

A.O.L.S. Bulletin

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UPDATING OF FIRST APPLICATION/CERTIFICATION OF TITLES ACT PLANS

The Association office has recently received a number of calls from surveyors involved in the preparation of plans for First Application or Certification of Titles expressing concern that they have been asked by M.C.C.R. to update the Plan prior to service of notice. Their concern is; who is to bear the cost of such an update? Most times the update may only involve a quick trip to the field to verify that the monumentation is still in place, however, instances have occurred where the property has changed so substantially that the plan must be virtually re-drawn. The costs both in time and money could be excessive in such a situation and obviously the surveyor should not be expected to bear the cost of something over which he usually has no control.

It is the position of M.C.C.R. that a Plan should be up-to-date when the First Application/C.T.A. process is complete or, at least, at the time that notices of the applications are sent to adjoining owners and other interested parties, accompanied by a print of the subject Plan.

It is important that notice prints be up-to-date, particularly in the light of Paragraph 47.(1)3 and subsection 47(3) of the Land Titles Act. Where a notice is served which does not contain an accurate description of the land, the title of which has been certified, remains subject to any title or lien, by possession or improvement, an adjoining owner may have acquired in the past.

A Plan that is no longer current could indeed present an inaccurate description and thereby expose the signing surveyor who supplied the prints for notice purposes, to future liability claims.

The adjoining owners, who are in the majority lay people and therefore unfamiliar with the finer points of surveying, do indeed rely on the currency of the Plans used for notice purposes and should therefore not be misled by possibly out-of-date information. The same arguments that apply to Building Location Surveys, etc. apply in this instance.

Surveyors should make it clear to their clients that a Reference Plan submitted in support of a First Application or C.T.A. can take a minimum of 6 to 8 weeks or a maximum of "years" from submission to deposit. The Plan may require amendments during this time which may be the result of something over which the surveyor and M.C.C.R. have no control and the surveyor should not be liable for the costs involved. The surveyor should inform the client, in writing, and have a contract prepared which clearly indicates that the fee charged is only for the initial submission and any additional work involved in updating the Plan at a later date will involve additional cost to the client.

The above Bulletin has been approved by the Ministry of Consumer and Commercial Relations.