Index

A

Abandoned roads: ownership, 261 Access "to" and "from" lands, 387 Accretion and erosion of shoreline, 141

"Ad medium filum aquae" rule, 151 Bed of Navigable Waters Act (1911), 151

Adverse possession and prescriptive easements, 325, 335, 403

not against a public highway (1922), 404

"Area of user" (registered plans of subdivision), 365 Assumption of roads (maintenance

responsibility), 79, 367

B

Beaches cases re: (allied with Road Principles), 148 save the beaches, 148 Biggar, C.R.W. Municipal Manual, 1900 (A Rembrandt), 3, 86, 98, 252, 255 Boundary roads and boundary trees, (joint jurisdiction), 273 boundary road agreements (between municipalities), 275 boundary trees. maintenance agreements, 275 boundary trees, ownership of, 282 closing of, 277 deviation of, 276 mutual mistake between owners re: boundaries, 328, 408 **Building** permits complaints against building officials, 440 zoning requirements, 437

С

Categories of roads, 1810-2014, 51 Colonization roads construction standards, 117 "excepted" from Crown patents, 105 expenditures of public money, 107 free land grants, 107 instructions to inspectors, (1889), 119 land purchasers' nightmare, 115 maps of colonization roads, 114 northern Ontario, 113 Ottawa-Huron tract, the, 107 ownership, municipality, if chartered (organized), 116 road expenditures, 108 road in lieu, 117 16 principle major colonization roads. 108 what width prior to 1889? - 66', 40'? (20.1 m., 12.19 m.), 109, 110, 400 Compiled plans, Land Registrar's, 377 Composite plans are not registered plans, 376 Concession roads/sideroads, 67 deviation from original survey, 128 reduction of road widths by Crown, District of Rainy River, 179 Concordance, table of, for Russell on Roads, Editions, 1, 2 and 3, xlv Cottagers' associations, 131 Cottage roads, 131 shoreline road allowances, 131 Cottage roads and rights-of-way, 307 Crown patents patents (restrictions in secondary clauses?), 168

Russell on Roads

"reservations" and "exceptions", re roads, 67, 239 Crown roads ownership flipped to municipalities, 1913, 73 public highways on Crown lands before patent, 76

D

Date list, terminology, definitions, 5 Dedication presumption of dedication by Crown, 126 Dedication, acceptance and assumption, 247, 254 by-law now required, 248 Deeming by-laws, 369 Definitions highways defined by legislation, 89 ownership and jurisdiction, 72-73 public highways: historical definitions, 55, 71 District Councils Act, 1841, 16 Districts, original in Upper Canada, 1788, 1840, 1902, 21, 99

Ε

Easements conditions for validity, 300 easements and rights-of-way, 291 issues and problems, 306 Land Titles Act, s. 44, 310 legal terminology ("dominant tenement"; "servient tenement"), 292, 306 Easement checklist, 300 Easements "in gross" a distinction, 295 Easements, prescriptive, 333 legal criteria, 452 Establishing a highway, 249 Establishing a municipal road (Municipal Act Amendment of 2006), 69

40 year shelf life: Registry Act, 447

F

Free grants and homesteads under the *Public Lands Act*, 1715% road reservations in certain Crown patents, 159, 164, 165

G

"Geographic Divide" – northern and southern Ontario, 163 Grandfathered clause for roads (*Municipal Act, 2001*), 58, 265 "Great Divide, the" (*Municipal Act, 2001*), 12 Great Road Flip Legislation of 1913 (Crown to municipalities), 74, 352

Η

Hand grenade, the (Municipal Act Amendment, 2006) revoking previous road restrictions, 47 Highway Act, the, 1810 (Author's designation of the untitled Act of 1810), 26 (See Chapter 2, Page 5) "High water mark" (the uninvited guest), 143 Bed of Navigable Waters Act, 1911, 143 designation on older registered plans, 147 legal demise of the term "high water mark", 146 Highways as defined by various legislation, 88, 89 "assumed" or "not assumed", 256 District Councils Act, 1841, 31 (jurisdiction over roads transferred to District Councils from Justices in Quarter Sessions)

