

The Statutory Easement A Power To Be Reckoned With

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What has Section 42 of the Power Corporation Act got to do with surveying? You will find that Act in the Revised Statutes of Ontario, 1980 Chapter 384 and subsequent amendments in 1981 and 1983.

To refresh your memories, this Section states:

"Notwithstanding any other Act, where any right, interest, way, privilege, permit or easement has heretofore been or is hereafter acquired by the Corporation, in, through, over, under, along, upon, across or affecting any land, unless it is otherwise agreed, the land continues subject thereto for the term thereof and it is binding upon the owner at the time of acquisition and all subsequent owners of land until expiration or release by the Corporation".

In simpler language, it doesn't matter what any other Act says, if a pole line or cable, including underground wires, crosses land, its mere physical presence creates a right to have it remain for all times, forever. It goes without saying this also includes the right to maintain this line or lines; otherwise it may not stand forever.

Some may question my use of the word "forever". After all, it does say in the paragraph until "expiration" of whatever was acquired, that is until the end of an occupancy defined in time, be it 10 years or some other.

The word forever was carefully chosen. Section 43 states:

"Notwithstanding this Act or any other general or special Act, where works of the Corporation have been affixed to realty they remain subject to the rights of the Corporation as fully as they were before being so affixed by the Corporation in writing". R.S.O. 1970, c.354, s.44; 1973, c.57, s.2.

I will paraphrase this; and watch this subtlety. It doesn't matter what the Act says or what any other special Act may say, as long as the cables, poles or wires remain on private land they belong to Ontario Hydro together with all the

associated rights. That includes all acquisitions quoted in Section 42.

We all know what an easement is, but what are the rights, interests, ways, privileges and permits? This is a very broad and inclusive list of interests. It is interesting to note that no mention is made as to how these acquisitions are documented.

They could be verbal, by a hand shake, a free lunch or a formal looking piece of paper filled in by a line foreman saying five poles and two anchors are to be installed on Lot 2, Concession 8, Township of Apple, County of Pie, for the sum of \$35.00. This last one may be categorized as a permit.

You should also note that nothing is mentioned about depositing any notice on title.

However frivolous you think this matter is, make no mistake about the intentions of Ontario Hydro. Land will be encumbered unless released by the Corporation and the land will remain encumbered unless an owner can produce a document that clearly states Ontario Hydro will gain no rights, interest, ways, privileges, permits or easements pursuant to Section 42 and that Section 43 does not apply.

What does all this mean? In any part of the Province serviced by Ontario Hydro, beware of power cables. Pay particular attention to their exact location on private lands and note this location on plans and field notes. It may be wise to identify each and every pole and anchor. Research shows a reservation of one rod in width on each side of the pole line as being very common and required for maintenance purposes.

We have all heard of the unregistered easement or deed and the inherent problems this generates on title. We will have to refine our language as this Ontario Hydro easement may not be the same entity. What we are talking about is an easement by Statute that does not have to be registered.

There is another issue to be considered, but before doing this, Section 38 of the Act must be reviewed.

"The Corporation, upon such terms as it considers proper, may sell, lease or otherwise dispose of to a municipal corporation or commission any land or works, or any interest therein, that the Corporation is or has been using and such sale, lease or other disposal shall be deemed to be an agreement within the meaning of clauses 149(2)(a) of the Municipal Act." 1973, c.57, s.11(1).

In recent years, Regionalization of certain areas in Ontario transferred thousands of acres under Ontario Hydro authority (the Power Corporation Act) to Hydro-Electric Commissions and some Public Utility Commissions. Ontario Hydro transferred thousands of statutory easements to be now administered by local power authority. The difficulty of identifying these easements now exists and will become more of a problem in the future. The current Act is not specific in stating that the same rights enjoyed by Ontario Hydro over these transferred easements are also available to the local Commissions. It is arguable that it is necessary for the local Commission to define the newly acquired easements and properly register them. A proposed amendment to the Power Corporation Act (Bill 204) relieves the local Commissions from the necessity to register documents in order to acquire and retain Ontario Hydro's rights, interests, ways, privileges and permits.

It is necessary to properly identify the electric works on private property. Commissions and Corporations dealing with power function under authority of the Public Utilities Act R.S.O. 1980, O.423, and there are not statutory easements, or anything closely resembling this, defined within the Act. Their easements must be registered.

It is my opinion that a statutory easement cannot be derogated or diminished in spite of the fact it has been transferred to others. Land encumbrances must be identified accurately.

There are many other legal problems associated with these statutory easements that need to be resolved and perhaps these will be the content of a future article.