



EDITORIAL

Over the years this division has received numerous queries regarding the interpretation and application of subsections 1 and 2 of Section 22, O. Reg. 77/63 (Code of Standards and Procedures for Surveys and Plans under The Land Titles Act).

These subsections are as follows:

22. - (1) The measurements of distances and directions obtained by the surveyor in the course of a survey on the ground shall be reduced to true measurements and shall be shown on the plan.

- (2) Where a measurement of distance or direction differs from that shown,
- (a) in the register or on a registered plan; or
 - (b) in a deed or plan registered under The Registry Act,

the measurement shall be followed by the abbreviation "Meas." and the corresponding measurement in the register or on the registered plan, or in the deed or plan registered under The Registry Act, shall be noted followed by "Register", "Plan (No.)" or "Deed (No.)", as the case may be.

Specifically, the queries have usually been the following:

1. What is meant by "true measurement"?
2. Does the combined scale factor adjustment made to measured values in order to place the survey on the Ontario Co-ordinate System constitute a contravention of subsection 1?
3. Does the differing in bearings caused by the using of a different reference meridian constitute a "difference" within the meaning of subsection 2?
4. Are there any allowable tolerances between true measurements and registered or plan measurements?

The following comments relate to the above questions in the same order as they appear above.

1. In his certificate on the plan the signing surveyor has certified that the survey and plan are correct. Consequently, he must have satisfied himself, that to the best of his knowledge and belief the measurements stated are "true measurements". "True" in this context can only be interpreted in the classical surveying sense; lineal measurements reduced to the horizontal and angular measurements adjusted, so that closed figures shown are mathematically correct.
2. When legal survey plans are prepared which utilize the Ontario Co-ordinate System and illustrate measurements to which have been applied the combined scale factor, obviously these measurements are not "true" in the classical sense. However, it must be kept in mind that the combined scale factor does intend to "correct" the values to conform to a particular map projection. Consequently, this division has taken the position that, provided the combined scale factor is quoted in note form on the plan, the plan will not be deemed to contravene subsection 1 of Section 22. Following the same reasoning, if this combined scale factor alone causes a difference between registered values and the measurements quoted on the plan being presented, this difference shall not be deemed a "difference" under subsection 2 of Section 22.
3. For the interpretation of subsection 2, the differing of bearings on the plan presented from that of record, occurring only by reason of a different reference meridian and not an actual difference of angle, need not be considered to be a difference under the subsection. The principle employed is that the difference must

QUESTIONS AND ANSWERS

Following is a question received from a reader concerning easements and an answer given by our Legal Division:

Q. Could we have a discussion on the creation of easements or rights-of-way. What is a prescriptive right-of-way? How many years of usage creates one? Can an owner protect his proprietary right by closing a road through his lands once yearly, if that road provides say a short cut, or perhaps access to other lands which an owner permits only as a courtesy?

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- be one of angle between the two intersecting tangents rather than one of variation in the reference meridian.
4. Subsection 2 requires that when a difference exists between the measured value and the registered value, both are to be shown on the plan being presented. No provision is made for allowable tolerances in this regard. Consequently, if a true difference exists, both measurements are required to be shown. This will not, however, preclude the Examiner of Surveys from exercising a little discretion when the difference is insignificant and not shown on the plan being submitted. This difference will normally be considered insignificant if it falls well within the tolerances allowed in errors of closure by Section 9, O. Reg. 77/63.

H. Krebs, O.L.S., D.L.S.
Senior Examiner

QUOTABLE QUOTES

"The beauty and genius of a work of art may be reconceived, though its first material expression be destroyed, a vanished harmony may yet again inspire the composer; but when the last individual of a race of living beings breathes no more, another heaven and another earth must pass before such a one can be again."

C. William Beebe

ACTION AND NEWS

The Report on Land Registration by the Ontario Law Reform Commission was recently tabled in the Legislature by the Minister of Justice. Presumably the next step of the government will be to assess the recommendations in the Report and accept or reject them in total or in part.

