

November 8, 2005

MEMORANDUM: EM 2005-03

TO: All Land Registrars

FROM: Kate Murray
Director of Titles

RE: Easements in Gross; Dominant Tenement

Recently, there have been some questions raised regarding easements in gross and how the land registration system is dealing with them following the issuance of the Easement Bulletin - 2005-02. A number of easement creating documents submitted for registration did not include a dominant tenement but also did not identify the easement as an easement in gross. These have been properly returned, but in many cases the registrants continue to question the requirements.

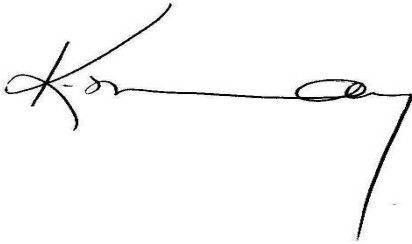
Bulletin 2005-02 explains that for an easement to be legally valid it must have both a servient and dominant tenement. The only exception to that provision is an easement in gross, which does not need to have a dominant tenement identified. At times, a dominant land definition has been included in an easement in gross document, but it will not be confirmed or abstracted in the land registration system. To assist in the identification of easements in gross a new provision was introduced requiring the registrant to include the words "Easement in Gross" in the creating document.

Not all agencies have the authority to create easements in gross. If one is submitted from a utility or government agency and identified as an easement in gross, we will assume they have such authority. If the document does not identify the easement as an easement in gross it must include a dominant tenement.

Some documents creating easements include dominant lands that are located outside the land registration division that includes the servient lands. Such a definition satisfies the requirement to have a dominant tenement, but these lands traditionally have not been confirmed or abstracted in the land registration system. This approach will continue to apply.

Historically the land registration system has permitted the registration of utility easements with a general definition of the dominant tenement (e.g. head office). Such a definition has been accepted as satisfying the requirement to have a dominant tenement but no entry was made on the abstract/parcel/PIN for the dominant lands, even if they were located in the same land registration division as the servient lands. This provision will continue to apply to utility easements for gas, hydro, sewer, water, cable and telecommunications easements that are not identified as easements in gross.

If you have any questions or you encounter a situation not addressed, contact your Regional Surveyor.

A handwritten signature in black ink, appearing to be 'K. Dalglish', written in a cursive style.

CC: John Dalglish, Director of Land Registration
Regional Managers
TSSO Staff