

RESPONSIBILITY & LIABILITY

THE PROFESSIONAL CAN BE HIS OWN WORST ENEMY

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The thrust of this paper is generally intended to be toward the members of the survey profession who have already passed the required tests of competence and education and are practising in the private area. This does not mean that the employee of a public agency has no interest in the information presented here or that because you are an employee and not a partner in a private company you have no responsibility or liability, because that is not the case. I believe that you will find as we go on that your professional responsibility should be constantly on your mind together with some idea of the consequences if that responsibility is neglected.

This is not to suggest that a surveyor should become paranoid and only practise "defensive surveying"! There is a limit to how cautious one can be in approaching a job, a limit to how much time can be spent collecting and assessing evidence and a limit to how much can be asked of the client when the account is rendered. It is the mark of the professional surveyor that he can make the conscious decision when and where to stop.

A Professional

The following minimum criteria have been developed to define a profession:

1. an occupation requiring specialized knowledge in a field of science or learning; and
2. performed after completion of a long and intensive recognized course of instruction; and
3. providing a service that is predominantly mental or intellectual; and
4. involving consistent exercise of discretion and judgment in rendering a public service; and
5. characterized by high standards of achievement and conduct; and
6. practised by persons committed to continued study; and
7. maintained by force of organization or concerted opinion of at least a majority of the eligible licentiates.¹

Readers of the A.C.S.M. Journal will realize that Dr. Buckner's list was prepared to prove that surveying is not yet a profession in the United States as certain of the above criteria are not adhered to by all American surveyors. Happily I would submit that land surveying in Ontario does in fact conform to each test.

While there is no question that the Ontario Land Surveyor has specialized knowledge, academic recognition and exercises a predominantly intellectual decision-making thought process, it is the last four criteria that form what I call the

¹Buckner, R.B., "Does the surveying profession have future goals and directions?" "Surveying and Mapping" Dec./81. A.C.S.M., Falls Church, Va., U.S.A.

"Newton Principle of Professional Practice".

Science students will recall that Sir Isaac Newton's third law of motion states in general that "action equals reaction" or that there is a definite "cause and effect" relationship in everything we say or do.

The "Newton Principle" would indicate that if we constantly use discretion and intelligent judgment in our relations with the public, we will create an aura of respect and trust that surveyors have not had in many years;

and if we

strive for the best possible results in our surveys and act ethically at all times we will be rewarded with the respect of our peers and leave a legacy of worthwhile documentary evidence for those who follow us;

and if we

continue our education beyond the entry level minimums and remain current technically and legally, we will lessen the opportunity for charges of negligence and professional misconduct;

and if we

educate the public and our sister professions in our methods, values and professional qualities, we will obtain and maintain a mutual understanding and interdependence that will result in the proper compensation for our services;

and finally, if we

support the objectives, principles and programs of our Association, we will continue to receive the support of our government, the confidence of the public and the envious

glances of most other similar associations.

Complaints, complaint sessions and discipline hearings usually result from ignorance of, or wilful contravention of the Code of Ethics and Standards of Conduct. Similar disagreeable proceedings will also result when the surveyor does not maintain his knowledge of the statutes, equipment and procedures and becomes incompetent. Professional liability is a natural result of the neglect of a surveyor's professional responsibilities.

"Responsible" is defined in the Oxford English Dictionary as being:

- morally accountable for actions
- capable of rational conduct
- of good credit, position or repute
- respectable and trustworthy

Under that definition, the surveyor should most certainly be a "responsible" person.

The surveyor cannot abdicate his responsibility to the public, his peers or himself as King Edward VIII did when he said:

"I have found it impossible to carry the heavy burden of responsibility and to discharge my duties as King as I would wish to do without the help and support of the woman I love".²

Fortunately, the surveyor does not have to renounce his commission because help and support is readily available to him through his professional association's continuing education program so that he can remain competent.

