# Index

$\mathbf{A}$	C
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	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
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	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
deviation of, 276 mutual mistake between owners re: boundaries, 328, 408 Building permits complaints against building officials, 440 zoning requirements, 437	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

# E

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*, 171 5% 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

# H

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, 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

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	"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
"Improved roads" surveys, 217 table of improved road surveys, 235-237 Indian lands jurisdiction re roads through, 84, 85, 86	Local roads boards: legislation, 209, 271  The Eagle Mine Case, 213  The Sioux Lookout v. Canada case, 215
Inhibiting orders (registered plans), 367	M
J	Maintenance, jurisdictional trap (exchange of lands for roads), 456

#### Russell on Roads

(Note – unlined parts of Schedule Planning Acts, early, 1912, 1917, "A" represent author's attempts to 1946, 349, 350 highlight amendments), 469 Plans Municipal Act, 2001 - "The Great compiled, 379 Divide", 123, 44 composite, Crown lands, private (The greatest change in municipal lands, 376 legislation in 152 years) early reference, notations on, 374 Municipal Act Amendment, 2006 judges', 378 Land registrar's compiled plans, (greater flexibility to municipalities, 2, 45, 406 377 Municipal flexibility of powers, 406 municipal, 378 Municipal roads "seasonally Plans of subdivision: registered, 338 maintained", issues and procedures, importance of, 339 485, 486 plans, not valid registered plans, N roads on registered plans reserved by owner, 346 "Natural person" powers, 40 Portage routes Northern Ontario – geographical historical background, 316 division from southern Ontario, 163 legal cases, 319 Minister's jurisdiction, 321 Public Lands Act, 1960, 315 Occupiers' liability, 187, 320 Private access roads, 285 Opening roads extended meaning, a headache, 286 187 internal disputes, 289 (See also establishing a highway), zoning by-law issues, 286 Promenade in subdivisions, 355, 356 "Original" road allowances Promenade: leading case not compelled to open, 63, 67 (Oro-Medonte Township v. War-Ownership kentin, 2013), 330 does not mean assumption, 79 Promenade not a highway, 61 ownership and jurisdiction, 87, 126 Provincial roads: procedures for ownership, Crown roads transtransferring to a municipality, 207 ferred to municipalities, 1913, 352 Public highways, 55 Ownership of land to the water's edge historical definition, 72 (Ontario v. Walker, 1970), 140 no adverse possession on highway (unless there is a 66' shore road after 1922, 332 allowance) ownership of soil and freehold, 73 P what constitutes, 71 Public lands Pathmaster/overseers, 267 area available, 176 "PIN" (Property Identification free grants and homesteads, 175

Public Lands Act: roads under, 201

Numbers) for electronic registration

system, 511

#### Index

Reference plans – not registered Riparian principles, 139 plans, 373 Roads dedication for non-highway pur-Q poses (Gibbs v. Grand Bend, 1995), 245 Quarter Session roads 5% reservation in Crown patent, by judges, 17, 93 159 end of justices' powers, 97 "implied dedication", 254 historical background, 94 in lieu of/in place of original road road by-laws approved by justices allowances, 181 sitting in Quarter Sessions, 100 laying out and/or opening, 68 (Ontario Land Surveyors' comroad closing by-laws, 184 pilation - see Schedule "B") road flip, the great of 1913 (Crown known locations, 18, 19, 20 transfer to municipalities), 74, 352 R Road Access Act: ingress and egress, 392 Reference plans – are not registered its purpose, 513 plans, 373 legislation, R.S.O. 1990, 523 Registered plans of subdivision Road allowances area of user (on registered plans), mistakes when opening, 195 Municipal Act, R.S.O. 1990, 197 assumption of roads, 79, 367 "original", 63 cancelling all or part of a regis-Road by-laws by District Councils, tered plan, 359 1841-1849, 436 deeming by-laws, 369 Road closings: A fresh approach mortgages lifted on roads, 339 (Municipal Act, 2001), 412 owners' certificate (read it), 260 drafting policies, 413 plans which are not registered hand grenade (Municipal Act plans, 340 amendment of 2006), 47, 412 roads, lanes and promenades, 337 Roads, historical cornerstones, 1788roads owned by municipality, 343 2014, 23 when binding, 343 Roads, private, 285 Registration of roads by-laws, 431 Roads, "seasonally maintained" by historical background, 434 municipalities, 485 Researching legislation on older Road widths, 395 roads: steps, 11 "Reservations and exceptions" in Crown patents, 239 Shoreline road allowances: cottage Restricting common law use of country, 131 passage, 57, 81 accretion and erosion, 141 Restructuring order: roads under, cases re: encroachment on, 136

effect when road formerly under

Sioux Lookout Case (2010), 215

Local Roads Board, 214

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, 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, "improved road" surveys, 217 record of, 225-237

#### T

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, 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

# $\mathbf{Z}$

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