

# Easements: Case Scenarios to Challenge Your Skills

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## I INTRODUCTION

Since easements necessarily burden one parcel and benefit another, a lawyer working in the Land Registration system must understand how that relationship is properly reflected the parcel registers of the affected parcels.

### Conversion: Placing Easements on the AFR

An easement either exists or it does not. The process of converting a parcel into the land registration system does not create the easement. The determination as to whether an easement exists is made through the lawyer's exercise of professional judgment, when reviewing all of the available evidence. This evidence is derived from a number of sources including:

1. the title search;
2. through discussions with your client;
3. plan references;
4. aerial photography;
5. surveys; or
6. evidence arising from neighbours or relatives.

Generally, the existence of an easement which either burdens or benefits your client's parcel is discovered during the title search, unless it is an overriding interest (see s.73 of the LRA) or a prescriptive right.

The lawyer may also learn of the existence of an easement when the client tells you about the existence of a physical feature on the ground which may prove to be an easement.

Although there are many types of easements, there are two common types of easements:

1. Utility easements;
2. Access and usage easements

The easement may benefit one parcel or many parcels. The easement may burden one parcel or many parcels.

Before a lawyer converts a parcel and places a benefit or burden on an application for registration the lawyer must decide whether the easement exists and how it was created. This requires the lawyer to consider two questions:

1. What is the extent and nature of the easement?
2. How is the easement created if I am satisfied an easement does exist?
  - is the easement found in an express grant?

- is the easement referenced in the description for the full marketable title’s time frame without any express grant?
- is the easement only referenced on a plan? Remember a plan is not an enabling instrument but it may provide evidence of the existence of an easement)
- are there statutory declarations to substantiate a prescriptive right?
- if there are no statutory declarations that you discover during the title search, what statutory declarations do you need to create to provide the evidentiary base for the easement?
- Am I satisfied the easement is an overriding interest as defined in s.73 of the *LRA*? If yes, then, is it appropriate in the lawyer’s opinion to give notice of this by making reference to the easement in the textual qualifications on the parcel register?

For an easement created by prescriptive right, you must have documentary evidence to support your conclusion that an easement exists. This is usually derived by way of statutory declarations from the parcel owner, abutters, surveyor or other persons with knowledge of the easement. This evidence must be recorded in the registry of deeds prior to conversion and then the interest will be placed as a benefit or burden on the AFR, with the statutory declarations serving as the enabling instruments.

The lawyer must address, through the exercise of his or her professional judgment, the sufficiency of evidence that will be required. The lawyer must consider the quality of the evidence available as well as whether it is sufficient to establish the prescriptive right.

#### Revision: Adding or Removing Easements from the Parcel Register

Unless the easement falls within the “wandering boundary” exception, after a parcel is in the land registration system, an easement by prescriptive right cannot accrue. Therefore, new easements which a lawyer adds to the parcel register will usually be created by an express grant.

As with any revision, before making any changes to the parcel register, ensure you have reviewed the land registration view of the parcel on Property Online. This is the view which provides you all the live interests associated with the parcel and the approved description. It is the registered interests on this view which are guaranteed by the Nova Scotia government.

Before placing an easement on the parcel register you must do the following:

1. Review the parcel register (land registration view) to determine what already exists as against this parcel.

2. Assess the recorded interests which may be affected by the addition of a benefit or burden.
3. Perform a judgment search as judgments remain on the names based roll to determine if any judgments have priority.
4. Identify and review the PID for the parcel(s) which will be benefited or burdened by the easement you are adding to your parcel.
5. Ascertain whether the servient tenement PID is already in the land registration system and if not, then determine whether you require an abstract of title for the servient tenement.
6. Assess whether there are mortgages on the servient tenement PID which may affect the validity of your grant of easement.
7. If this is an easement created by prescriptive right as it falls within the wandering boundary exception then ascertain what evidence is required to allow you to place the easement on the parcel register. Reference to the Professional Standards will assist in this regard.

The lawyer attaches the Grant of Easement document to the Form 24 to add the benefit or burden to a parcel register. \_\_\_

### Reconciling the Parcel Register with the Description

During conversion ensure that all benefits and burdens you place on the application for registration (AFR), are described in proper form on the description.

