



EDITORIAL

SURVEYING TRAVELLED ROADS

In many areas of the Province, both within organized municipalities and unorganized areas, regardless of the system of survey, travelled roads exist on the ground which do not appear on title and have not, according to available records, ever been surveyed. These roads are commonly referred to as forced roads, trespass roads or travelled roads.

Travelled Roads were created on private lands often without authorization or permission of the owner, and also on Crown land; in which case a work permit from the Department of Lands and Forests may have been issued, however, in most cases, I believe that they were run or created without any authority what-so-ever. In either situation there is no requirement that the roads need to be surveyed. Inevitably, development creeps along these roads and takes the form of land titles created by metes and bounds descriptions or in many cases by survey with monumentation. This helter-skelter type of subdivision on land establishes a pattern which is very difficult to correct at later stages.

Dedication of land to the public is a question of fact. There must always be an acceptance by the public (SCHRAEDER vs GRATTON (1945) O.R. 657). This acceptance may be shown by by-law of the municipality or by user by the public. (O'NEIL vs HARPER (1913) 28 O.L.R. 635); (REAUME vs WINDSOR (1915) 8 O.W.N. 505). A person dedicating may impose terms, i.e., as for its uses and if accepted can only be accepted by the public, subject to those terms, (Re PECK and GALT (1861) 46 U.C.Q.B. 211). Dedication to the public and acceptance by the public may be inferred from the use of the road continuously over a period of a great many years, especially if no objections were ever raised by the owner of the lands so used. (FULTON vs CREELMAN (1931) S.C.R. 221).

The problem of dealing with unsurveyed travelled roads is not a new one. It would appear that since a road on which public money has been spent belongs to the municipality, under certain conditions, the municipality is not always interested in obtaining a registerable title; hence the lack of roads opened up by By-Laws. In unorganized territory, there is no authority except the Crown to take over a road and it appears to be the most reluctant of any authority to take over an old road or lay out a new road.

Travelled Roads or Trespass Roads derive, for the sake of simplicity, their authority to remain in place by reason of long, continued and open existence and are, therefore, defined on survey by the possessory limits existing on the ground. The law recognizes the existence of such roads and that there is no foundation for their establishment at an arbitrary width of 66 feet unless the occupational limits happen to coincide with this dimension.

The policy of the Department of Transportation and Communications as expressed in their instructions for land surveys of existing roads, is as follows: **"To establish the right-of-way for trespass roads, the Department will not make claim to any land which might be disputed by the owner. Certain liberties may be taken in establishing the limits in low-value land but the owner should be given the benefit of any doubt in cultivated areas."** Further to this, it states, **"because of the involved procedure the five percent (5%) reservation clause shall not be used by the Department to acquire a Right-of-Way."**

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QUESTIONS AND ANSWERS

Following is a question from a reader concerning adverse possession and the answer given by our Legal Division.

For legal precedents on the quality of possession needed to satisfy the Statute of Limitations, refer to the October, 1970 issue of The Ontario Land Surveyor under Quotable Quotes.

Q. Could we have a discussion on adverse possession; what it is and how created with case law references? One lawyer has said that it need not be under a single ownership, but that it may be under multiple ownership, provided that it is not broken and is continuous.

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QUOTABLE QUOTES

"Neither the words of a deed, nor the lines and figures of a plan, can absolutely speak for themselves. They must, in some way or other, be applied to the ground."

Equitable Building and Investment Co. v. Ross (1886, 5 N.Z.L.R., S.C. 229)

ACTION AND NEWS

We anticipate reorganized responsibilities and transfer to a new Ministry as of April in accordance with the government plans to reorganize administratively.

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It is important that travelled roads be surveyed and defined by their actual occupation and not by a preconceived width. The assessment of occupational evidence should include the consideration of ditches, cultivation, fences, hydro and telephone pole lines and not be interpreted as referring only to the travelled area of pavement itself. This would mean that in surveying a section of travelled road that the boundaries thereof could quite conceivably vary in width within a given section of road.

The Law supporting the existence of Travelled Roads and the rules establishing their limits are very limited and vague and the methods of surveying the boundaries of travelled roads can only be derived from a common sense approach and an interpretation of the general laws and rules relating to the evidence of boundaries.

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QUESTIONS & ANSWERS

(continued from opposite column)

A. Adverse possession is created under The Statute of Limitations and a person so claiming must show a continuous running of adverse possession for a period of at least 10 years. There can be, of course, any number of different people claiming possession of the said lands provided that such claims are continuous. We may say that normally it is essential that the limits of the lands so claimed be clearly defined, preferably by fences. The acts of possession that would be sufficient to sustain adverse possession may differ depending on the type of land or where it is situate, for example, between urban areas or non-urban areas, between improved lands or unimproved lands.