



Ontario

Ministry of  
Consumer and  
Commercial  
Relations

Registration  
Division

Real  
Property  
Registration  
Branch

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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.

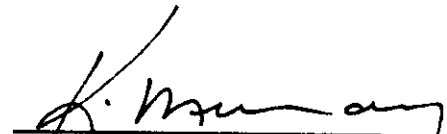
#### SECTION II

- 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.

  
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