If during revision, you add an easement on the parcel register, it is necessary to complete an amending parcel description certification application (the electronic Form 2 known as the PDCA) to ensure the easement is described in proper form on the approved description. Similarly, removal of an easement from the parcel register will also require an amending PDCA

Always refer to your PDCA checklist whether at the initial PDCA application, or any amending PDCA application. There may have been other changes to the PDCA requirements since any previous PDCA and you would want to make all the amendments at one time. (See the latest version of the PDCA checklist at Appendix "A").

### Flagging: The "Other" Side of the Easement

Since easements necessarily burden one parcel and benefit another, a lawyer working in the land registration system must understand how the relationship is to be shown on the affected parcels.

Not only must the lawyer understand how to input this information on an Application for Registration (AFR) but also how to interpret easements once placed in the parcel register.

As lawyers working within the system are charged with the responsibility to maintain an accurate land registration system, through parcel conversion *AND REVISION*, we must know how to take a traditional easement agreement and reflect it properly in the new system so that others can form accurate legal opinions regarding the affect of the easement on the parcel.

There has been some confusion as to how to properly show “the other side” of the easement in the parcel register when only one of the two affected parcels is being converted. Because the easement is an appurtenance, and runs with the land, it forms part of the government guarantee of title.

If only the benefit aspect of the easement is shown in the land registration system and the other aspect, the burden is missed during a conversion, then an inconsistency is created with regard to the government guarantee. While no case has yet come forward, it is possible that litigation may result when the legal benefit to a parcel is not recognized by the parcel which should have been burdened but was not at the time of conversion.

If the lawyer is satisfied that there is an easement which benefits a parcel, then there must be a corresponding burden on a servient tenement parcel or parcels. If the servient tenement is already in the land registration system and the burden is acknowledged on the PID or PIDs affected, then the flagging is not as critical. However, if the servient tenement has yet to enter the land registration system, then flagging is important.

When you convert the parcel or revise the register, there is a process to “flag” the servient tenement PID or PIDs. Flagging confirms the easement relationship between the parcels and alerts the servient parcel owner when they convert the non-LRA parcel into the system. When the lawyer exercises professional judgment with respect to the benefit the corresponding result is that you are also opining the existence of a burden on the servient tenement PID.

Lawyers should reference the professional standards, the legislation and the regulations to be satisfied as to the factual foundation of the easement if there is no express grant of easement upon which to rely.

At the time the servient tenement PID is subsequently converted, the owner will either:

1. accept and acknowledge the easement burden; or
2. dispute the easement burden which may trigger a claim for compensation, or a request for rectification.

In reviewing any apparent conflict in the parcel registers which may be created, the court will apply the principles set out in s.36.

It is not so critical to “flag” the dominant tenement PID if the easement is a burden on your parcel because the fact the burden is acknowledged on the servient tenement is the most important issue so that the dominant tenement will have continued use of the easement.



## II CASE STUDIES

The purpose of the exercises is to provide some good examples of how to properly move the easement interest into the new system and to create a method which reduces the likelihood of the burden being omitted on the servient tenement.

It is not always easy to determine the location of the burdened parcel - the servient tenement. Guidelines as to how to enter easement have been developed by the Government. However, there are legal issues to consider in addition to the procedural issues of how to do it.

The Easement Guidelines prepared by Service Nova Scotia and Municipal Relations can be found at the government website under "User Group Resources", Lawyers, Easement guidelines. A copy is produced at Appendix B. Additionally, the appendices attached illustrate how each parcel was converted, or revised, and the parcel register which ensued.

### **Case Study 1: Arrowhead Drive - PID 45198611**

This Hants County parcel was converted in July, 2004 by the Ansells. The Ansells sold to the Taylors in August, 2004. A Form 24 was then filed to revise the parcel register, changing the registered owners from the Ansells to the Taylors.

Arrowhead Drive was introduced to lawyers during Module 4 of the NSBS Land Registration Act education program in September, 2004. Given the complexity of the case study and the limited time it was reviewed during the Module 4, we felt this was worth repeating. Attached as Appendix C is a plan for the parcel which is shown as Lot M.

When this parcel was revised, the practice was for the benefits and burdens to attach to the registered owner(s). The practice has changed to more accurately reflect the law, such that, the benefits and burdens now attach to the parcel.

### **Objectives**

The objectives of this scenario for the 2005 conference are as follows:

1. To review how the submitting lawyer exercised her professional judgement to place the benefits and burdens on the Application for Registration when she converted the parcel.
2. The changes made to the legal description to complete the PDCA and why the description was altered.
3. What would the submitting lawyer do differently if she were preparing the AFR in February, 2005?

