ALL THE THINGS YOU DIDN'T WANT TO KNOW ABOUT BILLS 106 AND 204

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* **Bill 106 C.4 SO. 1990**,
  Royal Assent June 21,1990.
  An Act to amend certain Acts with respect to Easements and other matters.

* **Bill 204 C.53 SO. 1989**,
  Royal Assent October 16, 1989.
  An Act to amend the Power Corporation Act.

These two bills may appear remote from each other, however, when conjoined with a Public Utility's function in certain parts of Ontario they become a contentious item. Understood by few, unknown to many and now becoming another burden to be born on the backs of Land Surveyors. After all, is it not we who want to be known as the land experts? (I think we got this by default ... no one else wanted it).

Lets start with Section 42 of Bill 204. Once we slide through the gobbledygook we find that nothing has changed for Ontario Hydro, they have retained all their former omnipotent powers (of course this was the only way in which they would tolerate any bureaucratic tinkering). To save you the trouble of looking up the Power Corporation Act you could refer to the article printed in the Ontario Land Surveyor, Spring Issue 1990, on "The Statutory Easement - A Power to be Reckoned With".

Now come the variances. Ontario Hydro may pass all these good things like easements, registered or statutory (unregistered), permits, privileges, ways, interests or rights, to all these unsuspecting and in many cases uncaring Hydro Commissions or Public Utilities who also look after hydro. (For people who are foreign to Ontario we should enlighten them to the realization that HYDRO does not mean water , but, electric power). Unless you can find documentation on title contrary to or dispelling the Act, the land will be subject to these rights forever, for the full term, or until released by the assigned authority. There are more than 350 Public Utilities and Hydro Commissions in Ontario so there are not too many surveyors who are going to be missed by these two bills. (For people who are foreign to Ontario we should enlighten them again to the realization that Ontario is the only province that has Commissions and Public Utilities, each of the other provinces have their own single Power Authority).

Second variance. Any person who is going to purchase land may and this is usually done through their agent, normally a lawyer (lawyer's "unregistered easement letter" my term), make an enquiry of any unregistered rights. The current authority shall search their records (they may be lucky and have some) and relay any data as to rights they have on the land as well as answering within 21 days of the inquiry. Should the authority indicate they have a right, it must be defined as to what is it (wires, cables, duct structures, poles, swithgears, etc.), where is it (next to the lot line, from the building to the street, across the corner of the property, etc.), how long will be the occupation (a term of years or in perpetuity), and, under what Legislative Authority is the claim made (the Power Corporation Act, the Public Utilities Act, the Easement Statute Law Amendment Act). If the authority evades its duty to respond they are subject to damages for any losses.

Its now time to look at Bill 106. Lets skip through the Registry Act part, except to say that municipalities and M.G.S. have an extension of time, until December 31, 1999, to file a declaration of interest on title. This would probably be an "unregistered" easement.

In Section 2 lets work only on the 'MUNICIPAL PUBLIC UTILITY EASEMENT' (MPUE) as it would apply to Hydro Commissions or hydro Public Utilities. As you may recall, Section 35 of the Limitations Act RSO. 1980, c. 240 states, there are no prescriptive easement rights for wires or cables, but, it would appear the Easement Statute Law Amendment Act, SO. 1990, c. 4 has opened the door and now the wires and cables physical presence creates a right, at least, until December 31, 1999.

If you think the Power Corporation Act created omnipotent power, Bill 106 is oodlomnipotent for public utilities. Even the common law was changed. An MPUE does not have to be appurtenant or annexed to land nor does the dominant tenement have to be recited. Even when there is not an MPUE hydro plant will not be interfered with by anyone and the utility may enter upon any land to repair and maintain its equipment.

It is worth repeating here that a notice on title of an interest in land deposited prior to December 31, 1999, will be as effective as if it had been registered on July 31, 1981.

Well now! What has all this got to do with surveying? I think the best expostulation of events is through a survey scenario.

