

Ministry of
Government Services

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July 27, 2006

MEMORANDUM: EM2006-01

TO: All Land Registrars

FROM: Kate Murray
Director of Titles

RE: Procedural Changes Resulting from the Ramsay Decision

The Ontario Court of Appeal issued a decision on June 30, 2005 in the case of *1387881 Ontario Inc v. Ramsay (Ramsay)*. The decision states that an easement or other interest that was created prior to the 40-year title search period prescribed in the *Registry Act* can be preserved by an acknowledgement of the easement or interest registered within the 40-year period. Recently an application for leave to appeal the Ontario Court of Appeal decision to the Supreme Court Canada was denied. Accordingly, the following are the processes the Ministry will follow in light of this decision.

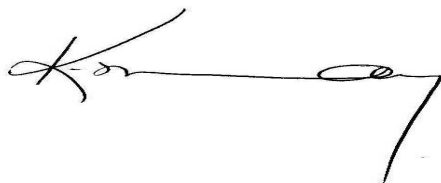
Previously the Ministry's approach was that a creating document or Notice of Claim within the 40-year search period was necessary to have a valid easement or interest. However, as a result of the *Ramsay* decision, changes are required in the process for Applications for First Registration and applications to bring a non-converted property to LTCQ, with respect to easements and other interests. Therefore, in addition to these previous requirements, an acknowledgement or reference to the easement or other interest in an instrument registered within the 40 years will also validate the easement or interest.

These principles could also apply to an existing LTCQ property. An LTCQ owner could apply to amend the parcel to add an easement or interest that was referenced in a Registry document in the 40 years preceding automation. Where there are references to the easement or interest on both the dominant and servient parcels, the owner of the dominant parcel may make an application to amend the register to add the easement to both parcels. If a transfer or charge has been registered on the servient lands since conversion, the consent of the servient owner and/or encumbrancer is also required. The servient owner may also apply by following the procedures set out in item #1 of EM199909. An owner may also obtain a court order to add the easement to a title.

An application to add an easement must include statements indicating that the easement continues to exist and has not been released and a solicitor must sign the application.

If an owner intends to pursue an LT+ application and wishes to adopt the principles of *Ramsay* by adding a Registry easement that was not brought forward on conversion, the matter must be addressed prior to the commencement of the LT+ application.

Managers and staff are to contact their Regional Surveyor when they encounter a scenario when the principles in *Ramsay* are being adopted.

A handwritten signature in black ink, appearing to read 'John Dalgliesh', with a long horizontal stroke extending to the right and a vertical stroke ending in a hook at the bottom right.

- c. John Dalgliesh, Director Real Property Registration Branch
Regional Managers
Regional Surveyors
Business Improvement Team
TSSO Staff