

Self-Governance The Mandate of the Profession

AN EASTERN PERSPECTIVE

BY ROSALIND PENFOUND, B.P.E., LL.B.
EXECUTIVE DIRECTOR, N.S.L.S.

I am pleased to be here representing the Association of Nova Scotia Land Surveyors and to comment on what's happening in the east, to give "An Eastern Perspective" of the surveying profession.

If you ask any Nova Scotia Land Surveyor these days what the biggest issue of the day is, they won't say the Competition Bureau, they will say the APENS; the Association of Professional Engineers of Nova Scotia. Within the last three years, two of our members have been charged with practising engineering in contravention of the *Engineering Profession Act* in Nova Scotia. Those charges relate to the laying out of roads and the showing of profiles and elevations on plans.

As it now stands, those members have not met with much success before the courts. There are several convictions against our members and at least one case is under appeal. The good news is that they are lower court decisions but the bad news is that whatever they are, they are against our Association and members. Also, the APENS has produced an information bulletin which has been distributed to our Department of Transportation and Development officers throughout the Province. The Bulletin lists the kinds of things they feel fall within engineering. One of the items they list is "sizing and configuration of lots". This has caused our Association and members a great deal of concern, as you can well imagine. The major problem is the definition of professional land surveying; the definition we have in our Act is rather narrow. On the other hand, the definition of professional engineering in the *Engineering Profession Act* could be interpreted to read; for example, if we rearrange the chairs and tables in this room, we have designed some kind of transportation system and are guilty

of professional engineering. It seems to be almost that wide.

Our Association has been very concerned about this problem. Council has deliberated long and hard and have met with our solicitor to develop the most appropriate approach to resolving this problem. The approach is really a three-pronged approach. Firstly, there is diplomatic activity. There is a committee now established between APENS and our Association which is attempting to work out a solution to this impasse. It appears to be an impasse, to come up with some kind of agreement between the two professions about what the relative jurisdictions are, something that each body can live with. It's a fairly high level committee consisting of the President of our Association and two other members, and the President of APENS and two of their members. That committee has a six-month mandate by our members to come up with a resolution to this problem. The six months will draw to a close in about two months from now (April '90). The committee has met with some limited success but still feels there is a lot of work yet to be done.

One of the other approaches is what we have called: "the political and legislative approach". That involves looking at our Act and possible amendments which would shore up what we feel is the traditional jurisdiction of land surveyors, and at the same time, we look at the expanded profession and a number of other things that we should include when we are doing that amendment.

The third and last, and hopefully one we will not get to, is the one that we call "the legal approach". If forced to, we may go to court to ask for a declaration as to what the relative jurisdiction of each profession is. We have to be realistic about that in that when you go to



court, you are never sure of what the outcome would be and we feel that that is the least desirable thing to do. For one thing, we feel it's incumbent on two professional bodies to try to resolve this kind of problem and be able to live in harmony and work side by side. We are hopeful that there will be a positive resolution of this matter through this liaison committee.

There are a number of other things going on that seem to go hand in hand with this issue. For example, in Nova Scotia our Department of Transportation has a number of surveyors on staff, but they are not called surveyors, they sit in a category called "Engineering Technician". That's something that, as you can well imagine, is a concern to us. Our DOT Liaison Committee is hoping to persuade our Department of Transportation to reclassify these people with the hope to establish a survey division or department within their Department. This is viewed by our members as really the biggest challenge to our profession. There are, of course, some other worrying things.

In 1988-89 the Association of Nova Scotia Land Surveyors only commissioned three new surveyors. At the same time, we lost 15 full members which, when you look at our overall membership, represents a decline of 4%. It doesn't seem like all that much but if we keep looking at 4% every year, our numbers will go down significantly.

The APENS issue is one of great continuing concern and promises to continue to demand more of our energies and perhaps our money down the road. The competition issue is also one of concern. Our general membership perhaps still sees it as rather remote in that it has not touched our Association per se. However, you can be assured that the Executive Council and staff see it as perhaps looming much closer, and they recognize the seriousness of that issue for surveyors across the country. We'll lend our support to your Association and others in attacking or attempting to resolve this issue as it develops.

The Competition Bureau and its activities, although they have not yet touched our association, is not new in Nova Scotia. Our Barristers Society through the years had a minimum fee

schedule or tariff, and from time to time have had committees deal with that subject. They have recently written to their membership saying disregard that, we don't have any kind of fee schedule any more. They disbanded the fee committee, mostly because they couldn't get anybody to sit on it any more.

