

# The Combines Investigations Act

## The Effect of Recent Amendments to The Combines Investigations Act on the Association's Code of Ethics.

As many members of the Association are no doubt well aware the recent amendments to the Combines Investigations Act of Canada effective July 1st, 1976 have included professional bodies within its scope, generally, and this may have a specific effect on the Association as a professional organization.

Effective July 1st, 1976, the new Act was extended to apply to the services of professional bodies and in the relevant sections the word "article" has been replaced by "product" and "product" is defined to include both "article" and "service". A "service" in turn means "a service of any description whether industrial, trade, professional or otherwise".

The operative section of the Combines Investigations Act is section 32 which states as follows:

"32 (1) Everyone who conspires, combines, agrees or arranges with another person . . . (c) to prevent, or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a **product**, or in the price of insurance upon persons or property, . . . is guilty of an indictable offence and is liable to imprisonment for five years or a fine of \$1,000,000 or to both".

There are a number of exceptions and defences to the language of section 32 (1) (c) the most relevant being section 32 (6) which states as follows:

"32 (6) In a prosecution under subsection (1) the court shall not convict the accused if it finds that the conspiracy, combination, agreement or arrangement relates only to a service and to standards of competence and integrity that are reasonably necessary for the protection of the public; (a) in the practice of a trade or profession relating to such service."

To complete the picture section 7 (c) of the Code of Ethics states that:

"No member of the Association shall engage in competitive bidding for any work".

Therefore there appears on the first reading of section 32 (1) (c) of the Combines Investigations Act to be a conflict between that section and section

7 (c) of the Code of Ethics, because the former section indicates that anyone agreeing or arranging with another to prevent or lessen competition with respect to a service is guilty of an indictable offence, while section 7 (c) of the Code of Ethics states that no member of the Association shall engage in competitive bidding for any work. In other words the Combines Investigations Act has now indicated that as far as professional bodies are concerned, that they shall not practice limiting competition or lessening it unduly, while the Association by virtue of its Code of Ethics has stated that none of its members shall engage in competition with one another when it comes to bidding for any work or services.

There has not been of course any determination as to whether or not the provision in the Association's Code of Ethics is in violation of the recent amendments to the Combines Investigations Act, nor has there been a determination of whether or not Ontario Land Surveyors are now required to submit tenders when called for by a person or organization requesting land surveying services.

However in the absence of any ruling with respect to the applicability of the new provisions to the Association as a professional body, a number of comments can and should be made at this time in order to alert all Ontario Land Surveyors to the implications of the new provisions to their practice as professional people.

The first point to be made is that it could be argued that section 7 (c) of the Code of Ethics of the Association conflicts on its face with the new amendments to the Combines Investigations Act thereby possibly exposing the Association to an allegation that it is suppressing competition under section 32 (1) (c) of the Combines Investigations Act. This position would be based on the premise that the intention of section 7 (c) of the Code of Ethics has always been to suppress competition at the expense of the public, with no thought to maintaining high standards of expertise within the profession. It is for this reason that the Association reaffirm the intention which gave rise to S 7 (c) of the Code regarding protection of the public in order not to suggest to the Department of Consumer and Corporate Affairs the possibility that the Association is in violation of the Act.

The second point is to emphasize that there does not exist any conflict between the Code and the new amendments given the present wording of the Code of Ethics. In other words the word-

ing of Section 7 (c) of the Code and the exceptions to section 32 (1) (c) found in section 32 (6) of the Combines Investigations Act, indicate that there exists no conflict or inconsistency between the new provisions and the Code of Ethics prohibiting competitive bidding.

This can be demonstrated by a number of arguments dealing with the interpretation of the new legislation and the Code of Ethics.

(a) Section 32 (1) (c) applies only where there is "an agreement" amongst persons. That is, where an Association provides for voluntary membership, any Act of the Association has usually been interpreted as done pursuant to membership agreement. But if membership is compulsory, as in the case of the Association of Ontario Land Surveyors, there is no specific precedent to the effect that a compulsory declaration, i.e. (section 7c) the violation of which can lead to prosecution under the **Surveyors Act**, amounts to an agreement or arrangement or conspiracy to prevent or lessen competition. For this reason it could be argued that the provision in section 7 (c) of the Code is not an agreement amongst Ontario Land Surveyors not to bid competitively, but a prohibition demanded of all Ontario Land Surveyors in the interests of preventing price wars or under-bidding to obtain work. The power to adopt a Code of Ethics is found in section 12 of the Surveyors Act and refers to "standards of conduct designed for the protection of the public". Therefore section 12 of the Surveyors Act is the enabling legislation with respect to a Code of Ethics and the intent of establishing a Code of Ethics is to maintain "standards of conduct designed for the protection of the public" and that the provision against competitive bidding intends to do that very thing.