² King Edward VIII of Great Britain (Later the Duke of Windsor) in a radio broadcast on December 11, 1936.

RESPONSIBILITY

Where does a surveyor's responsibility lie in this age of consumerism, given the state of the economy, the venality of man and the usually unreasonable demands of the public?

The Surveyor Has a Responsibility to Himself

He must maintain his self-respect and his respect for the rights of others through a knowledge of, and compliance with, his Association's Code of Ethics and Standards of Conduct and must follow a program of continuing competence after gaining entry to the profession.

In an effort to illustrate what this means, I would like to define "incompetence".

In a broad sense, I would judge a professional as having behaved in an incompetent manner after having entered the profession if he:

- a) failed to apply professional expertise properly to the client's engagement of his services;
- b) exhibited a disregard for the welfare of the client or society generally;
- c) was reckless;
- d) was negligent;
- e) was dilatory without excuse;
- f) involved the client in unnecessary additional expense; or
- g) failed to communicate adequately with the client to ensure that the client was sufficiently apprised of the

professional's progress or the client's situation generally.³

Adherence to a program of continuing education will help to ensure that the surveyor will not exhibit any of the above detrimental characteristics that might lead to charges of incompetence or misconduct.

The Surveyor Has a Responsibility to His Client

In addition to the general characteristics noted above, he must be technically competent to perform the work requested by the client and must not fail to advise the client when the work is outside his area of expertise.

The surveyor must enter into a clearly understood contractual relationship with his client - preferably in a written form.

While other professionals or trades may act in an exclusionary manner for their client, the surveyor must continually be aware of the rights of the general public, even to the immediate dismay of his client. The surveyor cannot blindly obey the dictates of the person who is paying him!

The Surveyor Has a Responsibility to the Law

He must always understand the law and its application to the task at hand and in addition, recognize potential deficiencies and assist in his Association's attempts to have changes made that would be in the public good.

³Barry J. Reiter, quoted at P. 172 in "The Report of the Professional Organizations Committee," April 1980, by Leal, Corry and Dupré, Ministry of the Attorney General of Ontario.

The Surveyor has a Responsibility to His Partner and His Employees

He must be honest with his partners and employees. Trust and loyalty operate in all directions - horizontally with his partners, and vertically with his staff.

A loyal and trustworthy staff is to be prized and jealously guarded but can only be maintained if the relationship is continuously monitored.

Care must be taken to ensure that wages and benefits are equitable with current scales and that those in authority administer the company affairs in accordance with company policy.

Staff training is as important as self-improvement. To paraphrase an old maxim - "a field crew is only as strong as the rear chainman".

While partnership agreements are generally drawn by solicitors, it is seldom that other staff are employed on other than an oral contract basis. Consideration might be given to employing staff on a written contract basis, at least there should be no misunderstanding on the terms of employment.

The Surveyor has a Responsibility to His Family

He must ensure that a sufficient level of income is maintained so that his family can survive and at least one pressure is relieved; and finally

The Surveyor has a Responsibility to the Public, His Peers
and His Professional Association

He must, through adherence to the tenets of his Association, maintain a trustworthy relationship with other surveyors and the public. Strong support of his Association will allow it to act in a concerted manner to achieve the mutually beneficial objectives of the profession.

The surveyor must cooperate with his brethren to ensure that the cost of a survey is maintained at what it is worth. A survey has an intrinsic value composed of field time, materials, office time, records, research and profit and any attempt to secure contracts through "price cutting" for whatever reason will lower the value of the survey and the level of respect that he has with the public and his peers and can only lead to trouble with his professional Association.

Liability

If the surveyor does not assume his responsibility to remain competent he may become a party to a civil action either in contract or in tort. The common law has come to recognize an obligation on behalf of those who provide a service to adopt reasonable standards of care or be liable to second parties and sometimes third parties.

The pressure to remain competent is, of course, also provided by the spectre of disciplinary sanctions on the part of the self-governing body, and very often the adverse financial

possibilities of the civil suit are equally persuasive.