Index

establishing a highway, 249 grandfathered by the Act of 2001, 58, 265 great road flip, the (Crown transfers roads to chartered municipalities), 31, 74, 352 *Municipal Act, 2001*, 36, 38 *Municipal Institutions Act*, 1849, 34 (The Magna Carta of Municipal Institutions in Canada – authorized the election of "Local Councils" with restricted municipal powers) ownership and jurisdiction, 71

I

"Improved roads" surveys, 217 table of improved road surveys, 235-237 Indian lands jurisdiction re roads through, 84, 85, 86 Inhibiting orders (registered plans), 367

J

Judge's plans, 378 Jurisdiction exclusive jurisdiction (the judicial 55 year debate), 74

L

Land grants (colonization roads), 107 Land registration – from paper to electronics, 505 Land Titles System comparison with Registry System, 450 converting to, 65 electronic, 310 Lanes on registered plans, 348 Latin phrases – used by the judiciary, 9 "Laying out" or "opening" a road, 68 "Legal aspects of surveying water boundaries", 154 (See Lambden and De Rijcke, Carswell, 1996) Legislation: see Table of Legislation, Introductory index, xli Letters of credit, 286 cashing letters of credit procedures, 492 steps, 502 for municipal services, 489 "letter of guarantee" (do not accept), 494 precedent - forms of letter of credit, 497 stand-by letters of credit, 491 Local roads boards: legislation, 209, 271 The Eagle Mine Case, 213 The Sioux Lookout v. Canada case, 215

Μ

Maintenance, jurisdictional trap (exchange of lands for roads), 456 Maintenance of roads isolated acts of maintenance, not assumption, 258 maintenance responsibility - "responsible under the circumstances", 263 "Metes and bounds" descriptions, 8, 375 Minimum maintenance standards, Municipal Act, 2001, s. 44, 453 Ontario Reg. 239/02 (first Reg. setting out detailed maintenance standards), 455 requires classification of highways, 456 Maintenance standards amended by O. Reg. 239/03 (Schedule "A"), 469

Russell on Roads

(Note – unlined parts of Schedule "A" represent author's attempts to highlight amendments), 469
Municipal Act, 2001 – "The Great Divide", 123, 44
(The greatest change in municipal legislation in 152 years)

Municipal Act Amendment, 2006 (greater flexibility to municipalities, 2, 45, 406

Municipal flexibility of powers, 406 Municipal roads "seasonally maintained", issues and procedures, 485, 486

Ν

"Natural person" powers, 40 Northern Ontario – geographical division from southern Ontario, 163

0

Occupiers' liability, 187, 320 Opening roads extended meaning, 187 (See also establishing a highway), 249 "Original" road allowances not compelled to open, 63, 67 Ownership does not mean assumption, 79

ownership and jurisdiction, 87, 126 ownership, Crown roads transferred to municipalities, 1913, 352 Ownership of land to the water's edge

(Ontario v. Walker, 1970), 140 (unless there is a 66' shore road allowance)

Р

Pathmaster/overseers, 267 "PIN" (Property Identification Numbers) for electronic registration system, 511 Planning Acts, early, 1912, 1917, 1946, 349, 350 Plans compiled, 379 composite, Crown lands, private lands, 376 early reference, notations on, 374 judges', 378 Land registrar's compiled plans, 377 municipal, 378 Plans of subdivision: registered, 338 importance of, 339 plans, not valid registered plans, 340 roads on registered plans reserved by owner, 346 Portage routes historical background, 316 legal cases, 319 Minister's jurisdiction, 321 Public Lands Act, 1960, 315 Private access roads, 285 a headache, 286 internal disputes, 289 zoning by-law issues, 286 Promenade in subdivisions, 355, 356 Promenade: leading case (Oro-Medonte Township v. Warkentin, 2013), 330 Promenade not a highway, 61 Provincial roads: procedures for transferring to a municipality, 207 Public highways, 55 historical definition, 72 no adverse possession on highway after 1922, 332 ownership of soil and freehold, 73 what constitutes, 71 Public lands area available, 176 free grants and homesteads, 175 Public Lands Act: roads under, 201