(b) The thrust of section 32 (1) (c) of the Combines Investigations Act is to prevent by conspiracy or agreement the lessening of competition by businesses and professional Associations, but not to prevent a professional Association or group from setting standards of competence and integrity for its members necessary to protect the public, and it is felt amongst the Association that professional bidding does lead to situations in which the public at large are compromised if Ontario Land Surveyors engage in such conduct. In the long run this affects both the standard of competence and the integrity of the profession, because it results in the rendering of low bids in order to obtain the client in the first instance,

which forces the surveyor who is successful in the bid to remain within the confines of his bid or estimate, often resulting in the necessity of producing hasty and less than top quality work, because he must operate within the financial guide lines set by his initial bid. The end result of this type of approach is to reduce the calibre of work done, thus downgrading the profession as a whole and of course more importantly resulting in substandard work on behalf of the client, the public at large.

Section 32 (6) of the Combines Investigations Act indicates that the court shall not convict the accused under subsection (1) if the court finds that the conspiracy, combination, agreement or arrangement relates to a service and to standards of competence and integrity that are reasonably necessary for the protection of the public in the performance of that service. Therefore the second argument is that the Association requires a provision to avoid the detrimental aspects to prevent competitive bidding and that even if the provision in the Code of Ethics is an agreement or arrangement it is one designed to maintain standards of competence and integrity that are reasonably necessary for the protection of the public. There exists wording about "standards designed to protect the public" both in section 12 of the **Surveyors Act** which gives rise to the Code of Ethics and in section 32 (6) of the **Combines Investigations Act** which provides an exception to prosecution under section 32 (1) of the same Act.

The upshot of this brief analysis is that the Association is probably not in breach of any of the recent amendments to the Combines Investigations Act, because the intention of section 7 (c) of the Code has **never** been to conspire to prevent by arrangement the lessening of competition vis-a-vis the public but rather to maintain a high standard of professional excellence.

However the point which must be made at this time is that the matter as it now stands is unclear. The Association is not in a position to announce to the public at large that it is exempt from the provisions of section 32 of the Combines Investigations Act and in fact to do so could result in grave consequences for the Association because it could quite easily be construed by the Department of Consumer and Corporate Affairs to be a specific violation of section 32. For the Association to announce that the Department's legislation is inapplicable to the Association publicly, might invite prosecution because it could be construed as a repudiation of the amendments, in the Department's eyes, and as directly

misleading the public regarding the effect of the amendments on the Association's activities.

This analysis extends to the setting of Tariff rates by the Association as suggested remunerative levels for standard types of activities. The spirit and intent of such tariff rates is not to restrict competition in the market place or preclude the market from freely adjusting to reflect the worth of professional surveying work. The Tariffs are suggested guidelines proposed by the Association to assist Ontario Land Surveyors in arriving at a reasonable charge for services rendered, as well as advising the public of the cost of professional surveying work and how such cost is determined. The intention is informative and flexible, rather than restrictive or rigid.

The Association has always sought to govern its activities in such a way as to maintain high standards amongst its personnel to ensure that its reputation with the public and any other organiza-

tion or group remains professionally beyond reproach. To this end the Association has no intention of directly or indirectly violating government legislation, and it is submitted the Association never has done so, but rather, has always intended to regulate its own internal affairs in order to further the common interest of the public at large and its own professional reputation.

In conclusion, this matter is one of considerable importance to the Association and warrants discussion by all members at the Association's annual meeting in February. A clear understanding of the new provisions of the Combines Investigations Act as they may affect the Association is necessary and it is relevant to every member that he conduct his affairs in such a manner as not to contravene the new legislation. It is submitted that this can be accomplished and that the Association's past practices and present activities do not in any way intend to contravene the new provisions in spirit or in fact.

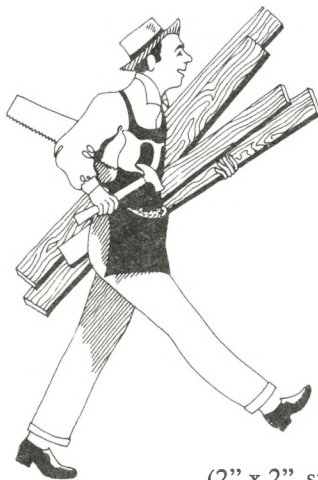
# Good News For Ontario Land Surveyors

## PERSONALIZED SURVEYOR'S STAKES

Soft and Hard Wood

YOUR NAME ON THEM MAKES A DIFFERENCE

Do you know how much do-it-yourself stakes really cost, when to the initial cost you add labour, etc.? Figure it out, then compare with the following;



Length	Sec.	Price
12"	1" x 2"	.05
	2" x 2"	.08
18"	1" x 2"	.06
	2" x 2"	.12
24"	1" x 1"	.08
	1" x 2"	.09
30"	2" x 2"	.18
	1" x 2"	.10
36"	2" x 2"	.22
	1" x 2"	.12
48"	2" x 2"	.26
	1" x 2"	.20
60"	2" x 2"	.32
	2" x 2"	.46

(2" x 2" stakes 4-way point, others 2-way)

Add 50% extra for painting, 5c each for stencilling your own name.

Shipped anywhere. No order too small.

CONTACT M. R. WILLITS & ASSOCIATES

195 Winnett St., Woodstock, Ontario

Phone (519) 539-1555