIME TABLE FOR IMPLEMENTATION OF AOLS SURVEY REVIEW DEPARTMENT

August 28 Meeting with representatives of other Ministries to discuss Referral and Survey Review Department functions and request for support.

September 9 Forwarding of Proposal to Ministry of Consumer and Commercial Relations.

September 26 Ratification by Council of amendment to Code of Ethics and Standards of Conduct.

September 18, 20, 21 and October 1, 2 and 8 Special meetings of represen-

tatives of Council and M.C.C.R. with membership in Thunder Bay, North Bay, Brockville, Scarborough, Oakville and London to discuss proposal and implementation of Survey Review Department.

October 1 Advertisements sent to the AOLS membership regarding the two positions available. Closing date - October 20.

October 1 Procedural guidelines and manual preparation to begin.

October 25 Review of applications and arrangements for interviews.

November 1 Engaging of staff.

December 1 Two OLSs and clerical staff in-house to set up department.

January 1 Implementation of Survey Review Department. ●

Organizational Chart of Survey Review Department and Related Committees

