

The Registration of Road By-Laws - The Origin and Demise of Some Helpful Ontario Legislation

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Many municipalities, including the City of Mississauga, register all by-laws that establish, assume or close roads. It's a practice that has a long tradition in Ontario and one that makes sense. Anyone searching title at the Land Registry Office will be able to easily assess a property's relationship to any adjacent roads. But the land surveyor should be aware that since the law requiring the registration of road by-laws changed in 1966, not all municipalities still follow this practice.

The first law to mandate the registration of by-laws opening roads was an early version of the Registry Act which took effect March 4, 1868¹. In Section 63 it specified:

All By-laws hereafter to be passed by any Municipal Council, under the authority of which any street, road, or highway shall be opened upon any private property, shall before the same becomes effectual in law, be duly registered in the Registry Office ...; and all By-laws heretofore passed and all orders and resolutions of the Quarter Sessions heretofore passed, under the authority of which any street, road, or highway, has already been opened upon any private property, may at the election of any party interested and at the cost and charges of such party or Municipality, be also duly registered

In other words, a municipal by-law opening a road on private property did not take effect until it was registered. And any interested party could, as long as they were paying the shot, register a previously-enacted road opening by-law, order or resolution.

The next mention of this new ruling in the legislation tells an interesting story. With a little imagination we can guess what happened.

When the Registry Act changed, many municipal clerks were probably unaware that they were now required to register their road opening by-laws. It was business as usual ... until they discovered to their consternation that none of their new roads were legally enforceable. In some LROs, there must have been a rush of registrations as non-compliant municipalities legalized their by-laws. In other places the unregistered by-laws lay waiting to trap the unsuspecting.

The Ontario government decided to remedy the situation by making it crystal clear in the new Municipal Act² given Royal Assent on March 29, 1873 that road opening by-laws had to be registered. Section 445 of this Act repeated, in almost the same wording, Section 63 of the Registry Act quoted above.

After that, the date March 29, 1873 became the watershed for dividing the old days when road opening by-laws weren't necessarily registered from the new regime of mandatory registration.

The Registry Act in the 1877 Revised Statutes of Ontario (RSO)³ states in Section 73 (1):

Every by-law passed since the twenty-ninth day of March, eighteen hundred and seventy-three, or thereafter to be passed by any Municipal Council, under the authority of which any street, road, or highway has been or is opened upon any private property, shall before the same becomes effectual in law, be duly registered in the Registry Office....

Its companion, Section 73 (2) states:

Every by-law passed before the said day, and every order and resolution of the Quarter or General Sessions passed before the said day, under the authority of which any street, road, or highway, has been opened upon any private property, may at the election of any party interested and at the cost and charges of such party or Municipality, be also duly registered

To cover all the bases, in RSO 1877 two similar subsections were also included in Section 507 the Municipal Act⁴. No self-respecting municipal clerk would now be caught off guard.

The legislation stayed like this for many years, changing only in minor ways in terms of what type of copies of the documents could be registered and who was considered an interested party.

On May 27, 1893, Section 83 of a new Registry Act⁵ continued the two subsections and added a third regarding the registration of municipal incorporation and boundary by-laws. This third subsection was never repeated in the Municipal Act and when the Municipal Act received a major overhaul on May 6, 1913⁶, the reminder that road opening by-laws needed to be registered was one of the sections that was dropped. After more than 40 years, it had no doubt become standard procedure in all municipalities to pay a visit to the Land Registry Office with all newly passed road opening by-laws.

A fourth and fifth subsection were added to the Registry Act legislation in RSO 1914 Chapter 124 regarding the mandatory registration of money by-laws and the opening of the by-laws to public inspection.

On March 26, 1918 with a new Registry Act⁷, there was a major change in the requirement to register road by-laws. In Section 10, subsection (1), all road CLOSING by-laws were added to the list:

Every by-law passed since the 29th day of March, 1873, or hereafter passed by a municipal council under the authority of which any street, road, or highway is closed or under the authority of which any street, road, or highway is opened upon any private property shall, before the same becomes effectual in law, be registered in the registry office

Strangely, this change was not extended to subsection (2) which still refers only to the registration of road opening by-laws passed prior to March 29, 1873. Road closing by-laws from that era are not included.

Although the Registry Act was amended in other ways, the section dealing with by-law registration remained virtually unchanged until the 1960s. Each LRO maintained an index of by-laws detailing the opening and closing of roads which grew with the passing years.

In the booming 1960's the Registry Act was amended twice. The first change took effect on April 26, 1963⁸ when Section 31 of the new legislation repealed Subsections (4) and (5) of Section 75 of the Registry Act (RSO 1960, Chapter 348) dealing with the registration of money by-laws and the opening of the by-laws to public inspection. Section 32 adds three new subsections regarding the registration of sworn copies as opposed to notarial copies.

The second change to the Registry Act was more drastic. On July 8, 1966⁹, Section 33 of the new statute repeals subsections (1) and (2) of Section 75 of The Registry Act. The mandatory registration of road opening and closing by-laws passed into history along with the optional registration of road opening documents from before March 29, 1873.

It's hard to understand the reasoning behind this change.

¹ *An Act respecting Registrars, Registry Offices, and the Registration of Instruments relating to Lands in Ontario* (31 Vic Cap 20).

² *An Act respecting Municipal Institutions in the Province of Ontario* (36 Vic Cap 48).

³ RSO 1877, Chapter 111 – *An Act respecting the Registration of Instruments relating to Lands*.

⁴ RSO 1877, Chapter 174 – *An Act respecting Municipal Institutions*.

⁵ *An Act respecting the Registration of Instruments relating to Lands* (56 Vic Chapter 21).

⁶ *An Act respecting Municipal Institutions* (3-4 Geo V Chapter 43).

⁷ *An Act to amend The Registry Act* (8 Geo V Chapter 27).

⁸ *An Act to amend The Registry Act* (SO 1963 Chapter 124).

⁹ *An Act to amend The Registry Act* (SO 1966 Chapter 136).

Perhaps it was thought that the municipalities would continue to enter road opening and closing by-laws in the land registration system as they had for the previous 90 years. Perhaps it was intended to save municipalities and Land Registry Offices money. Or perhaps the law makers of the day didn't fully appreciate the value of the by-law index to title searchers.

At any rate, if you are searching for road information in the post-1966 period, a visit to the local municipal offices as well as the local LRO is a very good idea.



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