4. What process would you follow in the event this parcel was sold and the closing was February 11<sup>th</sup>?

### Facts

At time of conversion, the legal description contained the following easements:

Benefits (Together with):

1. A right of way in common with others to travel over the private road known as Arrowhead Drive.
2. A waterline easement that ran over an abutting property to the Shubenacadie river.
3. A right to travel on foot over the twenty foot waterline easement to the Shubenacadie River.

Burdens

4. A waterline easement that ran over the parcel being converted to the abutting property.
5. A travelled way over the parcel which was the present location of Arrowhead Drive until such time as the travelled way is located wholly within the limits of Arrowhead Drive.

### **A. Converting the parcel for the Ansell's - the original AFR (Refer to Appendix "D" for the AFR references)**

#### How to describe the Benefits

In this case, all of the benefits were created ("enabled") by the one deed into the owner. This is an important fact because the deed was the enabling document for all of the easements.

Therefore, "Together with and Easement/Right of Way" was the enterprise name entered on the Benefit screen of the AFR only once.

If the three benefit easements had been created by separate enabling documents, then each document which enabled or created the interest would have to be entered as separate enterprise names on the Benefit screen of the AFR.

Therefore, when reviewing the parcel register, do not assume that because there is only one reference to an enabling instrument in the benefits section that only one easement exists. This reinforces the importance of reconciling the description (which describes all the benefits and burdens) with the parcel register (which identifies the enabling instrument to create the benefits and burdens).

Another point to remember is that the enabling documents from December 1<sup>st</sup> (and perhaps earlier in some counties) will be scanned in to view directly off of the parcel register. However, the documents referred to in the AFR are not scanned, only documents which arrive after the parcel is in the land registration system.

The benefit is only one side of the easement. In the Arrowhead Drive example, the three benefits crossed two other parcels and these two parcels carry the burden of the easement. As well, neither of these parcels at the time of conversion were land registration parcels. In order to ensure the two servient tenement PIDS are identified in the land registration system, it is important to flag the servient tenement PIDS.

One of the servient tenement PID's was with respect to the burden for the Arrowhead Road. The other servient tenement PID was over the abutting parcel and applied with respect to two burdens: 1. where the waterline easement ran under the ground of that parcel and 2. the easement to walk over that waterline.

One method to use to link the benefit with the burden, is to include the individual PID for each servient tenement parcel on the AFR. This is done by entering the Servient Tenement PID of the burdened parcel in the Benefits section of the AFR. Under enterprise name you enter the PID number to "pair" the burden with that particular benefit. Once you enter a PID number in the enterprise field, the system will automatically select "Servient Tenement PID" in the interest type box.

If the particular benefit affects more than one parcel, you should enter all the Servient Tenement PIDS that are affected.

The second method to use if you cannot determine which PID or PIDs are burdened with the easement is to enter "Various Owners" as the Enterprise Name in the Benefits section of the AFR. However, using this method will result in no flag to double check whether the easement burden is acknowledged by any or all of those parcels when they each convert to the land registration system.

### How to describe the Burdens

The Arrowhead Road example shows one Burden entry under the "Burdens/Qualifications on the Registered Interests" section. The burden is in favour of ("known as the Interest Holder") "various owners". This means that the parties who benefit from the easement could not be determined in a traditional forty year search of the parcel. Searches of abutting parcels would have to be done to determine this.

The certified description shows two burdens: one being the travelled right of way over the parcel and the second being the waterline easement over the parcel in favour of others. Note that only one Burden entry was necessary because the two burdens were enabled by the same document - the deed into the owner. Again, the certified description is where the detail of any burdens will be found.

However, there is an issue with respect to the temporary travelled way which is addressed in more detail in the section "Converting the Same Parcel in February, 2005" at page 12.

If a parcel being converted describes the burden, you may “pair the benefit to it” by entering the Dominant Tenement PID as a separate entry in the Enterprise Screen.

However, as noted earlier, it is not critical to do this. If the parcel being converted is acknowledging burdens associated with the use of the parcel, then presumably the benefit to one or more parcels is protected. If that lawyer does not add a benefit to a parcel register at the time of conversion, it does not negate the effect of the easement as the dominant tenement PID has already been converted with the burden.