It is fairly easy to understand what is meant by "breach of contract" and contracts are discussed in detail elsewhere in this seminar. I would now like to outline what is meant by "tort liability" and how it might affect the surveyor.

The word "tort" which is derived from the Latin word "tortum" meaning "a wrong", is defined in law as:

"an act which causes harm to a determinate person, whether intentionally or not, and not being the breach of a contract and which is either contrary to law, an omission of a specific legal duty or a violation of an absolute right".⁴

D.L. Marston defines "tort" more simply as:

"a private or civil wrong or injury, one that exists independently of the contract".⁵

In contract actions the limitation period begins to run from the time the contract is breached while in a tort action the limitation period usually begins when the damage is discovered which may, of course, be a considerable time after the actual error was made.

⁴ Attributed to Sir Francis Pollock in "Osborne's Concise Law Dictionary", 6th Ed., by John Burke. Sweet & Maxwell, London, 1976.

⁵ Marston, D.L., B.Sc., P.Eng., LL.B., "Law for Professional Engineers," P.25, McGraw-Hill Ryerson Ltd., Toronto, 1981.

A leading case in Canadian Law is entitled "Dominion Chain Co. Ltd. v. Eastern Construction Co. Ltd."⁶ which was based on an English case, "Sparham Souter v. Town and Country Developments (Essex) Ltd."⁷

In "Dominion Chain", the Ontario Court of Appeal first enunciated that the "time the cause of action arises" is when the damage is discovered and not when the error was made as had been the situation in previous negligence cases.

A recent Canadian case involving a land surveyor called "Viscount Machine v. Clarke"⁸ is one which reinforces this extremely important point. The principles of law being that:

"The contract creates a duty and the neglect to perform that duty, or the nonfeasance, is a ground of action in tort".⁹

and further that:

"Wherever there is a contract, and something to be done in the course of the employment which is the subject of that contract, if there is a breach of a duty in the course of that employment, the plaintiff may either recover in tort or in contract".¹⁰

⁶ Dominion Chain Co. Ltd. v. Eastern Construction Co. Ltd. (1976) 12 O.R. (2D) 201.

⁷ Sparham Souter et al. v. Town and Country Developments (Essex) Ltd. et al. (1976) C.A. 858

⁸ Viscount Machine & Tool Ltd. v. Clarke (1981). 126 D.L.R. (34) 160.

⁹ Boorman et al. v. Brown (1842) 3 Q.B. 511, 114 E.R. 603, 8 E.R. 1003.

¹⁰ ibid.

Although virtually all survey projects will involve a contract, either written or oral, no privity of contract needs to exist before an action in tort can be commenced. Obviously a traffic accident victim or a person injured as a result of the derailing of railway cars containing hazardous material, could bring a negligence action even though no contract existed between the driver of the vehicle and the pedestrian or between the railway company and a proximal resident to the right-of-way.

As noted above, liability can arise in both contract or in tort although compensation can only be gained from one, e.g., if a defective article is sold to a person there is an implicit contract to "Buy and Sell" and also a suit could be brought for damages arising out of the actual defect.

It is very probable that in surveying, a negligence suit, particularly a third party suit, would probably be brought in both contract and tort.

The main or fundamental purpose of tort law is to compensate victims of torts and not to punish the negligent wrongdoers.¹¹ Naturally, if the tort is made in circumstances that are criminal in nature, then the criminal law would come into effect. In addition, the regulatory body governing the professional would probably become involved.

Tort law has changed dramatically in the past fifty years, and in particular, in the past twenty years. Four cases are now briefly discussed to illustrate this change and the effect on the professional.

