



Ontario

Ministry of
Consumer and
Commercial
Relations

Registration
Division

Real
Property
Registration
Branch

BULLETIN NO. 90002

DATE: December 14, 1990

TO:
All Land Registrars

Bill 106 - Easement Statute Law
Amendment Act, S.O., 1990, c.4.

The Land Titles Act
The Registry Act

The Easement Statute Law Amendment Act, 1990 became law on June 21. In it are many changes, most of which deal with altering the forty-year search rule in the case of Municipal Easements. The following is an outline of the background and substance of the Act.

The Registry Act provides for a system in which interests in land are protected by the registration of documents and plans. The system protects interests by providing notice of them to other persons.

Prior to 1981, registered easements could be preserved beyond the forty-year search period contained in the Registry Act by either registering a notice of claim or by referencing the easement in other instruments.

In 1981, the Registry Amendment Act, 1981 eliminated the second option of referencing easements in other instruments in order to facilitate the automation of land records. Therefore, an interest in land, including a municipal or M.G.S. easement, could not be preserved by its mention in an unrelated instrument. Easements older than forty years could still be protected by a Notice of Claim.

Since the 1981 elimination of the referencing option for maintaining interests, many municipalities were unable to register notices of claims because they were not certain of the location or extent of many of their easements. The uncertainty was due to a number of reasons, such as the amalgamation of smaller towns where records were not complete. Therefore, the Ministry proposed the Easement Statute Law Amendment Act, 1990, based on a proposal from the Association of District, Metropolitan and Regional Solicitors which had been adopted by the Association of Municipalities of Ontario. Both the Ministries of Municipal Affairs and Government Services were involved in the development of the Act.

The Act exempts municipal and M.G.S. easements from the requirement of registering a notice of claim until December 31, 1999 and retroactively preserves/recreates these easements expiring since 1981. It is expected that the Act will protect these interests for a time sufficient for the municipalities and M.G.S. to locate and register their easements. Compensation will be provided to owners who may be adversely affected, but few claims are expected as most owners know the location of these easements on their properties.

Attached are a copy of the Act and a list of its highlights. It is important to note that there are no changes to registration procedures caused by these amendments.



Easement Statute Law Amendment Act, 1990

HIGHLIGHTS

SECTION I

- Amendment to subsection 106(7) of the Registry Act. The registration of a notice of claim does not extend a claim that has expired for some reason other than the expiry of the notice period in the Registry Act.
- Adds section 106a to the Registry Act and relates to public utility easements of municipalities and easements of the Ministry of Government Services. Easements that existed on July 31, 1981 continue until December 31, 1999, notwithstanding that they were not protected by the filing of a notice of claim prior to this Act coming into force.
- Persons who are prejudiced by the continuation of these easements are eligible to receive compensation, unless the easement is abandoned.
- Easements can be protected beyond December 31, 1999, by the registration of a notice of claim.

SECTION II

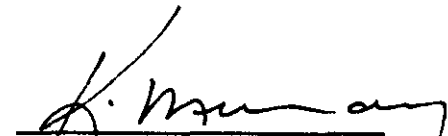
- Adds section 195a to the Municipal Act and relates to municipal public utilities. The law is changed so that a municipal public utility easement is no longer required to be attached to any particular parcel of land to be valid.
- Municipal public utilities constructed on land with the consent of the owner are exempted from Part III of the Registry Act, which deals with the investigation of titles and the expiry of certain claims. Therefore, the forty-year search rule does not apply when there has been consent of the owner.
- Interference with municipal public utilities that are not protected by easements is prohibited, unless there is a court order or municipal consent.
- Municipalities are granted the right to enter lands for the purpose of repairing their utilities.
- Where a municipality has located a public utility on what was mistakenly believed to be a road allowance, the municipality is deemed to have an easement and the owner is entitled to compensation to be determined in accordance with the Expropriations Act.

SECTION III

- Section 9a is added to the Ministry of Government Services Act and relates to the public utilities of that Ministry. It provides the same scheme for MGS as the amendment in section 2 provides for municipalities.