In the Arrowhead example, the benefits were not paired with the disclosed burdens.

### Preparation of the initial PDCA

When acting for the Ansell’s, the substance of the legal description did not change but the benefits and burdens were moved within the description to make it easier to read and follow. Attached as Appendix E is the approved legal description which is the same description as shown on the current parcel register.

At the time this PDCA was prepared the full text for the parcel, the benefits and burdens were required.

As well, the Arrowhead case study provides the classic example as to why the PDCA should be submitted following the receipt of the full title search. While the legal description in this case did describe all the benefits and burdens associated with the parcel, it is more common that at least one benefit or burden will arise from a separate and unreferenced enabling instrument. Consequently, if a lawyer relies on the most recent legal description alone it is more likely that items will be missed which will require an amending PDCA.

### **B. Converting the same parcel in February, 2005**

A number of items may be done differently now as we become familiar with the LRA and the processes within the system. The principles used to ascertain the benefits and burdens remain the same, as well as the analysis of what constitutes the enabling instruments to place the benefits and burdens on the register.

Having said that, the second burden on the Arrowhead parcel on the parcel did not arise by way of separate grant, nor does it appear in the title search for the time required to satisfy the *Limitations of Actions Act*. This burden was confirmed in the deed into the current owner. It could not be ignored nor was it clear how long the temporary travelled way had been used.

Also Lot M is subject to the present location of the travelled way of Arrowhead Drive (shown as temporary travelled way on the aforementioned plan signed by Harold S.

Lively, N.S.L.S.). Until such time the travelled way is located wholly within the limits of Arrowhead Drive.

This is an example which illustrates when a lawyer is called upon to exercise his or her professional judgment. The choice is to either place the easement burden on the parcel register because it is referenced in the deed (as was done here) or reference it by way of a textual qualification.

The process changes are as follows:

1. The registered owners of the parcel are no longer identified as the holders of the benefits or burdens on a parcel register. The benefits and burdens form part of the registered ownership interests and travel with the parcel. Therefore, the benefits and burdens are placed in the benefits or burdens enterprise section. For benefits use “together with...” and for burdens we use interest holder, dominant tenement PID or in the case of restrictive covenants, “subject to restrictive covenants”. See Appendix F for the February, 2005 AFR benefits and burdens sample.
2. The PDCA checklist has been updated in light of the December 1<sup>st</sup> legislative and regulatory amendments. We strongly recommend that each PDCA be reviewed in light of the PDCA Checklist before it is submitted. (Refer to Appendix “A”).
3. Pursuant to s.37(4)(f) of the *LRA*, an application shall be in the prescribed form accompanied by the appropriate *MGA* compliance statement as set out in the *LRA* Administration Regulations, s. 5(7)(f).

The PDCA checklist references this provision and it is mandatory to include in the PDCA a statement that the parcel complies with the subdivision provisions (Part IX) of the *Municipal Government Act* (the “*MGA*”). Ensure, as the converting lawyer, you use the language as set out in the regulations to avoid rejection. The statement regarding compliance should be placed at the conclusion of the description.

4. Many lawyers prefer to use short form descriptions whenever possible as it easier to prepare and their view is that there is then less risk of error. The sections from the PDCA checklist as to when you may use short form descriptions are reproduced here for your convenience.
5. To facilitate the ease of reading a description which has multiple benefits and burdens (like Arrowhead Drive) we recommend a practice used by Garth Gordon at TMC Law Office. Identify each benefit and burden on the description with headings such as FIRST BENEFIT, SECOND BENEFIT and so on. Compare the approved description with the description we would submit if we converted the parcel today. (Appendix G)

. Excerpt from the January, 2005 version of the PDCA checklist:

