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 Act. The survey confirmation process has continued to be provided for in various versions of the Act passed just prior to and just after the enactment of the Boundaries Act.
The operative provisions of the current version of the Surveys Act (R.S.O. 1990, c. S.30) are:

**Part VIII**

**Municipal and Crown Resurvey**

**Survey in a municipality**

**Application for survey in a municipality**

48. (1) The council of a municipality or the board of trustees of an improvement district, upon its own motion, may, or upon the petition of one-half of the landowners affected shall, pass a by-law authorizing an application to the Minister to cause a survey to be made under his or her direction for the purpose of fixing the position of a disputed or lost line, boundary or corner that is in the municipality and that has been surveyed under competent authority or under the Land Titles Act or the Registry Act.

**Confirmation of survey**

(2) The Minister shall appoint and instruct a surveyor to make the survey for which an application has been made under subsection (1) and when the survey has been made and the plan and field notes have been examined by the Minister, the Minister shall cause a notice to be published once in each week for four consecutive weeks in a newspaper having general circulation in the municipality in which the survey has been made of a hearing to be held by him or her at a stated place on a day not less than ten days after the last publication of the notice at which hearing the survey will be considered and any interested persons will be heard, and upon the evidence submitted the Minister may direct such amendments to be made as he or she considers necessary and may confirm the position of the disputed or lost line, boundary or corner fixed by the survey, and any line, boundary or corner so confirmed is, subject to section 49, an unalterable line, boundary or corner and is final and conclusive and shall not be questioned in any court.

**Notice of confirmation**

(3) The Minister shall mail within ten days of confirming a survey under subsection (2) a copy of the plan and field notes of the survey to the municipality and to every person who appeared at the hearing.

**Cost of survey**

(4) Subject to section 51, the cost of a survey under subsection (2) shall be paid to the surveyor making the survey by the municipality making the application therefor upon notice in writing by the Minister to the municipality that the survey has been made, and the municipality may levy all or any part of such cost on the landowners affected by the survey in proportion to the benefit received as determined by by-law of the municipality and collect the same as taxes. R.S.O. 1990, c. S.30, s. 48.

**Appeal, filing of plans**

**Appeal from confirmation**

49. (1) Any person objecting to the confirmation of a survey under subsection 48(2) may appeal to the Divisional Court and the court may decide the matter on the evidence before it or direct the trial of an issue and may dismiss the appeal or order the Minister to amend the survey and plan in such manner as the court considers proper.

**Notice of appeal**

(2) Notice of an appeal under this section shall be served on the Minister within thirty days of the date of the confirmation by the Minister of the survey.

**Filing of plans and field notes**

(3) Upon the expiry of thirty days from the confirmation of a survey by the Minister or where an appeal has been taken under subsection (1) within thirty days of the final disposition of the appeal, a copy of the plan and field notes of the survey or of the survey as amended in accordance with the order of the court, as the case may be, shall be registered by the Minister with the proper land registrar and a copy thereof shall be filed with the clerk of the municipality that made the application under subsection 48(1). R.S.O. 1990, c. S.30, s. 49.

**Survey in unorganized territory**

**Application for survey in unorganized territory**

50. (1) The Minister upon the application of an owner or owners of land that is situated in territory without municipal organization and that has been surveyed under competent authority or under the Land Titles Act or the Registry Act may cause a survey to be made under his direction for
the purpose of fixing the position of a disputed or lost line, boundary or corner.

**Cost of survey**

(2) Subject to section 51, the cost of a survey under subsection (1) shall be paid by the owner or owners making application therefor upon notice by the Minister that the survey has been made.

**Confirmation of survey**

(3) Subsection 48(2) and section 49 apply with necessary modifications to a survey made under this section. R.S.O. 1990, c. S.30, s. 50.

**Cost of survey may be paid by Province**

51. The Minister may pay all or any part of the cost of a survey under section 48 or 50 out of the money that is appropriated by the Legislature for ground surveys. R.S.O. 1990, c. S.30, s. 51.