Director of Land Registration
Carol D. Kirsh



Director of Titles
Katherine M. Murray

Bill 106

(Chapter 4
Statutes of Ontario, 1990)

**An Act to amend certain Acts
with respect to Easements and other matters**

The Hon. G. Sorbara
Minister of Consumer and Commercial Relations

<i>1st Reading</i>	December 20th, 1989
<i>2nd Reading</i>	June 4th, 1990
<i>3rd Reading</i>	June 18th, 1990
<i>Royal Assent</i>	June 21st, 1990

Bill 106

1989

**An Act to amend certain Acts
with respect to Easements and other matters**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 106 (7) of the *Registry Act*, being chapter 445 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1981, chapter 17, section 4, is amended by adding at the end thereof "other than as a result of subsection (1)".

(2) The said Act is amended by adding thereto the following section:

106a.—(1) In this section,

Definitions

"Ministry of Government Services" means Her Majesty the Queen in right of Ontario as represented by the Minister of Government Services;

"municipality" means a municipality within the meaning of the *Municipal Act* and includes a regional, metropolitan or district municipality, the County of Oxford and a local board within the meaning of the *Municipal Affairs Act*;

R.S.O. 1980,
cc. 302, 303

"public utility easement" means an easement in respect of a water works or water supply system, sewage works, steam or hot water distribution system, electrical power or energy generating, transmission or distribution system, street lighting system, natural or artificial gas works or supply system, or a transportation system.

(2) Despite sections 105 and 106, a public utility easement of a municipality or an easement of the Ministry of Government Services that existed on the 31st day of July, 1981 continues until the 31st day of December, 1999.

Continuation
of public
utility
easements

Eligibility for
compensation

(3) If, except for subsection (2), an easement would not affect land, a person who has an interest in the land acquired on or after the 1st day of August, 1981 and before the day this section comes into force is entitled to compensation for the easement.

Idem

(4) Subsection (3) does not apply to a person if the easement is specifically referred to in,

- (a) the instrument by which the person acquired the interest; or
- (b) a registered instrument executed by the person before the day this section comes into force.

Time of
calculation

(5) Compensation shall be calculated as though the easement had been expropriated on the earlier of,

- (a) the day the person who has an interest in the land gives the municipality or the Ministry of Government Services notice that he or she claims compensation under this section; or
- (b) the day the municipality or the Ministry of Government Services gives the person who has an interest in the land notice of its easement.

Calculation
of compen-
sation

(6) The *Expropriations Act* applies with necessary modifications to claims for compensation.

R.S.O. 1980,
c. 148

Abandonment
of easement

(7) A municipality or the Ministry of Government Services is relieved from paying compensation for an easement if it,

- (a) removes anything placed under the authority of the easement;
- (b) restores the land to the condition it was in immediately before any removal; and
- (c) abandons the easement.

Notices of
claim

(8) A notice of claim in respect of a public utility easement of a municipality or an easement of the Ministry of Government Services registered before the 31st day of December, 1999 is as effective as if it had been registered on the 31st day of July, 1981.

2. The *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

195a.—(1) In this section,

Definitions

"municipal public utility" means a public utility owned and operated by a municipality;

"municipal public utility easement" means an easement of a municipality in respect of a municipal public utility;

"municipality" includes a regional, metropolitan or district municipality, the County of Oxford and a local board within the meaning of the *Municipal Affairs Act*;

R.S.O. 1980,
c. 303

"public utility" means a water works or water supply system, sewage works, steam or hot water distribution system, electrical power or energy generating, transmission or distribution system, street lighting system, natural or artificial gas works or supply system, or a transportation system.

(2) A municipal public utility easement does not have to be appurtenant or annexed to or for the benefit of any specific parcel of land to be valid.

Dominant
tenement

(3) Part III of the *Registry Act* does not apply to a claim of a person in respect of a part of a municipal public utility constructed on land before this section comes into force with the consent or acquiescence of the owner of the land.

