

STRESS -

DO YOU GET PAID FOR YOUR SERVICES?

BY LORRAINE PETZOLD, O.I.S.

THE FOLLOWING is the decision in a recent case in New Brunswick, in which the survey company was having difficulty in receiving their money. I am sure that in reading this short case, you will note the similarity between it and what you may have encountered in the past.

MILLER, J.

This action concerns a claim for compensation for professional services rendered. The defendant has appealed a judgement rendered against him in an amount of \$715.00 and the appeal has been heard as a trial de novo.

After hearing the evidence of both Mr. Gilmore and Mr. Connors, it is clear to me that the defendant is very confused over the issues and has acquired an unfortunate complex by which he feels that everyone concerned has joined some kind of conspiracy against him. For instance, he can get no support from a surveyor because "one won't go against another", and no lawyer will act for him because such lawyer would no longer be able to obtain the services of a surveyor.

The only support the defendant has been able to muster apparently comes from the office of the Ombudsman. The defendant maintains that the solicitor for the Ombudsman has investigated this particular issue and has supported the defendant's position that the plaintiff's survey has been carried out improperly.

There has been no evidence other than the defendant's contention that the Ombudsman's office has been involved in the dispute.

I have been overwhelmed with documentary evidence such as plans, sketches and surveys but none is of appreciable assistance in determining this issue which is whether the plaintiff should be paid for professional surveying services.

The original protest note states: *"I am disputing this claim for there is a number of issues which should be discussed which I will do in Court. As for counterclaim, the matter is under investigation now and will be proven later."*

I must admit some difficulty in understanding the defendant's position. He waived in that at one moment, he contested the validity and quality of the work done by the plaintiff and at another time, he denied requesting the work for which the plaintiff seeks compensation.

There can be no question as to the existence of a contract between the parties for the defendant has paid the sum of \$800.00 to the plaintiff. This action concerns a further claim of \$700.00.

In my opinion, the evidence is overwhelming that the defendant requested the professional services undertaken by the plaintiff.

The defendant complained to the Association of Land Surveyors early in 1986 after the work had been performed and an account for services rendered. The complaint, a copy of which is before the court, did not question the validity of the account rendered. At that time, Mr. Connors' only complaint was that he did not agree with the location of a boundary line. The Association investigated and found no substance in the complaint. I agree.

On the trial de novo the defendant agreed with the suggestion that the issue then before the Court, based on the evidence heard, related not to the quality of the work done but whether the plaintiff's services were requested by the defendant.

I have absolutely no doubt that the plaintiff's services were requested by the defendant and even though the results of the survey investigation were not in accordance with the defendant's belief, the plaintiff is still entitled to be compensated.

The plaintiff's claim has been proven and he will have judgement against the defendant in an amount of \$700.00 together with filing fees paid.

Moncton, N.B.
December 22, 1986.
Judge of the Court of Queen's
Bench of New Brunswick. ●