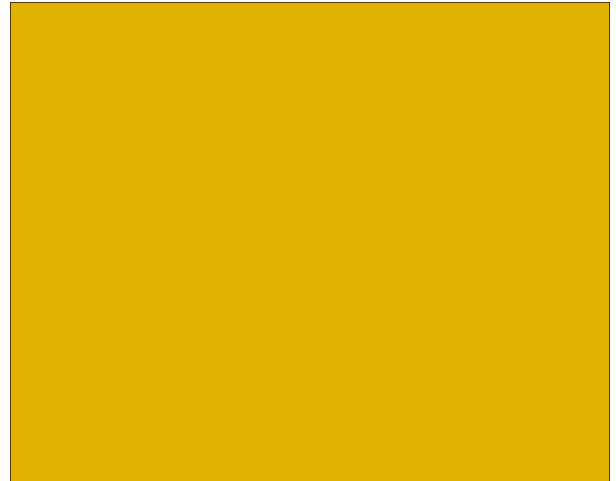


Survey Plans Are Protected by Copyright



Ref: 2009—002



Recommendations for Municipalities



Association of Ontario Land Surveyors

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The Challenge

Wide Distribution of Survey Plans and Infringement of Copyright

The Association of Ontario Land Surveyors recognizes that many municipalities provide copies of plans of survey to the public without considering the implications of such practices on the public and the professional surveyor.

What Municipalities Can Do to Reduce Survey Plan Distribution and Copyright Infringement

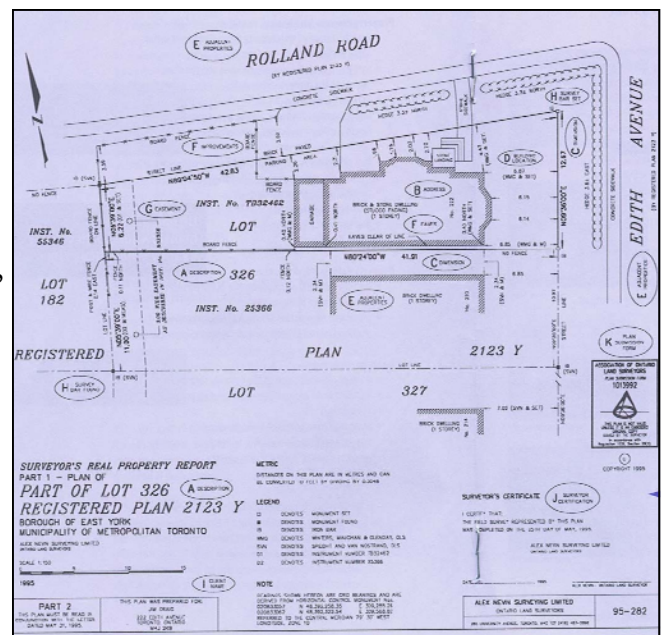
The Association of Ontario Land Surveyors recognizes the challenge and cost of complying with the spirit and intent of the Municipal Freedom of Information and Protection of Privacy Act. On one hand, accessible and open government is essential to the fundamental principles of accountability to the public and service to taxpayers. On the other, compliance with legislation places a financial burden on municipalities encouraging a practice that contravenes the provisions of the Copyright Act and encourages claims of lost revenue.

Municipalities should avoid distributing outdated plans of survey to the public without the consent of the survey firm that holds the copyright to the old survey records, unless the copies are used for research, private study, criticism, review, or news reporting.

Why Municipalities Should Use Caution in the Distribution of Survey Plans

The distribution of survey plans presents problems for municipalities, the public, the governing council of the Association of Ontario Land Surveyors and professional surveyors.

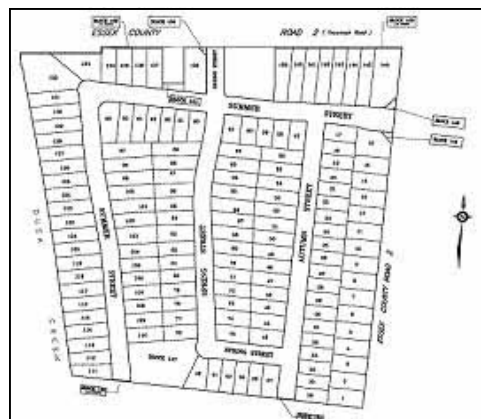
Copyright law in Canada protects a wide range of “works,” including every original literary, dramatic, musical and artistic work and computer program. To be classified as an “original” work, the work must be more than a mere copy of an existing work, provided the author uses skill and judgment in the process. This is not a demanding standard. Virtually all surveys are classed as original works.





The exceptions to copyright infringement are set out in Sections 29 and 30 of the *Copyright Act*. The “fair dealing” exceptions to copyright are set out in sections 29 to 29.2. Section 29 states that fair dealing for the purpose of research or private study does not infringe copyright. In general terms, those who deal fairly with a work for the purpose of research, private study, criticism, review or news reporting, do not infringe copyright.

Outdated survey plans can mislead the public because they may not contain up-to-date title, boundary, and site condition information. In general, the public is not aware of the complexity of these issues and may use the survey plan for a purpose for which it was never intended. Many of the old survey plans on file with municipalities are copies of copies, which are difficult to read. The unreadable state of some plans encourages creativity in some individuals to add and delete information on the survey plan while retaining the signature of the Ontario Land Surveyor.



Many survey firms are investing funds to convert their survey records into digital form to recover some of their costs for permanently storing the records as required by statute. In many cases, old survey plans are available for purchase by the public through a Web site portal, or directly from the survey office. The effect of municipal distribution of survey plans is to reduce the value of records of survey infrastructure to the cost of a photocopy thereby depriving a professional surveyor the ability to sell the plan at a fair price. This situation could expose municipalities to claims of lost revenue.

Action

Contact the Association of Ontario Land Surveyors for assistance on locating the firm which acquired the records of a particular land surveyor. The survey firm which owns the copyright may provide a copy of the old survey for a fee, with the appropriate disclaimer or qualifier.



Association of Ontario Land Surveyors:

The Association of Ontario Land Surveyors was formed to regulate the practice of professional land surveying and to govern its members so that the public interest may be served and protected.

The Association of Ontario Land Surveyors (AOLS) issues licences to Cadastral (Legal Boundary) Surveyors and Certificates of Registration (C of R) in Geodesy, Geographic Information Management, Hydrography and Photogrammetry. Applicants must comply with academic requirements, a Term of Articles and pass the professional examinations. All members are entitled to use the designation O.L.S. (Ontario Land Surveyor) or O.L.I.P. (Ontario Land Information Professional).



Many of the members of the Association of Ontario Land Surveyors are employed by municipalities and government agencies, and provide services to municipalities. Professional surveyors are in a position to identify practices that will improve the efficiency and effectiveness of municipal operations.

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