¹¹ Marston, D.L., 5 supra P.25

"Donoghue v. Stevenson".¹² A 1932 English case in which a bottling company was found to be under a legal duty to take reasonable care that the product was free from any deficiency that might cause harm to any consumer of the product. Canadian courts have extended this liability to almost any product made, imported, repaired or supplied and is called "products liability". In the United States, this type of liability is becoming more and more common and has been extended to an area rather close to our hearts - the construction industry. Contractors, architects, engineers and surveyors are being sued as a result of defects in construction. While not yet commonplace in Canada, we should be aware of this rather unpleasant development.

"Hedley Byrne v. Heller & Partners".¹³ A 1964 case in which the House of Lords in England effectively changed the professional liability picture forever. It is the most significant tort case to date and arises from a dissenting opinion in 1951 by Lord Denning, one of the most controversial and important jurists of modern times, in a case entitled "Candler v. Crane, Christmas & Co."

In "Candler v. Crane, Christmas & Co."¹⁴ an action was brought in tort for negligence and there was no contractual relationship for the recovery of a financial loss. The law at that time provided costs for damages only when the damage was to "person or property". The Court of Appeal dismissed the action because of the lack of a contract but Lord Denning wrote an innovative dissenting opinion based on the position

¹²Donoghue v. Stevenson, (1932) A.C. 562

¹³Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.
(1963) All E.R. 575, (1964) A.C. 465

¹⁴Candler v. Crane, Christmas & Co.

that a professional has a duty in preparing reports and accounts (it was an accounting case) to any third party reasonably relying on the reports or accounts. Surveying should be no different.

Thirteen years later, while the defendant professionals (they were bankers) in Hedley - Byrne escaped negligent liability because of a caveat in their report that they would not be liable for the accuracy thereof, the House of Lords took the opportunity to break new ground based on Lord Denning's 1951 opinion, and stated that "a negligent, though honest, misrepresentation, spoken or written, gives rise to an action for damages for financial loss quite apart from any contractual or fiduciary relationship."¹⁵

In the decision in Hedley - Byrne, Lord Morriss stated in part:

"If someone, possessed of a special skill undertakes, quite irrespective of contract, to apply that skill for the assistance of another person who relies on such skill, a duty of care will arisefurthermore, if, in a sphere in which a person is so placed that others could.....

- reasonably rely on his skill
 - reasonably rely on his judgment
 - reasonably rely on his ability to make enquiries
- and if that person takes it upon himself to.....
- give information or advice to
 - allows information or advice to be passed on to another person, who, as he knows or should know

¹⁵ Hedley Byrne v. Heller and Partners, 13 supra

will place reliance upon it, then a duty of care will arise".

In Hedley - Byrne, the courts decided that all professional people who provide a technical service might be defendants in such a case. The full extent of the range of persons who might be plaintiffs is still unknown but the horizon appears to be expanding.

An English Court of Appeal case entitled "Ministry of Housing v. Sharp"¹⁶ was decided using Hedley - Byrne as a precedent and in this case it was held that a plaintiff in a case had to be an identifiable person. This put at least some form of limit on who could be a plaintiff.

The fourth case, and the one that has extended Hedley - Byrne even further, is called "Haig v. Bamford"¹⁷ in which the Supreme Court of Canada ruled that an accountant has a duty to all of the class of people who will rely on his report, Haig was not Bamford's client! This might be a representative action case (class action in the United States) and suggests that a surveyor might be responsible to other parties beyond his client!

The surveyor should also be aware of another form of liability called vicarious liability. Vicarious liability is the concept that the employer is liable for the negligent performance of his employee. This may seem unfair but is consistent with the basic premise of tort law - that is to "compensate the injured party".¹⁸

¹⁶Ministry of Housing v. Sharp

¹⁷Haig v. Bamford

¹⁸Marston, D.L., 5 supra, P.31

The case of "Northwestern Mutual Insurance Co."¹⁹ outlines the fact that tort liability can apply vicariously to the employer and the employee can be personally liable. The point here, of course, is that liability insurance should be taken out on both the corporation and its professional staff.

