



Ministry of  
Consumer and  
Commercial Relations

Ministère de  
la Consommation  
et du Commerce

**Registration Division**

26 October, 1999

**EM199909**

MEMO TO: Land Registrars  
Regional Surveyors  
Electronic Registration Team

FROM: Kate Murray  
Director of Titles

**RE: Easements**

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This memo will replace the previous memo issued October 6, 1999. As you are all aware there have been many questions raised recently regarding the subject of easements and how to deal with them when properties have been automated and converted to land titles. This has been discussed with most of you at the Regional Meetings and you were advised that instructions would be issued for dealing with an easement not brought forward when property has been converted to land titles.

There are four options available to clients if they feel a property should reflect an easement which was registered and which has not been shown in the property description since it was not within the 40-year search period. These options also apply to municipal easements. They are as follows:

- 1) the owner of the servient lands may make an application to amend the register by adding the easement to his/her description and setting out the description of the easement and the dominant lands. The land registrar could then amend both the servient and dominant parcels.
- 2) the owner of a dominant parcel which has a notation "except the easement herein", may make an application to amend the register to delete that remark and add the easement to both the dominant and servient lands, if the application is accompanied by a consent of the owner of the servient lands.

*NOTE: In either of these situations, where the servient parcel is amended by adding an easement, and an encumbrance has been registered subsequent to the property being converted, consent of the encumbrancer is required.*

- 3) the owner of a dominant parcel of which a purported easement has not been brought forward when the property was converted may register a notice under section 71 against both the dominant and servient lands. If such a notice is registered, the property description will not be

amended. This notice can remain on the parcel indefinitely unless an application to amend the register is registered by either the owner of the dominant or servient lands.

The owner of the dominant property may apply to have the parcel amended by adding the easement to the description with appropriate evidence, e.g. consent of the registered owner of the servient property. Again, if there has been a mortgage registered on the servient lands subsequent to the property being converted, consent of the chargee must be obtained.

The owner of the servient property may apply to have the register amended by removing the notice if he/she has evidence that the parcel is not subject to the easement.

- 4) if property had been left in the registry system, the solicitor for the owner of a dominant parcel could have registered a notice of claim under section 113(2)(b) of the *Registry Act*, stating that there has not been any conflicting registrations. Therefore if a property has been converted to land titles without an easement, an application to amend the register based on the principles of this section may be registered. A solicitor must make the statement that there have been no conflicting registrations and a covenant to indemnify the Land Titles Assurance Fund will be required.

In these cases there will have been a description of the easement contained in the document which created it. Therefore, you may accept a description which contains sufficient information to enable you to record the easement against the proper parcel, i.e. lot, plan/concession, geographics and the instrument number which created the easement.

In all four of these options, the normal registration fee of \$50. will apply.

As well, the registered owner of a dominant parcel still has the option of dealing with the easement by making an application for absolute title (LTPlus) following the normal procedures.

These options should allow clients to deal with their easements and amend the registers when they feel they have a valid interest or easement.

Cc Ian Veitch  
Regional Managers  
Head Office Staff  
Legal Services

