



Ontario Federation of Agriculture

Ontario AgriCentre

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MEMORANDUM

TO: OFA Board of Directors

CC: OFA Member Service Reps

FR: Peter Jeffery
Senior Farm Policy Researcher

Date: February, 8, 2015

RE: Bill 100; proposed Supporting Ontario Trails Act, 2015

It has been brought to my attention that some media outlets are carrying articles asserting that provisions in Bill 100 will impose mandatory easements for trails on owners of private property, and remove the rights of individual property owners to decide if they will permit a recreational trail on their property.

Bill 100, the proposed Supporting Ontario Trails Act, 2015, was introduced in the Ontario legislature on May 12, 2015. Since then, there has been no debate on the proposed Act. The section referenced in the media is section 12, which I've attached.

I've highlighted subsection 3 of section 12. As I read section 12(3), the decision whether or not to enter into a trail easement lies fully with the property owner, "an owner of land may grant an easement...". I see nothing in section 12 that suggests trail easements will be anything but totally voluntary; solely at the discretion of the property owner to enter into or not. To suggest otherwise is, in my opinion, being disingenuous.

OFA commented on Bill 100 last June. Because the Bill clearly uses the word "may" in relation to entering into easements, we saw nothing in the section to give rise to concerns. OFA's June 2015 comments on Bill 100 can be read at: www.ofa.on.ca/issues/submission/ofa-submission-regarding-bill-100-proposed-supporting-ontario-s-trails-act

If you have any follow up questions, please do not hesitate to contact me;

A handwritten signature in blue ink that reads "Peter".

EASEMENTS

Rules re easements

Definitions

12. (1) In this section,
“eligible body” means,

- (a) the Crown in right of Canada or in right of Ontario,
- (b) an agency, board or commission of the Crown in right of Canada or in right of Ontario that has the power to hold an interest in land,
- (c) a band within the meaning of the *Indian Act* (Canada),
- (d) an aboriginal community or organization prescribed by the regulations made under this Act,
- (e) a municipality within the meaning of the *Municipal Act, 2001*,
- (f) a conservation authority established under the *Conservation Authorities Act*,
- (g) a board within the meaning of the *Education Act*,
- (h) a corporation incorporated under Part III of the *Corporations Act* or Part II of the *Canada Corporations Act* that is a charity registered under the *Income Tax Act* (Canada),
- (i) a trustee of a charitable foundation that is a charity registered under the *Income Tax Act* (Canada),
- (j) a prescribed donee under the *Income Tax Act* (Canada),
- (k) a qualified organization, as defined under section 170 (h) of the *Internal Revenue Code* (United States) and Treasury Reg 1.170A-14 (United States),
- (l) a corporation created by statute that is a registered charity under the *Income Tax Act* (Canada),
- (m) any other person or body prescribed by the regulations made under this Act;

“owner” means the registered owner of land under the *Registry Act* or the *Land Titles Act*.

Nominee of eligible body

(2) For the purposes of this section, a reference to an eligible body includes a nominee of the eligible body who is acceptable for registration in the land registration system as a registered owner of an interest in land.

Granting of easements

(3) An owner of land may grant an easement, with or without covenants, to one or more eligible bodies,

- (a) for the preservation, enhancement or management of the use of, or access to, all or a portion of the land for purposes relating to trails or to activities relating to trails;
- (b) for the creation, maintenance or management of trails for public use; or
- (c) for the purposes as may be prescribed by the regulations made under this Act.

Easement reserved by a body

(4) When an eligible body conveys land, it may reserve an easement for a purpose referred to in subsection (3).

Same

(5) A reference in any Act or regulation to easements granted under this Act also applies to easements reserved in accordance with subsection (4).

Registration of easement

(6) An eligible body shall register the easement against the land affected in the proper land registry office and, once registered, the easement and any covenants contained in the easement run with the land against which it is registered.

Not valid unless registered

(7) An easement is not valid unless it is registered under subsection (6).

Assignment

(8) An easement may be assigned by an eligible body to another eligible body, but the assignment must be in writing and must be registered on title to the land.

Term

(9) An easement is valid for the term specified in it. The term must be specified as a period of months, years or in perpetuity.

Validity

(10) An easement registered on title to land, including any covenants contained in the easement, is valid whether or not the eligible body owns appurtenant land or land capable of being accommodated or benefited by the easement or covenant and regardless of whether the covenant is positive or negative in nature.

Release

(11) The eligible body may execute a release of an easement and shall provide a signed copy of the release to the owner of the land.

Same, registration

(12) The eligible body shall register the release of the easement against title to the land affected in the proper land registry office. If the eligible body fails to register the release, the owner of the land shall register the release.

Enforcement of easement

(13) An eligible body may enforce an easement that is registered on title to the land, including any covenants contained in the easement, against the owner of the land and against any subsequent owner of the land against which it is registered.

Same

(14) The owner of land may enforce against the eligible body any covenants contained in an easement that is registered on title to the land.

No merger of registered easement

(15) If an eligible body becomes the owner of land in respect of which it has the benefit of a registered easement,

- (a) the easement does not merge in title; and
- (b) if the eligible body transfers the land, the easement and any covenants continue to run with the land.

Rights preserved

(16) Nothing in this section limits a right or remedy that a person may have under any other Act, at common law or in equity in respect of an easement or a covenant, if the right or remedy is not inconsistent with this section.