**Crown resurvey**

52. (1) The Minister may cause a survey to be made under his or her direction for the purpose of fixing the position of a disputed or lost line, boundary or corner that was surveyed under competent authority, and in any such case the Minister may direct that subsection 48(2) and section 49 apply with necessary modifications.

**Confirmation of Crown resurveys**

(2) Where a survey similar to a survey under subsection (1) was made under the instructions of the Minister before the 1st day of June, 1947, the Minister may, upon compliance with the requirements as to publication of notice and the holding of a hearing set forth in subsection 48(2), confirm the survey and such confirmation has the like force and effect as a confirmation under the said subsection. R.S.O. 1990, c. B.10, s. 3 (2).

**Who may apply**

(3) An application to the Director under subsection (1) may be made by,

(a) the owner of an interest in the parcel;
(b) the council of the municipality in which the parcel is situate;
(c) a minister of the Crown;
(d) the Surveyor General of Ontario;
(e) the Surveyor General of Canada; or
(f) with the consent of the owner of an interest in the parcel, a surveyor. R.S.O. 1990, c. B.10, s. 3 (3).

**Contents of application**

4. (1) An application under section 3 shall be accompanied by,

(a) a copy of an up-to-date plan of survey, signed by a surveyor indicating the location on the ground of the boundary or boundaries to be confirmed;
(b) a copy of the field notes of the survey; and
(c) such other information or material as is prescribed. R.S.O. 1990, c. B.10, s. 4 (1).

**Further materials**

(2) The Director may at any time require

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5 Boundaries Act, R.S.O. 1990, c. B.10.
an applicant to furnish such additional or other information or material as the Director specifies. R.S.O. 1990, c. B.10, s. 4 (2).

**Director may initiate proceeding**
(1) The Director, of his or her own initiative, may initiate a proceeding under this Act and may engage a surveyor to make a survey and plan of the parcel or any boundary thereof. R.S.O. 1990, c. B.10, s. 5 (1).

**Costs**
(2) Where the Director initiates a proceeding under subsection (1), the costs of the proceeding, including incidental costs, may, on application to the Director, be paid out of The Land Titles Assurance Fund established under the Land Titles Act, and subsections 56 (2) to (5) of that Act apply to an application under this subsection. 2002, c. 18, Sched. E, s. 2.

**Costs of municipality**
6. Where an application under this Act has been made by or on behalf of the council of a municipality, the costs of and incidental to the application shall be borne by the municipality and, except where the purpose of the application is to confirm the location of the boundaries of a public highway, the costs may be recovered by the levy of a special rate of assessment on all parcels included in the application. R.S.O. 1990, c. B.10, s. 6.

**Discussion**

Before going further, it should be emphasized that the *Surveys Act* process had fallen into complete disuse over the last 30 to 40 years, until very recently (discussed later). The *Boundaries Act* process is and remains the commonly used forum, especially among private landowners who are unable to agree on the true location on the ground of their common boundary.

Although there is substantial overlap between the two procedures, there are distinctions.

As is readily apparent, the *Surveys Act* process is largely reserved for matters initiated by a municipality (the exception being in relation to unorganized territories). The *Boundaries Act* is far broader in its application and can (and most often is) initiated by private landowners.

Under the *Surveys Act*, as a precondition there must be established that there is a “disputed or lost line, boundary or corner.” Under the *Boundaries Act*, there must be “doubt as to the true location on the ground of any boundary or parcel.”

**Costs**

There also appears to be a significant distinction in the cost recovery implications between the two provisions. Under the *Surveys Act*, the municipality can levy the costs against the affected landowners. Under the *Boundaries Act*, to the extent that an application is made by a municipality in relation to the location of a road, the municipality is prohibited from levying the landowners.