Mistake or Negligence

A mistake is not necessarily negligence, and in an action against the crown where an engineer (it could have been a surveyor) was accused of negligence, the court stated in part:

"Whether or not there was negligence.....is a question of fact. Engineers (surveyors) are expected to be possessed of reasonably competent skill in the exercise of their particular calling, but not infallible, nor is perfection expected and the most that can be required is the exercise of reasonable care and prudence in the light of scientific knowledge of the time, of which they should be aware....." ²⁰

There is no question that all of the education and training in the world will not avoid the honest mistake, mistakes that are not occasioned by incompetence but by unusual or unavoidable circumstances.

¹⁹Northwestern Mutual Insurance Co. v. J.T. O'Bryan
 (1974) 51 D.L.R. (3D) 693
²⁰Marston, D.L. 7 supra, P.28

Two well known phrases regarding errors come to mind:

"The best laid schemes o' mice and men gang aft agley"²¹

and

"To err is human, to forgive divine"²²

Unfortunately, even the invocation of such great men as Burns and Pope will not cause a negligence action to be abandoned - only cold, hard cash. Unless, of course, you are not found guilty. The negligence area is one of the few places where the surveyor is in full control of his destiny. If no mistakes are made - no liability will result.

Can a surveyor avoid liability?

No attempt should ever be made to avoid legitimate liability and do not admit liability or attempt to settle a claim made against you without advising your insurer, even if you think you are wrong. Do not admit you are wrong. You may prejudice your case or even void your insurance. It is most important to follow the instructions regarding notification of the insurer.

Liability suits have become far more common since the end of World War II, particularly in the United States where the enormous publicity attached to contingency cases has driven up the amount of the claims to stratospheric heights.

²¹ Robert Burns (1759-1796) "To a Mouse"

²² Alexander Pope (1688-1744) "An Essay on Criticism"
1,525

This publicity, and television reports spilling into Canada, has contributed to a dramatic increase of civil litigation in Canada, and in fact contingency fees are now allowed in British Columbia and Nova Scotia. Of course, increased land costs have been a factor in cases involving surveyors, a few years ago, it was simply not worth it.

As was said earlier, there has been the demise of the concept of privity of contract and the increase in number and kind of those who have the right to sue and, naturally, with the growth of consumerism, more legal actions are commenced.

The churlish among us might say that there are too many lawyers anyway, and they have to have something to do and, of course, surveyors do make mistakes for a variety of reasons, some of which will lead to liability suits.

Education of the public and related professional bodies will do much to help protect the surveyor from frivolous actions. We are professionals and we must emphasize our competency through the demonstration of our qualifications in education, training and experience.

If we are able to ensure that others understand that we give opinions and judgments based on investigation, analysis and decision, we will be less likely to be accused of not being absolutely correct and that our surveys are not free from defect or in fact, perfect.

How Can You Defend Yourself Against a Negligence Liability Action?

To succeed in convincing the court that compensation should be paid, the plaintiff must prove that each of the following questions can be substantiated in a negligence action:

- a) Did the surveyor breach the standard of care expected of a person in his profession?
- b) Is the plaintiff a member of the class of people to whom the surveyor owes a duty of care?
- c) Was the surveyor's mistake the proximate cause of the damage? and
- d) Did the plaintiff's reliance on the survey result in any financial loss?

Thus the essential ingredients in any negligence suit are breach of the standard of care and the duty of care, that the negligence was the direct cause of the damages and that there was a financial loss. If the plaintiff cannot prove each point, he will lose the action.

With regard to the standard of care, it must be noted that this is the ordinary standard of care that a reasonable surveyor would exercise in a similar situation. This is not the highest standard possible of course, and a "specialist" would be judged at a higher level of skill.

With regard to duty of care, we must refer to Hedley - Byrne and Haig v. Bamford to realize that we as professional surveyors must know who might be going to rely on our survey.

