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

John Barzo1, Barriston LLP, Barrie, Ontario

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.

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 Act2. 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.

1 John Barzo is a lawyer in Ontario, practising with the firm Barriston LLP in Barrie, described here: http://www.barristonlaw.com/our-firm.php. The contribution made by Adrianna Pilkington is gratefully acknowledged.

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


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