

TO PRACTICE OR NOT TO PRACTICE

Before taking any position on Sections of the Act and Regulations which perhaps are not clear cut, the Association seeks legal counsel. The opinion received is as follows.

Question

What is the meaning to be ascribed to the provisions of section 14(6) of the Surveyors Act, S.O. 1987, c. 6 (the "Act")?

Section 14(6) of the Act provides as follows:

"The Registrar may refuse to issue a Certificate of Authorization to a licensed member of the Association or may revoke a Certificate of Authorization held by a licensed member of the Association where the Registrar is of the opinion, upon reasonable and probable grounds, that the member has not engaged in the practice of cadastral surveying during the period of five years preceding the date of the refusal or revocation."

There appear to be two interpretations available to the Association in respect of this particular provision. The first is that a licensed member who is not engaged in the practice of surveying continuously for a five year period preceding his application for a Certificate of Authorization may be refused the said Certificate.

The second interpretation asserts that if an applicant has at any time during the five years preceding an application for a Certificate of Authorization engaged in the practice of professional land surveying, the Registrar is obliged to grant to that person a Certificate of Authorization.

The phrase "has not engaged in the practice of cadastral surveying during the period of five years preceding the date of refusal or revocation" is ambiguous because the word "during" has two distinct meanings.

It may mean:

1. "Throughout the course or duration of", or it may mean
2. "Within the time of", or "at some time in".

The meaning of a word in a statute may be determined by review of the objects or purpose of the Act or the "mischief" which the section was designed to eliminate.

The object or purpose of the Surveyors Act is to regulate the practice of cadastral surveying in the Province of Ontario for the benefit of the public. Section 14(6) establishes a minimum standard of experience for licensed members engaging in private practice and ensures that only experienced surveyors engage in private practice. The purpose of the section would not be met if the Association allowed licensed members who had only practised surveying for a week in the previous five years to obtain a Certificate of Authorization and thereby offer their services independently to the public. This new section in the Act would have accomplished little or nothing towards ensuring that experienced surveyors are the ones offering services to the public and dealing with the public in that regard if that were the interpretation adopted.

If there are two interpretations that can be placed upon a particular word such as the word "during", the courts will adopt the most reasonable and sensible interpretation. In my view the most reasonable and sensible interpretation is the one which interprets the word "during" as meaning "throughout the course or duration of".

If the purpose of the Act is to ensure that all surveyors in private practice have a minimum level of experience, then it makes sense to distinguish between a licensed member who has practised continuously for a period of five years, from a licensed member who has not so continuously practised. If no such distinction is made, then the section is virtually meaningless.

In conclusion, it is our opinion that the section should be read as follows:

"The Registrar may refuse to issue or revoke a Certificate of Authorization where the member has not engaged in the practice of cadastral surveying continuously for a period of five years preceding the date of refusal or revocation."

Any other interpretation would prevent the Registrar from ensuring that experienced personnel obtain Certificates of Authorization, and would in effect compel him to recognize all licensed members and grant them Certificates without exercising any discretion. Any licensed member could set up shop for a day and on that basis submit that he had complied with the provisions of the Act.