Your client should inform you to what purpose he will put the survey and you should act accordingly. It is my opinion, however, that we must pursue this aspect of liability, as it relates to surveyors, with much more vigor.

The negligence must be the proximate cause, that is, have a direct and reasonable link to the damage and not only remotely connected.

Finally, there are many mistakes that do not lead to lawsuits, as there was no financial loss, and the large awards are usually in cases that involve bodily harm. In any event, the plaintiff cannot benefit to a greater extent than his actual costs unless there is bodily harm when punitive damages might be awarded.

Product Liability

As noted above, this type of action is not common in Canada, but the law seems to be tending toward it. In product liability it is only necessary to prove:

- a) that the product was defective; and
- b) the error was the proximate cause of the damage.

In some jurisdictions, professional services have been considered a product and the title of consumer product has been tried to be given to a house.

In product liability, the ordinary standard of care does not exist, simply that there is a defect, which in an encyclopaedic definition might mean "lack of completeness", "shortcoming", "blemish" or "failing". In short, anything but perfection!

While surveyors have a good chance to win a significant share of cases involving negligence due to the points made above, product liability is a different situation. We should be alert.

The Need for Minimum Standards

While the adoption of a Code of Minimum Standards may well be a tool to limit liability, we must guard against an attempt to establish "excellence" as the norm. As Weidener says:

"Minimum standards can serve to standardize practice and to serve as the bench mark against which professional practice can be judged. Effectively, the standards will become the "normal" standard of care to be employed. There can be no debate on this issue. It is only necessary for the surveyor to perform to the standard. Obviously, elevation of the standards beyond those prevalent in an area (established over the years by many factors, including economics) will only serve to create a gap that will be fertile ground for liability suits".²³

²³Weidener, James P., L.S., P.P., "Professional Liability Problems in the Surveying Profession" A.C.S.M. Bulletin, Nov., 1981

How Can the Surveyor Reduce the Chances of Being Sued for Negligence?

1. Establish a good professional practice.

Some suggestions that can help you to establish a good professional practice are:

- a) Develop professional pride, not only in yourself but in your employees. Do not ever say "I'm just the surveyor."
- b) Experienced employees are the key to any claim-free practice. "In-house" training programmes combined with professional and para-professional degrees or diplomas will effect the "personal touch" that will make your staff feel part of the team.
- c) Establish effective checking procedures for field and office work alike. Remember that eighty percent of liability claims are in engineering surveys. Legal surveys are easier to check because of the use of mathematical closures. Spot check in the field no matter how much you trust the staff. Long term employees may get complacent and new men need guidance. Remember, it is your signature on the plan.
- d) Practice effective crew management by spreading your key personnel through the staff and try not to rely too heavily on newcomers during times of rapid expansion.
- e) Make sure that the crew knows exactly what is needed- give them written instructions.

2. The Professional Service Contract

It is my opinion that every job should be performed only after a written agreement has been reached. I am sure that you all know that all jobs are contracts whether written or oral and if you have to go to court would you rather rely on your word against his or the written terms of an enforceable document? Preferably this should be a standard form, adopted by the Association.

If you have an oral contract, then obviously, while the client thinks he knows what he wants and you think you know what was agreed to, only the court will decide and all you will have is your memory. To be sure, you may have secondary evidence in the form of field notes or even a letter asking for simply "a survey" but unless specifics are noted, you may have trouble collecting.

There are, no doubt, some logistical problems in obtaining a signed agreement with your client but there are really no valid reasons. Of course, some are advanced such as:

- my client will go elsewhere
- I never work that way
- I only use the telephone
- My client will be upset

These are "cop-outs"! A contract protects both parties equally and is a necessity in today's world of business.

If time is extremely limited, make your deal over the telephone, filling out your standard form as you talk. Read it back to him and advise him you are sending it for his approval. Make a note on your telephone log - it will be acceptable in court, probably as stronger evidence than your memory.