R.S.O. 1980,
c. 445,
Part III
not to apply

(4) No person shall interfere with a part of a municipal public utility for which there is no municipal public utility easement unless,

Interference
with utilities

(a) the municipality consents; or

(b) the interference is authorized by a court order under this section.

(5) The District Court may make an order authorizing interference with a part of a municipal public utility on the application of a person who has an interest in the land where the part is located if the use of the land by the person is substantially affected.

Court orders
with respect
to utilities

(6) A person making an application for an order under subsection (5) in respect of a part of a municipal public utility shall give the municipality ninety days notice of the application or such other notice as the court may direct.

Notice

- Other orders** (7) In making an order under subsection (5), the court may make such other orders as it considers necessary including an order that the applicant provide an easement for the alternative location of the public utility for such compensation as the court may determine.
- Stay of orders** (8) The court shall stay an order under subsection (5) at the request of the municipality for such time as the court determines to allow the municipality to acquire an interest in land to accommodate the part of its public utility that is subject to the order.
- Right to repair utilities** (9) Subject to any court order under this section, a municipality may enter upon any land to repair and maintain its public utilities.
- Utilities located by mistake** (10) If, before this section comes into force, a municipality located a part of a municipal public utility where it had no right to do so in the mistaken belief that the part was being located on a municipal road allowance, the municipality that owns and operates the utility shall be deemed to have an easement in respect of the utility and the owner of the land on which the part is located shall be entitled to compensation for the easement determined in accordance with the *Expropriations Act*.
- R.S.O. 1980,
c. 148
- Offence** (11) Every person who knowingly contravenes subsection (4) is guilty of an offence.
- 3. The *Ministry of Government Services Act*, being chapter 279 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:**
- Definitions** **9a.—(1)** In this section,
- "government public utility" means a public utility owned and operated by Her Majesty the Queen in right of Ontario as represented by the Minister;
- "government public utility easement" means an easement of Her Majesty the Queen in right of Ontario as represented by the Minister in respect of a government public utility;
- "public utility" means a water works or water supply system, sewage works, steam or hot water distribution system, electrical power or energy generating, transmission or distribution system, street lighting system, natural or artificial gas works or supply system, or a transportation system.

(2) Part III of the *Registry Act* does not apply to a claim of a person in respect of a part of a government public utility constructed on land before this section comes into force with the consent or acquiescence of the owner of the land.

R.S.O. 1980,
c. 445,
Part III
not to apply

(3) No person shall interfere with a part of a government public utility for which there is no government public utility easement unless,

Interference
with utilities

(a) the Minister consents; or

(b) the interference is authorized by a court order under this section.

(4) The District Court may make an order authorizing interference with a part of a government public utility on the application of a person who has an interest in the land where the part is located if the use of the land by the person is substantially affected.

Court orders
with respect
to utilities

(5) A person making an application for an order under subsection (4) in respect of a part of a government public utility shall give the Minister ninety days notice of the application or such other notice as the court may direct.

Notice

(6) In making an order under subsection (4), the court may make such other orders as it considers necessary including an order that the applicant provide an easement for the alternative location of the public utility for such compensation as the court may determine.

Other orders

(7) The court shall stay an order under subsection (4) at the request of the Minister for such time as the court determines to allow the Government to acquire an interest in land to accommodate the part of the public utility that is subject to the order.

Stay of
orders

(8) Subject to any court order under this section, the Minister may enter upon any land to repair and maintain a government public utility.

Right to
repair
utilities

(9) If, before this section comes into force, the Government located a part of a government public utility where it had no right to do so in the mistaken belief that the part was being located on a municipal road allowance, Her Majesty the Queen in right of Ontario as represented by the Minister shall be deemed to have an easement in respect of the utility and the owner of the land on which the part is located shall be

Utilities
located by
mistake

entitled to compensation for the easement determined in accordance with the *Expropriations Act*.

R.S.O. 1980,
c. 148

Offence

(10) Every person who knowingly contravenes subsection (3) is guilty of an offence.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Easement Statute Law Amendment Act, 1990*.