Index

Reference plans - not registered plans, 373

Q

Quarter Session roads by judges, 17, 93 end of justices' powers, 97 historical background, 94 road by-laws approved by justices sitting in Quarter Sessions, 100 (Ontario Land Surveyors' compilation - see Schedule "B") known locations, 18, 19, 20

R

Reference plans - are not registered plans, 373 Registered plans of subdivision area of user (on registered plans), 365 assumption of roads, 79, 367 cancelling all or part of a registered plan, 359 deeming by-laws, 369 mortgages lifted on roads, 339 owners' certificate (read it), 260 plans which are not registered plans, 340 roads, lanes and promenades, 337 roads owned by municipality, 343 when binding, 343 Registration of roads by-laws, 431 historical background, 434 Researching legislation on older roads: steps, 11 "Reservations and exceptions" in Crown patents, 239 Restricting common law use of passage, 57, 81 Restructuring order: roads under, 205 effect when road formerly under Local Roads Board, 214 Sioux Lookout Case (2010), 215

Riparian principles, 139 Roads dedication for non-highway purposes (Gibbs v. Grand Bend, 1995), 245 5% reservation in Crown patent, 159 "implied dedication", 254 in lieu of/in place of original road allowances, 181 laying out and/or opening, 68 road closing by-laws, 184 road flip, the great of 1913 (Crown transfer to municipalities), 74, 352 Road Access Act: ingress and egress, 392 its purpose, 513 legislation, R.S.O. 1990, 523 Road allowances mistakes when opening, 195 Municipal Act, R.S.O. 1990, 197 "original", 63 Road by-laws by District Councils, 1841-1849, 436 Road closings: A fresh approach (Municipal Act, 2001), 412 drafting policies, 413 hand grenade (Municipal Act amendment of 2006), 47, 412 Roads, historical cornerstones, 1788-2014, 23 Roads, private, 285 Roads, "seasonally maintained" by municipalities, 485 Road widths, 395 S

Shoreline road allowances: cottage country, 131 accretion and erosion, 141 cases re: encroachment on, 136 extension of side lot lines, 417 interference by human works, 140

Russell on Roads

locating original shore road allowances, not surveyed, 132, 133, 142, 420 obtaining clearance letters, 418 when partially under water, 421 Squatters' rights, 188 old Act, s. 299: a special privilege, 189 adverse possession, 325, 326, 327 not applied to pubic highways, 332 Statute Labour Highway Act of 1810, 268 origin and demise, 267 "usually performed", 77, 122, 267 **Subdivisions** lifting of mortgages, 365 0.3 meter reserves (formerly 1 foot reserves), 361, 392 "Subdivision control" legislation, 351. 382 checkerboarding, 351, 382 list when no "consent" required, 381 Surveyors error in laying out a road, 312 Surveys Act, s. 57: 8 sections repealed, 1987, 426 District of Rainy River, survey changes, road allowance width reduced, 179 Surveys, instructions to surveyors (building locations), 308 Surveys, metes and bounds descriptions, 8, 375 Surveys, types of township surveys, 383 "improved road" surveys, 217 record of, 225-237

Т

Table of concordance, for Russell on Roads, Editions 1, 2 and 3, xlv Township survey systems (at least 17 different types), 383 Trespass/given/force roads, 121 deviation from (case law 2009), 128 judicial decisions, 124, 125 ownership of soil and freehold, 126 *Planning Act* considerations, 165 width, 127

U

Unjust enrichment (i.e. cottage associations), 307, 311 Unopened road allowances public right to use, 80 Upper Canada Rebellion, 1837 (results – new legislation), 96, 97

W

Waterways, the original public highways, 60 "ad medium filum aquae" rule, 151 changed by Bed of Navigable Waters Act, 1911, 151 ownership of bed of non-navigable waterways by provincial Crown or federal Crown, 152 use of non-tidal navigable waters a federal jurisdiction, 154 Note: for more information see excellent publication entitled "Legal Aspects of Surveying Water Boundaries" by D.W. Lambden and I. De Rijcke, a Carswell publication 1996 Width, roads, 395

Ζ

Zoning by-laws roads standards required for building permits, 437, 438