

RIGHT TO ENTRY

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PURPOSE OF THIS ARTICLE

Right of Entry has been an important part of the Rights obtained by the land surveyor in Ontario, over the past 100 years. Initially only the land surveyor himself was granted the right to enter onto and do work on property without permission during the course of a survey. This right was later extended by legislation to any person who is in the employ of the surveyor.

The current Surveys Act {Section 6, RSO 1980, Chapter 493} states as follows:

- 6 (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 action thereon or therein for any purpose of the survey, but the surveyor is liable for any damage occasioned thereby.
- 6 (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."

It is important to note that the surveyor has a Right of Entry and the crossing of lands during the course of a survey should not be considered trespass. This word should not be used either by the surveyor or his staff.

PROBLEMS

From time to time, the Association is advised of difficulties that surveyors encounter while exercising their Right of Entry. These difficulties may arise from persons refusing to grant the Right of Entry or from damages that may result because of the surveyors Right of Entry. The most common problem brought to the Association is the upsetting of the resident by the surveyors Right of Entry.

ACTION

It is most important that the surveying profession protects the Right of Entry that it has under the Surveys Act. To try and undertake surveys in the best interest of the public without the Right of Entry is virtually an impossibility. Therefore, each survey firm is being asked to review with their staff, this entire document. It is recommended that this be done with the entire crew and with a member of the Association leading the discussion.

Although many of the items that are reviewed are basic common sense, it does not hurt to review them once again with your employees. This is an important item and we cannot treat it lightly.

HOW DO WE PROTECT OUR RIGHT OF ENTRY

There are basically four areas by which the Right of Entry can be protected and treated respectfully by both the surveyor and his employees. These are:

1. appearance;
2. identification;
3. manner of action; and,
4. leaving the site.

Let's look at each of these individually.

Appearance

The first impression that one has of any individual whether in social or business life is that person's appearance. It cannot be stated too strongly that the first impression that the public has of both the individual survey firm and the profession as a whole is the appearance of the persons who arrive on their property to undertake work.

Although the type of working clothes may differ from area to area, from season to season, there are some basic rules that should apply in each and every survey firm.

- (a) Dress neatly.
- (b) Start off with clean clothes each morning.
- (c) Dress appropriately.

Common sense, is it not, however, one only has to look closely at many of the crews that we see (and we see them with the eyes of a surveyor) to note that if we were the public and didn't know what these people were doing on our property, their first appearance would lead to alarm. There is absolutely no need for any survey crew to look, other than, acceptable at any time.

The appearance of the vehicles in which the field crews arrive, is also of importance. No survey firm can stand the poor public relations or poor advertising of one's firm, nor can the industry suffer the junk heap arriving in front of a residence or pulling into a driveway, looking as though it was going to fall apart at any moment.

Neat clean crews driving acceptable vehicles give the first impression to the resident.

Please review your appearance. Can it be improved?

Identification

The Association has received calls in the past from members of the public regarding people working on their property who do not have business cards and who, when the resident talks to the persons on site, indicate that they will not tell them who they are working for.

Right of Entry does not also provide us with anonymity. The vehicles and the persons on site should and must be identifiable. How can this be done?

In most instances, if the company owns the vehicles being vans or similar commercial vehicles, they are clearly identified with the name of the company. However, many of these survey companies allow private vehicles to be used for the travelling to job sites. If this is being done, the identification can be undertaken in one of two ways. A magnetic identification board can be affixed to the doors of the car outlining the name of the company. If this is not feasible, a properly prepared sign, small in size but clear enough to be read, can be placed in an appropriate window of the car. This can be done in a side read window, not affecting the line of sight, or in a portion of the back window.

In addition, the persons on site must also be identifiable. If the Ontario Land Surveyor is not on site with his membership card, it is recommended that all surveyors institute a practice immediately of having the Party Chief carry an identification card.

The card must identify the bearer as an employee of the firm. It is recommended that the Party Chief, carries the identification card and that they not necessarily be given to other employees. The Party Chief generally is on staff for sometime and could, in turn, identify the other persons as employees of the firm.

It is important that the card is renewed on a regular basis and due to the use that it will have, should be renewed as soon as it is ragged or it should be encased on plastic. The card has on the back of it, the Right of Entry under the Surveys Act which can be shown to the resident.

Any approach to members of the crew by the residents, should be directed to the Party Chief. They should be polite in this direction and should indicate that the person should speak to the Party Chief.

The Party Chief should, on arriving at the site, identify himself/herself to the residents, if they are at home.

This identification should include the name of the party chief and the company name. Business cards from the company should be carried in order that they can be given to the person. There should be no hesitation in giving out the card of the firm.

Once again, Right of Entry does not allow us privacy of identity.

Manner of Action on the Site

The most complained about section of the Right of Entry is the manner in which survey crews conduct themselves while on site. The first item to be dealt with under this is so sensible that it almost seems embarrassing to have to discuss it, however, it is the most abused part of our Right.

The politeness by which the survey employees treat the public while on site or rather the lack of politeness results in more calls both to the Association offices and to government departments than any other matter. The manner in which the reply is given to the irate or distressed resident who asks, "What are you doing on my property?", can make or break the rest of the effort.

