

BOUNDARY DISPUTE RESOLUTION: A COMPARISON OF ONTARIO'S BOUNDARIES ACT AND SURVEYS ACT AS SOLUTIONS FOR MUNICIPAL ROADS

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In resolving boundary disputes in Ontario, there are two separate statutory regimes that can be utilized by municipalities (and others). Focusing on the context of municipalities and disputes in relating to the location of roads, this paper provides a comparative analysis of Ontario's Boundaries Act and the long ignored municipal resurvey provisions in the Surveys Act. It is the writer's thesis that in these circumstances, the Surveys Act provides for a more efficient and better cost recovery process for municipalities than the regime set out in the Boundaries Act.

Dans la résolution des litiges de limites foncières en Ontario, deux régimes statutaires distincts peuvent être utilisés par les municipalités (et autres instances). En se concentrant sur le contexte des municipalités et des différends ayant trait à l'emplacement des chemins, le présent article présente une analyse comparative de la Loi sur le bornage et des dispositions sur le réarpentage municipal longtemps ignorées de la Loi sur l'arpentage. La thèse de l'auteur est que dans ces situations, la Loi sur l'arpentage propose un processus plus efficient et économique au niveau du recouvrement des coûts pour les municipalités que le système établi dans la Loi sur le bornage.



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Introduction

On occasion, and often depending on the presence of motivating factors of property values and waterfront access, a debate erupts as to a particular boundary of a property and the location of a road, including unopened road allowances.

If there is a controversy on one side of the road, a municipality is almost guaranteed that the interests of the property owner/s on the other side of the road will be impacted. The municipality will be literally caught in the middle. Depending on the particular circumstances, municipalities do not want to be seen as taking a position in favour of one ratepayer over another.

It is this "public interest" aspect of the municipality that needs to be kept in mind in formulating a response to such disputes. In this paper, the role of a municipality, as well as the search for mechanisms that may assist in finding a solution to a boundary dispute in which a municipality finds itself involved,

are discussed and a comparison of almost parallel solutions is described. To be clear, this paper does not give answers to boundary disputes, but describes similar processes for finding an answer.

Legislative History

The *Surveys Act* has been in existence since the 19th century (at least as early as 1877 and has existed in some form prior to that when Ontario was the Province of Canada).

The survey confirmation process provided for in s. 48 of the *Surveys Act* has been in existence since at least the 1887 version of the *Act*². The survey confirmation process has continued to be provided for in various versions of the *Act* passed just prior to³ and just after⁴ the enactment of the *Boundaries Act*.

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² See sections 38-43 of *The Surveys Act*, R.S.O 1877, c. 146.

³ See section 48 of *The Surveys Act, 1958*, S.O. 1958, c. 107.

⁴ See section 48 of *The Surveys Act* R.S.O. 1960, c.390.