The Boundaries Act and The Certification of Titles Act were recently amended by The Civil Rights Statute Law Amendment Act, 1971, assented to on the 23rd of July, 1971. The Amendments deal with notice, hearings, and right of appeal resulting from the recommendations of the Royal Commission Inquiry into Civil Rights as to procedural safeguards for the exercise of statutory powers in Ontario.

Members On The Move

Gunter Bellach has returned from Nassau, Bahamas, and has left again to reside in British Columbia where he will be employed by McElhanney Surveying & Engineering, 1200 West Pender Street, Vancouver, B.C.

REMINDER

Mark your calendar now for the Association's 1972 Annual Meeting at Thunder Bay on February 14-15-16.

New Deputy Minister For Lands and Forests

Walter Quirk Macnee, P.Eng., deputy minister of transport since 1966 was appointed deputy minister of lands and forests May 1st, 1971.

Born and raised in Kingston, Ont., Mr. Macnee was aiming for Queen's University. His education, however, like that of many other young men in the '40's, was interrupted by the Second World War. He served in England, Italy, Belgium and Holland with the Perth Regiment, 5th Canadian Division, before returning to his home town to complete his B.Sc. in Civil Engineering at Queen's in 1950.

That same year, he went to work for the Ontario department of highways, and, in 1952-53, did post-graduate work at Yale University's Bureau of Highway Traffic.

In 1956, the provincial department of transport was set up. The transport department was responsible for some of the functions previously handled by the highways department. He stayed on with highways and headed up the traffic section. From 1962 to 1966 he was the department's traffic and planning studies engineer. In December of 1966, he was named deputy minister of transport.

Mr. Macnee has played a very active part in the work of the American Association of Motor Vehicle Administrators and is past-president of the Association's Region 1. He is one of the group most instrumental in bringing about uniform traffic signs across the country.

Mr. Macnee is married, with two sons and one daughter. His wife is also a former Kingstonian and, despite the fact that they have lived in Toronto for some years, they still belong to the Kingston Yacht Club. In the winter, he's an enthusiastic curler.



WALTER QUIRK MACNEE, P.Eng.

Law and Surveying (continued from page 5)

A. The topic of the creation of an easement or rights-of-way is most complicated because of our law. Unless one goes into it most thoroughly there is a danger that statements so given could be harmful unless fully explained.

In Ontario an easement can be created of course by a grant of the easement. It can also be created under what is called a doctrine by prescription. This doctrine is based on a legal fiction that because people had use of the land without complaint from adjoining owners that there had been some time or other a grant of such easement which had become lost, that is the doctrine of "the lost modern grant". This doctrine holds that a title may be obtained for enjoyment for 20 years, that such enjoyment must be open, uninterrupted and undisputed. It is rather difficult to acquire such an easement in this manner

as there are also many qualifications in that the adjoining land over which this easement runs must be in possession by the owner himself and not be in possession of his tenement as otherwise the 20 years would not run. There is also required the definite use as to manner, that is by pedestrians, cars, etc., and also the extent on the ground must clearly be defined.

For practical purposes, the doctrine of lost modern grant was put into statutory form in The Limitations Act and a right of easement acquired under The Limitations Act is known as acquiring the right by prescription by statute. It does not supersede the doctrine of the lost modern grant but provides an alternative method and usually is the only practical means by which to acquire in Ontario an easement by prescriptive means. Section 31 of The Limitations Act, R.S.O. (1970), provides that any claims lawfully made by prescription with respect to an easement that is open, actually enjoyed without interruption for 20 years shall not be defeated or destroyed and that if it is upon so shown to be continuous for a period of 40 years, the right is to be deemed absolute and indefeasible. This means in effect that if a right of easement has been used for 40 years then the fact that the owner of the land against which the easement runs cannot defeat the claim by virtue of the fact that he had tenants in possession or any other personal disability such as age or incompetency. We would also point out that to establish this prescribed right in The Limitations Act, it is necessary to bring the matter into a court of law and the right of claim must in effect be existing at the time such an application is made into a court of law.

With regard to the problem of closing a right-of-way once yearly, this is not absolutely necessary. In order to stop the time running it is only necessary to stop the use of the right-of-way and time again starts running from that moment, and provided that it is stopped before the 20-year period it is just as effective if it is stopped once every year.