What is important to remember in the context of a *Boundaries Act* matter is that the *Boundaries Act* process will only make a formal determination in relation to the specific boundary in question. For example, consider the situation where party “A” is the owner of a lakefront parcel bordering the west side of the road. Party “A” brings an application suggesting that the boundaries to the water’s edge need to be determined due to a lowering of the water levels over time. Party “A”’s application can, and will, only relate to the west side of the road. Unless the municipality brings its own companion application to address the east side of the road, there will be no formal determination in relation to that side. If the municipality does bring the application, the municipality will not be able to recover any of its costs by way of a levy, and arguably, may be responsible for the landowner’s costs on the east side.

**Political Considerations**

There is no use pretending that political issues do not exist. The simple fact is that if a road gets adjusted in one direction, such adjustment will inevitably benefit one land owner at the loss of another. Since both are ratepayers, it is not surprising that a municipality will not want to be seen as taking a position that may take from one and give to the other. If forced to bring an application under the *Boundaries Act*, the municipality has no choice. It has to retain a surveyor to prepare a proposed plan in support of the application.

If it can be used, the *Surveys Act* process avoids these potential perceptions in that although the municipality triggers the process, it is the Province, through the Minister of Natural
Resources that hires the surveyor. The municipality can therefore stay above the fray and remain neutral. One cannot overestimate the value in this, especially considering the emotion tied up with land rights, especially amongst warring and well-heeled waterfront property owners.

**Recent use of the Surveys Act Process**

As indicated above, the *Surveys Act* process had fallen into complete disuse for the last 30 – 40 years. The original impetus for this legislation seemed to have been the need to resolve land disputes in areas where there were public or private highways and roadways. However, with the advent of newer technologies and the development of cadastral systems, the need to resolve land disputes has diminished.

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**Chart comparing the Surveys Act and Boundaries Act Confirmation Processes**

<table>
<thead>
<tr>
<th></th>
<th>Surveys Act</th>
<th>Boundaries Act</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>What is at issue?</strong></td>
<td>Disputed or lost line, boundary or corner (s.48(1))</td>
<td>Doubt as to the true location on the ground of any boundary of a parcel (s.3(1))</td>
</tr>
</tbody>
</table>
| **Land Prerequisite**   | The disputed or lost line must have been surveyed under:  
- competent authority or  
- the *Land Titles Act* or the *Registry Act* (s. 48(1)) | The boundary must relate to a “parcel” defined as an: area of land described in an instrument by which the title of an interest in land is or was established or an area of land shown on a plan and includes a public highway or any part thereof (s.1, 3(1))[^6] |
| **Who may apply**       | Council of municipality, or board of trustees of improvement district, upon its own motion or by petition of one-half of landowners affected (s. 48(1))[^7] | the owner of an interest in the parcel;  
- the council of the municipality in which the parcel is situate;  
- a minister of the Crown;  
- the Surveyor General of Ontario;  
- the Surveyor General of Canada; or  
- with the consent of the owner of an interest in the parcel, a surveyor (s.3(3)) |
| **Ministry-initiated proceeding** | Minister may cause a survey to be made and may also direct the hearing provisions apply (s.52(1)) | Director may initiate a proceeding and may cause a survey to be made (s.5(1)) |
| **Contents of application** | Survey and field notes of survey caused to be made by Minister will be examined by the Minister (s.48(2)) | copy of an up-to-date plan of survey, signed by a surveyor indicating the location on the ground of the boundary or boundaries to be confirmed;  
- copy of the field notes of the survey;  
- such other information or material as is prescribed. (s.4(1)) |
| **Survey**              | Minister shall cause a survey to be made then Minister shall examine plan and field notes (s.48(2)) | Copy of up-to-date survey is submitted by applicant (s.4(1))  
Director may also engage a surveyor to make a survey (s.5(1)) |

[^6]: Under the *Boundaries Act*, there are additional provisions provided for related to application in relation to a public highway.