If you have regular clients, then a standard outline of your services could be sent to each of them and when a job is ordered, you send a note saying that you are proceeding as usual according to your standard outline of work.

A contract should contain some or all of the following:

- type of service
- extent of service
- products to be rendered
- client assistance necessary
- standards to be employed
- accuracy to be obtained
- fee and billing schedule
- procedure to change orders
- special considerations
- delivery schedule²⁴

A contract should be written in plain English with no ambiguities because if there is any doubt the court will decide and will apply the common interpretation to the words in the contract.

²⁴ *ibid.*

There is a medical axiom that says:

"The sicker the patient the quicker the pay".

In our business this probably is an analogy for getting paid C.O.D., although the surveyor must be sure that his contract, oral or written, will allow for this method of payment.

A contract should not contain any express warranty or guarantee that could be construed as providing a survey free from defect or in fact, perfect. Most liability insurance will not cover such warranties. You will recall the four conditions for negligence, to prove breach of warranty one must only prove the fact of the breach.

Do not forget that a surveyor is giving a professional opinion that need only be related to the ordinary standard of care.

The surveyor should strive for professional performance, at fair and equitable compensation in his contracts. The contract is a considerable loss prevention agent which should not be overlooked.²⁵

²⁵ *ibid.*

Some Hopefully Helpful Hints

- A. Beware of indemnification clauses, often hidden in the fine print of a standard contract with companies you may be sub-contracting with. These clauses say that you will "save harmless the owner, contractor, other sub-trades..." from any defect. We have already discussed express warranties or guarantees and they can only cause trouble. Be sure that you do not assume any more liability than you must, according to the statutes, regulations, codes of ethics or the common law.
- B. Take care not to act as an unpaid guarantor when certifying a building location or other survey. Be sure to know what is really needed if your client's solicitor is acting for a mortgage company - ask him for a copy of the lender's instructions.
- C. Be sure that you do not inadvertantly change the ordinary standard of care to something higher. Do not let the client tell you what you will certify to if you are not absolutely sure you can do it.
- D. In proposals to clients, do not suggest that you can perform or do perform at "higher" than ordinary standards. You are not always picked for your quality.
- E. Be sure that if you are going to bill on an interim basis, you do so on time, as it may be a breach of contract by you if you do not do so.

- F. Always document instructions, such as construction changes, in writing. Make certain that they are given by an authorized person and document all client communication.
- G. Be selective in your acceptance of a client. This is difficult in this economic climate, but beware
- if he has a poor credit rating
 - if he is difficult to deal with
 - if he has a "slow pay" reputation - talk to your peers
 - why is he now coming to you?
 - has he been prone to litigation?
 - will he refuse to sign a contract or give a retainer on sizeable jobs?
- H. Are you truly competent to do the work? It is not enough to know theoretically how to do the job, competence also includes:
- understanding time constraints
 - manpower availability and their abilities
 - special skills (geodesy, photogrammetry, etc.)
 - equipment availability
 - bridge financing if needed
- I. Do not invalidate your professional liability insurance by:
- offering a warranty or guarantee
 - failing to notify the insurer at the first suggestion of a claim

- settling a possible claim without "iron-clad" waivers from your client. You could still be liable to further suits and your insurance would be invalid.

- J. Have your solicitor examine all contracts with clients, staff or partners.
- K. Be sure that your relationship with your staff is clearly understood. In these times of drastic staff reduction, you must be very sure you do not dismiss staff wrongfully. A fifteen or twenty year employee will command a sizeable severance cheque - once again, check with your solicitor.

Conclusion

There is no question that almost all liability problems in surveying, and in fact, in most business, are "self-inflicted". It is the responsibility of the modern surveyor to ensure that he remains up-to-date in all ways.

"Vigilance" is the watch-word!

The law, the economy, employee relations and community responsibility make constant demands on the modern businessman, and the surveyor must never forget that he should be a modern businessman as well as a modern surveyor. More now than ever before your future is in your hands!