The need to learn how to answer the question without necessarily giving away confidential information is expertise which one acquires as one is in the business over a number of years. The Party Chief must be knowledgeable and responsible in order to protect our Right to Entry by properly answering all questions while on site. All members of the crew should not answer questions but should refer the residents to the Party Chief. The party chief should emphasize that they are locating the boundary between parcels.

One spokesman while on site is enough. All other members of the crew should be advised that they should not give flippant answers nor should they distress the resident in anyway. The party chief may have to take time to speak with the members of the public. This time cannot be begrudged either by the party chief or the surveyor in charge.

You may be challenged directly to get off the property and in this instance the Party Chief has to have the expertise in being able to calm down the resident and hopefully stay on site and work. It is found that most persons who object to the survey crew being on their site, cannot conceive that we have the Right to be there. The Right of Entry is an unusual Right in that it is not given to many and the public simply does not believe that we are correct. Therefore, it is important to be able to show them the Section from the Surveys Act. One cannot assume that they will accept it and simply say stay on my property.

The rebuttal by the Party Chief of the order to "get off the property" should be calm, logical and polite. This can be practised or acted out in house while going through this demonstration of how exactly you should calm down an irate citizen in this regard.

The actions taken by the citizen may go one step further. They may either call the police or in isolated instances confront you with a firearm. In the last instance there is only one thing to do and that is to retreat from the property immediately. If the police are called, once again you have to be polite and outline to the police your Right of Entry and the reasons why you are going on the property.

In addition to the manner in which you are confronted or the manner in which you answer questions, there are a lot of other items which cause problems to the resident. The first, of course, is the digging up of their property. "Why are you digging so far back on my lawn, I own out to the sidewalk." "Why are you tramping through my flower beds?" "Who gave you permission to climb over my fence?" "Why are you cutting branches out of my tree?"

Each of these questions is a cause for alarm as they each have to be treated with sensitivity. Let us first go to digging the hole in the ground. Does the crew know how to properly cut the grass or the sod, dig the hole and replace the same? Is care given to not messing up a huge section of the ground of the property when looking for old evidence? Can the Party Chief explain properly to the resident why they are digging so far back from the sidewalk?

The Party Chief, while writing some notes, turns around to find that the two crew members have trampled a section of the garden. The elderly resident of the property is now rushing towards him yelling that they are ruining her flowers. How does one react? What does one do? Why did it happen in the first place? The Right of Entry does not preclude the Right of the person to privacy and safety of their property, therefore, all crew members must realize the importance of their responsibilities while on site and this includes damage of the lowest plants in the garden. There is no point in saying, "But it was only petunias". Each member of the crew must realize that they cannot damage anything while they are there. If it is absolutely essential that they enter into an area where it is almost impossible to act without damaging plants, then the Party Chief should be ready to explain to the resident what they are doing and what they will replace. One also must be very astute in being able to assess the importance of the item to the person not necessarily its monetary value.

The cutting of branches - how many crews are still hacking away at branches when, with a little effort, the line of site could have been cleared by simply using the method of tying back branches.

How many times are crews climbing over fences and bending the top rails when they could in fact, walk around the same fence. Unfortunately, in discussing this with the Party Chief and those in the field, the same item always crops up, "I am not given enough time to do the survey". Rushing the time on the site will, in many instances, increase the instances of non-responsibility regarding the personal property of the resident. The crew has to take the time to act responsibly and the surveyor has to give them the time to act responsibly.

Protect our Right of Entry.

Leaving the Site

The exiting of the crew from the site should not result in it looking like a disaster zone. The site should be left as close as to how it looked when they arrived as is possible. Now what exactly does this mean?

Obviously, all holes dug have to be refilled. They should be neat, a rake in the car can help greatly when cleaning up holes dug in grassed areas. Any trees that have been tied back, shrubs that have been dislocated with flagging should be returned to their original condition.

In addition, those temporary nails and pieces of flagging should be removed from their site. It is disconcerting to the resident to see a line of nails 10 or 15 feet away from the property line.

Leave the site as you find it. If you have to leave any nails, hubs, wood stakes, etc. on site, talk with the resident and ensure that they realize that they are not the legal survey markers and ask their permission to leave them until you return to complete the job.

SAMPLE LETTER

TO WHOM IT MAY CONCERN:

We are now embarking on the final stage of your neighbourhood subdivision survey. It is a requirement of the:

CITY OF "A" TOWN

that the developer verify and if necessary, replace all main survey markers.

We have been employed by:

MRS. JONES

to do this work and would like to introduce our Party Chief:

JANE BROWN

who along with the crew, will be doing the necessary field work.

The crews may need to take measurements from your home. Occasionally, their magnetic "bar finder" will locate a "bar" buried beneath the surface of the ground and it will be necessary to dig down to verify whether the "bar" is in its exact position or not. Whenever digging becomes necessary, the crews will take utmost care to ensure restoration of the ground to its original condition.

When a "bar" is missing or damaged, it will be replaced by a 1" square bar set flush with the ground.

Thank you for your co-operation and understanding.

**THIS TYPE OF LETTER CAN BE DEVELOPED
FOR INTRODUCTION OF FIELD CREWS**