[^7]: Under the *Surveys Act*, different application provisions apply to disputes in unorganized territories (s.50). Those provisions, which allow individual landowners to make an application, are not canvassed here, as the relevant property is within a Township.
<table>
<thead>
<tr>
<th>Notice</th>
<th>Minister to cause notice of hearing to be given in newspaper (s.48(1))</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Notice of application required to be provided by Director to such persons the Director considers proper (s.7)</td>
</tr>
<tr>
<td></td>
<td>Notice of hearing also required to be given to parties and others (s.8(6))</td>
</tr>
<tr>
<td>Requirement to hold hearing</td>
<td>Will hold hearing where application is made to Minister (s.48(2))</td>
</tr>
<tr>
<td></td>
<td>Hearing required where written objections to the location of the boundary/ies received by Director within time limit (s.8(1),(2))</td>
</tr>
<tr>
<td></td>
<td>Hearing optional where Director is not satisfied by the application and the material filed in its support (s.8(4))</td>
</tr>
<tr>
<td>Parties</td>
<td>Interested persons will be heard (s.48(2))</td>
</tr>
<tr>
<td></td>
<td>Applicant, any person who writes objection, other persons as specified by Director (s. 8(5))</td>
</tr>
<tr>
<td>Costs</td>
<td>Cost of survey paid by municipality, municipality may levy the cost on the landowners affected by the survey (s.48(4))</td>
</tr>
<tr>
<td></td>
<td>Where application made by or on behalf of municipality, costs are borne by municipality buy may be recoverably by a levy (s. 6)</td>
</tr>
<tr>
<td></td>
<td>An application initiated by Director has costs recoverable out of LTA fund (s.5(2))</td>
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<tr>
<td></td>
<td>Application is liable to pay all costs, charges and expenses of and incidental to the application (s. 11(1))</td>
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<tr>
<td></td>
<td>Where hearing is convened, Director may order costs paid by or to any person who is a party to the proceeding (s. 11(2))</td>
</tr>
<tr>
<td>Result</td>
<td>Minister may</td>
</tr>
<tr>
<td></td>
<td>• direct such amendments to be made as s/he considers necessary [to the survey and plan]</td>
</tr>
<tr>
<td></td>
<td>• confirm the position of the disputed or lost line, boundary or corner fixed by the survey (s.48(2))</td>
</tr>
<tr>
<td></td>
<td>Subject to the appeal provision, any line, boundary or corner confirmed is an unalterable and is final and conclusive and shall not be questioned in any court (s.48(2))</td>
</tr>
<tr>
<td></td>
<td>Director may dispose of any objection in a manner s/he considers just and equitable under the circumstances (s.9(1))</td>
</tr>
<tr>
<td></td>
<td>Director may by order</td>
</tr>
<tr>
<td></td>
<td>• confirm the location of the boundary/ies</td>
</tr>
<tr>
<td></td>
<td>• where s/he thinks it proper to do so, Cause survey and plan to be amended and confirm the location of the boundary/ies as amended (s.9(1))</td>
</tr>
<tr>
<td></td>
<td>Boundaries confirmed and certified by the Director are deemed to be the true boundaries of the parcel (s.15(1))</td>
</tr>
<tr>
<td>Appeal</td>
<td>Any person objecting to the confirmation of a survey may appeal to the Divisional Court.</td>
</tr>
<tr>
<td></td>
<td>Court may order the Minister to amend the survey and plan in such manner as the court considers proper (s.49(1))</td>
</tr>
<tr>
<td></td>
<td>Any party aggrieved by an order of the Director (re: survey confirmation or costs) may appeal to the Divisional Court. (s.12(1))</td>
</tr>
<tr>
<td></td>
<td>Re: survey order, Court may:</td>
</tr>
</tbody>
</table>
|                                            | • decide matter on the evidence before it,
years, until recently. This writer has recently triggered two Surveys Act applications on behalf of municipalities which will require hearings. As of the date of writing this paper, neither application has been heard. These two proceedings are described in the examples which follow:

**Example #1**

North end of unopened road allowance goes to water’s edge. Property owner (“A”) on east side brings Boundaries Act (“BA”) application seeking to have the road “deflect” westerly due to receding water’s edge. Responding surveys done by Property owner (“B”) on west side and municipality (“M”) essentially rebutting theory of the applicant’s surveyor.

