

Executive Director's Report on Court Decision

BY CARL J. ROOTH, O.L.S.



"RIGHT OF ENTRY" - Surveyor Held Liable For Traverse Line Cut On Adjoining Property

The Right of Entry is a privilege granted to all licensed Ontario Land Surveyors under the Surveys Act, 1990 R.S.O. chap.S30, section 6. This privilege is stated as follows:

"6.-(1)

A surveyor or a person in the surveyor's 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."*

We wish to draw your attention to a recent court case between Wayne Arthur Summerville (plaintiff) and R.D. Tomlinson Limited and Robert Douglas Tomlinson (defendants). The proceedings of this case are Court File No. 292657/87 and the judgement was delivered orally by The Honourable Mr. Justice R.G. Byers on December 8, 1992, at Belleville, Ontario.

This article is being printed with the permission of R.D. Tomlinson Limited in an effort that our members will have a better understanding of our liabilities for damage when exercising our "Right of Entry".

The following is a synopsis of some of the information contained in the REASONS FOR JUDGEMENT.

The plaintiff owned some 400 acres of heavily wooded property with a wide variety of mature trees.

In 1981, the plaintiff discovered that a line had been cut along the south boundary of his property for a length of approximately 4,400 feet. The width varied from 8 to 10 feet wide and ap-

proximately 300 trees had been cut down and left.

The defendant, R.D. Tomlinson, O.L.S., had been hired by the land owner to the south to do a boundary survey.

The plaintiff hired another surveyor for an opinion as to the boundary line in question and paid a sum of \$4,401.32 to have a plan prepared. The defendant, Mr. Tomlinson, did not contest the location of the boundary as surveyed by the plaintiff's surveyor.

The transcript contained several paragraphs by a forester, who evaluated the costs relative to the value of the downed trees.

We quote from Mr. Justice Byers judgement,

"I cannot help but express my dismay about the circumstances surrounding this entire affair. The right to trespass on private property is a special privilege given to surveyors. That privilege should be honoured, not abused. Anyone can make a mistake. But I would have expected a surveyor, once having been alerted to the fact that he has trespassed on someone's property and caused damage, to have taken all reasonable steps to make it right."

The costs that were awarded to the plaintiff were as follows: (1) \$4,401.32 plus P.J.I. at 10% from January 1, 1983 to date; (2) \$6,860. no interest; (3) \$12,500. plus P.J.I. at 10% from January 1, 1983.

There was another endorsement by Justice Byers as to costs to the plaintiff fixed on a party and party scale. Plaintiff was to have all expert witnesses

paid their reasonable accounts in full, including two days' trial time.

The above is a brief synopsis of the trial proceedings.

We as land surveyors must take due care to notify owners on both sides of a property boundary when possible of our intention to survey a boundary. Traverse lines are to be kept to a minimum width and should be entirely on your client's property. When you have made the decision to cut the final line, you must also accept the liability for any damage occasioned thereby for any mistake that may occur if in fact the final line was inadvertently cut on a neighbouring property.

The Association has written to The Honourable Mr. Justice R.G. Byers and provided a copy of the Right To Entry article that was prepared by Lorraine Petzold, O.L.S., in May of 1988. Justice Byers refers to the word 'trespass' throughout the above proceedings. We do not believe that a surveyor carrying out the course of a survey should be considered to be trespassing on the lands as legislation has given us this Right of Entry under the Surveys Act. Surveyors **must** understand that this right must be exercised with care and understanding.

You may want to take time to review the article "Right To Entry" and understand the four basic items that should be treated respectfully by both the surveyor and employees and these are:

- * APPEARANCE
- * IDENTIFICATION
- * MANNER OF ACTION
- * LEAVING THE SITE

Additional copies of the "Right to Entry" article are available at the AOLS office upon request.

