

ASSOCIATION OF ONTARIO LAND SURVEYORS

Right of Entry

What You Should Know

Section 6(1) of the Surveys Act does allow a licensed surveyor, or a person in the surveyor's employ, while in the performance of a cadastral survey, to enter and pass over the land of any person at any time, or to enter into a building, at a time suitable to the occupant. However, the surveyor is responsible for any damage resulting from his or her actions. The Public Transportation and Highway Improvement Act (S. 6) also grants a right of entry to persons authorized by the Minister of Transportation to carry out work under Part 1 of that Act.

Section 1 of the surveys Act defines surveyor as: **"surveyor" means an Ontario land surveyor licensed under the Surveyors Act.**

Note the use of "licensed" which means that section 6 of the Act must also be read as "licensed" and has always been interpreted to be "while making a cadastral survey."

The AOLS recommends to its members that they attempt to contact the owner or occupant before entering a property. This is not always possible or practical, and the surveyor may have to complete the work without advising the owner. Surveyors or their employees are expected to identify themselves or provide contact information for the surveyor if requested to do so.

Be Aware

1. Right of entry does not allow right of anonymity. Persons must identify themselves accurately when asked. The project manager or party chief should be equipped with business cards and doorhangers. If your vehicle is not identified with permanent corporate logo and coordinates, ensure that identification information is placed in the vehicle where visible. Right of entry does not necessarily allow right of entry for vehicles and parking of vehicles on property.
2. Representatives of Ontario Land Surveyors should

Surveys Act

6.f.11 A surveyor or a person in the surveyor's employ while making a survey may,

- (a) at any time enter and pass over the land of any person; or
- (b) at any time suitable to the occupant of a building enter the building, and do any act thereon or therein for any purpose of the survey, but the surveyor is liable for any damage occasioned thereby.

Offence for obstructing

- (2) Every person who interferes with or obstructs a surveyor or a person in the surveyor's employ in the exercise of any of the powers conferred by subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$100.
- (3) R.S.O. 1990, c. 8.30, s. 6.

Public Transportation and
Highway Improvement Act

6. The Minister or any person authorized by him or her may,

- (a) enter upon and use any land;
- (b) alter in any manner any natural or artificial feature of any land;
- (c) construct and use roads on, to or from any land; or
- (d) place upon or remove from any land any substance or structure, for any purpose of this Part.

R.S.O. 1990, c. P.50, s. 6.

consider themselves as proxies of the Ontario Land Surveyor and behave in a professional manner in speech, actions and personal appearance. The well-kept appearance of the vehicle in which the field crews arrive is also important to creating impressions of professionalism in the field. Answers to questions should be polite and respectful.

Adherence to such protocol could be a term of employment.

3. Right of entry does not preclude right of the person to privacy and safety of their property. When exiting a site, it should be left the way it was found in appearance. Temporary markers left on site should be explained to owners and permission asked to leave them until crews return to complete the work.



Right of Entry-A legislated *right* to think about

Right of entry complaints have increased over recent years. Past decisions of the AOLS Complaints Committee have most often involved requiring the surveyor to apologize to the complainant and demonstrate to the committee that he or she has an understanding of the obligations that go along with the privileges they have been granted by the Surveys Act. The public has become much more aware of the intrusion of strangers on their property, and they are much more likely to challenge such intrusions. Threats of reporting intrusions to political or other government authorities are common, and the danger of our members losing the privileges of Section 6(1) may be real. Stronger action by the AOLS such as mandatory photo-identification for Ontario Land Surveyors and survey crews, may be necessary if we are to avoid government intervention.

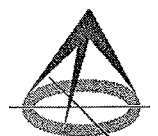
Powers of entry have come under close scrutiny since the enactment of the Canadian Charter of Rights and Freedoms, as well as the Ontario Law Reform Commission Report on Powers of Entry in 1983. Although Section 6(1) of the *Surveys Act* has not been modified or amended since these developments in 1983, a cautious practice in exercising the powers of entry in section 6(1) seems well advised to Ontario Land Surveyors wishing to exercise the power.

Although the explanation for a survey may be effectively communicated, a subsequent discovery by an owner that the surveyor used the access to obtain information about a boundary which is now being seen by the owner as serving his/her neighbour's interest, could turn confrontational in the context of a subsequent boundary dispute. Obtaining consent from the owner, in writing, while making it clear that it is not a licence to create damage, could well serve to protect the Ontario Land Surveyor from any charge of trespass in these circumstances.

The bearing of photo identification cards by an Ontario Land Surveyor, as well as members of a field crew seems well advised. This appears to be emerging as the norm among government inspectors and auditors and therefore, the offering of identification, as well as some explanation of the authority being exercised ought to be readily available to occupants and landowners.

Special caution and courtesy with members of the public should be encouraged. The survey of a party wall dividing a duplexed property may require entry into various rooms within the house on both sides of the party wall. Good rapport with the public, good communication skills, and patience in discussing the nature of the work to be performed and the purpose of the survey, all are recommended practices.

As of September 2002, there were no decisions by the courts arising out of a surveyor's exercise of Section 6(1) powers of entry in Ontario. Apart from cutting trees, pruning bushes, or damaging driveways, it would be hard to imagine what activity performed by an Ontario Land Surveyor could give rise to damage claims. Obtaining written consent may well serve to document the fact of consent having been requested and obtained by the Ontario Land Surveyor, but it would not exonerate the surveyor from liability for damage to the owner's land and premises.



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