“A” withdraws its BA application. “A” issues Statement of Claim alleging a variety of claims as against “M”. “M”, in conjunction with its insurer brings motion to stay action on basis that Boundaries Act tribunal is specialized and court ought to defer to that process. Consent order entered into wherein “A” agrees to bring new Boundaries Act application, and “M”, if necessary will bring its own Boundaries Act application to deal with the Western boundary of its road allowance.

“A” brings new Boundaries Act application, but on entirely new basis, which instead of being limited to the deflection issue at the water’s edge, calls into question the location of the entire road allowance, thereby involving multiple land owners down the line of the road allowance. Thus, broader issues are at play, along with “M”’s significantly increased exposure to costs consequences in the Boundaries Act (see discussion above).

“M” commences Surveys Act application. Boundaries Act tribunal is persuaded to hold its matter in abeyance pending conclusion of Surveys Act matter.

**Example #2**

Property owner “A” owns waterfront property. “A”’s property is in fact not adjacent to municipality’s (“M”) road allowance (#1), as there is one property owner in between (“B”). “A” brings BA application. “B” does not object. Due to proposed survey plan submitted in support of application, it is of necessary inference that road allowance #1 would have to be deflected as opposed to being prolonged as a straight line.

A unique aspect is that there exists road allowance “#2”, which due to the original lot fabric and the angle of the water’s edge intersects with #1, close to the water’s edge and #2 also goes to water’s edge, leaving a triangular waterfront parcel between #1 and #2. This is not to mention the numerous properties on the other side of #2, and their proximity to the water.

Broader issues beyond “A”’s property are clearly impacted.

“M” commences Surveys Act application. Boundaries Act tribunal is again persuaded to stay the Boundaries Act application pending conclusion of the Surveys Act matter.

**Common Factor**

Since in both examples above, there had already been Boundaries Act applications commenced, the municipality had to convince the Boundaries Act tribunal (and, it is suspected, the staff at the Ministry of Natural Resources as well) that it was appropriate to defer to the Surveys Act matter. Otherwise the municipality would have been faced with duplicate proceedings. The common factor between the two was that both
Boundaries Act matters raised broader issues, potentially impacting a multitude of landowners.

Although the concept of broader issues was used in the context of arguing (successfully) that the Boundaries Act proceedings referred to above should be stayed in favour of the Surveys Act process, perhaps it sheds light on which process ought to be used in any given circumstance. One could suggest that where the issue in question only impacts singular parcels on either side of the road, deference would be accorded to the Boundaries Act process. The Surveys Act procedure would be reserved for those instances where broader implications arise.

That said, the Surveys Act, is technically speaking, not so limited, largely due to the fact that it long pre-dates the Boundaries Act.

Although the above examples do not address this issue, quare whether or not a Boundaries Act proceeding would be stayed in circumstances where a municipality initiated the Surveys Act process in circumstances which did not engage such broader issues and was limited to the very issues that the previously initiated Boundaries Act proceeding was to adjudicate.

With two statutory processes for confirming boundaries in Ontario, it is logical, and certainly arguable, that each statute’s boundary confirmation process serves a different function in boundary adjudication. This writer would suggest that, although having fallen into disuse until recently, the Surveys Act retains a useful function. That useful function may involve a clarification of the survey fabric which has become either lost or uncertain through passage of time. An interesting question remains as to whether or not the Boundaries Act or the Surveys Act or neither are limited in scope to confirming the survey fabric, but are enabled in jurisdiction to dealing with any boundary between neighbouring owners, thereby allowing for a confirmation of a boundary that is part of the parcel fabric. In addition, from the perspective of a municipality, in the context of a road, it is arguable that the Surveys Act is the preferable process in that, unlike the Boundaries Act, a single application would address both sides of the road, a completely independent surveyor is appointed by the Province, and there is a more effective cost recovery mechanism.

Author

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