While performing a survey a pole line is noted as crossing the property and it is evident that the line is used for purposes other than the service to the buildings thereof. Naturally this pole line will be tied down. This could be a power line crossing cottage property to conveniently supply electricity to buildings well removed from the road. It could be a power line built behind the tree line on an ordinance road allowance so that the wind protecting effect of the trees is not reduced. It could be some corner jumping at the half lot line in double

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front townships. It could be the straightening effect of pole lines along development roads in townships with a 5% reserve clause. It could be, what is known in the utility business as 'alley jumps', whereas wires are attached to one building on one side of a lane, then jumped across to the other side to another building. Or it could be any older configuration of equipment on property , that was not questioned nearly as much years ago as it would be today.

In order for you to fully and correctly represent the property to your client should give rise immediately to the following questions.

1) Who owns the equipment? A public utility or Ontario Hydro.
2) When was the equipment placed?
3) Has the ownership of the equipment ever changed?

Four resolutions default from these questions.

1) The land is administered by Ontario Hydro without exceptions.
2) The land is administered by a public utility or commission within the lifetime of the equipment.
3) The equipment was placed after June 21, 1990.
4) The land was administered by Ontario Hydro and transferred to another authority (Regionalization).

This last resolve is the one with all the glitches and lets deal with it last.

Under resolution 1, the equipment is protected by easement be it registered or statutory (unegistered). The presence of the equipment creates the right.

Under resolution 2, the equipment is protected by easement be it registered or statutory (unegistered). The presence of the equipment creates the right, however, failure of the utility to deposit a notice of claim on title of an interest, prior to December 31, 1999 will nullify the statutory easement.

Under resolution 3, nothing changes for Ontario Hydro. As long as a public utility does not register easements on title the equipment sits on land as an encroachment. Although no person may interfere with the device they may be removed at the owners request or by a judicial order.

Under resolution 4, there are two trigger dates one is June 21, 1990 and the other and most important is the date of the administration transfer. That is, when did the local authority officially start to distribute power to customers in an area that was originally looked after by Ontario Hydro. As an example, lets say an area was transferred from Ontario Hydro to a local utility on January 1, 1978. All the power lines are maintained by the utility under authority vested in the Public Utilities Act however the easements and rights attached to land were created under the authority of the Power Corporation Act. The land will continue to be encumbered until released by the local utility. Equipment placed on land after January 1, 1978 and up to June 21, 1990 is subject to the Public Utilities Act and the Easement Statute Law Amendment Act.

The Standards for Surveys do stipulate that easements should be identified on all survey plans. In many instances we will now have to show these Statutory Easements, however, there is no documentation on title as to their width. The only sure thing to see is the actual pole or other device. On many of the old construction drawings supplied to the Commission from Ontario Hydro showed a width of one rod on both sides of the pole. This permitted storm guying as well as vehicular passage. In my opinion this is probably the preferred setting.

I suppose one of the major concerns should be in distinguishing power lines from Bell, cable TV, telecommunications, electric railways, signal cables or fibre optic cables. Although some of these fall within the definition of a public utility they do not have the authority as vested in a MPUE.

There are some similar power set ups or configurations that are administered differently by utilities, unfortunately, there are no set rules within Ontario to follow. It is recommended you meet your local hydro utility people, find out their area of operation and past history. Gain some knowledge in how to identify hydro lines, who knows, you may motivate them into placing their equipment on land in the correct location.

One of the greatest concerns to all bar pounders (surveyors) are the underground wires. Very few have identification markers and as for calling the local utility for locations . . . The cable locating scopes and equipment now used are more sophisticated, the accuracy is more reliable, however, they will still maintain that you have to dig by hand and locate the wires if you are going to set an iron bar within three feet measured laterally from the cables.

When you are talking to your local utility people, ask them how deep they bury their cables. In our utility it has been a practice for over twenty-five years to dig all trenches that have primary cables one metre deep. By the time the layering of sand and cables is finished in the trench, the communications cables, being placed in the top strata, are set to have a depth of 0.6 metres. The greater the number of primary cables the deeper the trench.

If you are absolutely sure, or have received verification from the local utility that the property corners are clear of wires, go ahead and set the standard iron bars. If, however, you have any doubts use only 0.6 metre iron bars.

The technology and design of wires, especially primary cables, should, when tampered with fault immediately. Knowing a little bit about electricity and its sometimes quirks I would not want to touch a bar that has passed through a cable, nor would I want any of you.

I know you must be really thanking me for telling you about all these additional easements you should be showing on your survey plans. (I think you got this by default... no one else wanted it)