In Nova Scotia the biggest area of concern with respect to competition is with the pharmacists. The Nova Scotia Pharmaceutical Society and Pharmacy Association are now in court fighting charges laid under the Competition Act. I don't have all the details and certainly if I did have them all, I would probably not be at liberty to divulge them to you as it is an ongoing case. I can tell you the basis of the charges; the society and the Association's Tariff Committee negotiated with insurance companies, private insurance companies that have drug plans, to set maximum fees which they would pay to a pharmacy for prescription drugs. They came up with a schedule saying this is what we will pay; to X company we will pay Y dollars for this prescription. That was negotiated with the Tariff Committee of the Association and a schedule was sent out to all the pharmacies. The insurance company thought that was great. They were very happy with it because it meant consistency and they did not have to negotiate with individual pharmacies.

They knew what they were dealing with and so did their members. The companies and pharmacies liked this as well because it made it much easier administratively for them. They felt that all the fees negotiated were more than reasonable. The public didn't complain. Again, it meant consistency and stability. They knew from drug store to drug store what the price would be and they were not asked to pay any more than the insured amount.

The basis of the allegation is that the pharmacists did not compete among themselves for the business of these insurance companies by setting these tariff rates. The allegation goes on further to say that by establishing these tariff rates for insurance companies, they really established a floor price for all prescriptions. In other words, if you

establish a price for a drug that's going to be paid by an insurance company, that, in effect, becomes the price that the individual consumer off the street who is not covered by insurance will pay as well. So it was viewed as setting a floor price.

It should be made clear that there was never any requirement for a pharmacy to charge a specific price. The only thing that was negotiated and put out by way of information was that this is the price that the companies will agree to pay under their plan. All this started as far back as 1976. They believe that the investigation has been going on since then. There was a search and seizure in 1981. Charges were actually laid three years ago. The point they are at right now is that preliminary hearings have been completed and a decision was to be handed down by March 22 of this year. Being totally optimistic, they have trial dates set for October and November 1990. As a guess, the costs for this are likely in the vicinity of half a million dollars and they have not reached trial yet. Interestingly enough, last year, in March, when the preliminary hearings were under way with respect to competition issues, there was a lot of bad press for pharmacists in Nova Scotia.

The consumers complained of the difference in prices from drug store to drug store. There was a great consumer outcry, the ombudsman was involved; all at the same time, the Association and Society members were in court addressing this competition issue. So, we are keeping our eye on that and are also keenly interested in what is happening here in Ontario and British Columbia.

On the positive side, I can report to you that our Association has looked at and has accomplished some major changes this year. We started a Survey Review Department, which commenced operation on January 1, 1990. Our new manager is James Gunn, one of our Past Presidents. He assumed his duties about two weeks ago.

As of June 1 this year we have mandatory liability insurance for our members and we have new regulations with respect to admission to membership. Surveyors real property reports are still actively under consideration. We

AN EASTERN PERSPECTIVE cont'd

anticipate some continuing opposition from lawyers and lenders but we are working towards meeting that. Some of our own members perhaps need to be convinced, but we have an active committee and hope to have something on the rails this year about that.

We have formed a committee that's called the Land Court Committee. It has been successful in discussions with the Attorney General's department in Nova Scotia in qualifying surveyors to be referees who can be used by the Supreme Court of Nova Scotia to deal with property and boundary related matters. We don't have the details worked out yet but we have positive responses.

It also looks like we may have in place, before too long, a system where a Supreme Court judge can refer to a surveyor a boundary or property related issue for a report to the court. We view this as very, very positive from a number of points of view.

We think most importantly, it will help the public and the courts to deal with these types of matters quickly and cheaply as opposed to having long, drawn out battles. We also believe that it greatly enhances the professional image of land surveyors of Nova Scotia and we think it is most appropriate that land surveyors become involved in these kinds of activities.

When I look at our current budget, it's pretty hard not to notice that our complaints and discipline budget is twice the amount budgeted for continuing education. It's five times the amount we have budgeted for public relations. These are the keys, continuing education and public relations.

Our emphasis is increasing and we hope to see those figures reversing as our efforts move in that direction. We hope that our Survey Review Department will greatly help us in planning continuing education activities. We have embarked on some new public

relations activities which we hope will be useful to the Association.

We now have a speaker's bureau in place. This year, for the first time, there will be a survey component to the Bar admission course for the Barristers Society of Nova Scotia. We now participate regularly in real estate board post-licensing courses and have regular contributions to local newspapers. These may not sound like really big items but they are new things and are getting us some of the exposure that we perhaps were lacking before.

To close, I can only say that I have only been on the scene for about 10 months. There are some major issues which confront this profession. We perhaps have small numbers compared to other professions, but I have certainly been impressed by the quality of people in the surveying profession across the country. The fraternity seems strong right across the country and I think that votes for a positive future.

GPS. We're in a position to help.



We're **SURNAV**, agents for Trimble, the world's leader in Global Positioning technology. We carry state-of-the-art equipment and we make sure it's there when you need it.

SURNAV. We're in a position to help.



Equipment Sales • Service • Rentals

1000 - 38 Antares Drive
Nepean, Ontario, Canada K2E 7V2
Tel. (613) 723-1830
FAX (613) 723-0786