	<b>Full Text:</b> The main description is in full text. <b>OR</b>	LR Administration Regulation 5(7),
	<b>Short Form Exception:</b> The parcel is on an approved plan of subdivision (excludes instruments of subdivision) or plan of survey recorded in the Registry, the main description is by plan reference that includes the unique identifier as shown on the plan (e.g. Lot 5A), the registry plan reference No(s). and the registration district.	(8)(a); PDCA Policy and Standards
	<b>Savings and Exceptings:</b> Parcels saved & excepted from the main description are in full text. <b>OR</b>	LR Administration Regulation
	<b>Exception:</b> The excepted parcels are described by unique lot identifiers in a plan of subdivision or a plan of survey previously registered under the Registry Act or LRA or now being recorded.	5(7),(8)(a)
	<b>Benefits and Burdens (except restrictive covenants, utility easements and development agreements that run with the land):</b> : Each benefit and burden is described in full text. <b>OR</b>	NSBS Professional Standard 2.1; LR Administration Regulation 5(7),
	<b>Exception:</b> For any benefit and burden that is described (depicted) and identified uniquely on a plan on file in the Registry of Deeds, the registered plan reference to the plan is included	(5)(8)(a); PDCA Policy and Standards
	<b>All information pertinent to the use of easements:</b> All information pertinent to the use of easements are in full text. <b>OR</b>	NSBS Professional Standard 2.1; LR Administration Regulation 5(7),
	<b>Exception:</b> For any easement information pertinent to its use that is described in a document on file at the Registry of Deeds, the document reference (year and document no. or the book and page) to the document is included, provided that a)- the referenced document contains only one easement, and b)- the usage details exceed 5,000 characters; c)- the referenced document will appear on the AFR/parcel register as an enabling instrument for the parcel; and the wording for the document reference is as follows: “Information pertinent to the use of the easement is described in Book/Page [or document number if no book & page]”.	(5)(8)(b); PDCA Policy and Standards

### **C. Revising the Parcel Register for PID 45198611**

The first revision of the Arrowhead Drive parcel occurred when the Ansell's sold to the Taylors. This transaction required the lawyer acting for the Taylors, the purchaser's lawyer, to revise the parcel register using a Form 24, the Request to Revise the Registration and Certificate of Legal Effect. The Form 24, or for that matter all forms which attach as cover pages to LRO documents, become part of the document. These forms, together with the enabling instruments, are scanned and are accessible by clicking on the view icon below the document number on the parcel register.

The LRO staff are directed by statute to follow the instructions as set forth by the lawyer on the forms. The LRO staff will not look behind the Form 24 to check to see if the lawyer completed the instructions correctly. Any errors which occur on the parcel register as a result of a lawyer's error in completing the Form 24 will, at a minimum, result in a rectification by way of Form 17 or in the worse case scenario, with litigation.

Attached as Appendix H is the existing parcel register for Arrowhead Drive. The Taylors own the parcel in fee simple and as joint tenants. Their ownership is guaranteed by the provincial government. Since the government guarantee is based on the lawyer's certificate of legal effect, only eligible lawyers, may revise a parcel register. However, adding or removing recordings, may be effected by anyone with the proper form and enabling instrument.

#### Facts

Assume you have been retained by the George Frank and Eric Robert to facilitate the purchase of Arrowhead Drive from the Taylors. The agreement of purchase and sale has been signed by the time they arrive at your office.

You will learn during your meeting with the clients that the owners of Lot N (PID 45347200) have agreed to grant an easement over their lot to the benefit of Lot M. This will cement the temporary travelled way which has been in use now for some time. Assume Lot N is in the land registration system. (If Lot N were a non-LRA parcel then a full title search of Lot N would normally be required in support of the grant of easement).

#### Revision Steps for First Form 24

- A. First you will revise the parcel register to transfer the ownership from the Taylors to Frank & Robert. Following are the steps you would take as the purchaser's lawyer working with a land registration parcel to conclude the retainer.
  1. Conduct a search using the Land Registration View for the parcel on Property Online to ascertain the status of the Arrowhead Drive parcel. You will learn this is LRA parcel.
  2. Review the parcel register to ascertain if any objections need to be raised with the other

lawyer as a result of your review of the parcel register. You will note that there are no recordings associated with the Arrowhead Drive parcel at this time. (Appendix G).

3. You will review the approved description and discuss with your clients whether they wish to retain the services of a surveyor. You will also review the PDCA checklist to ascertain what changes you may have to make to the description as a result of revising the registered ownership interests due to the sale.
4. Since the easement from Lot M is to be placed on the parcel register after Frank & Robert are the owners then the Form 24 with the deed from the Taylors to Frank & Robert will appear as on the Form 24 below.
5. There will be no changes to the description during this transfer of ownership so no amending PDCA is necessary.
5. Once the Form 24 is registered by the LRO staff then the parcel register is revised to show the new owners on the parcel register and the lawyer will receive a Form 29 (the SRRI) to confirm what changes were effected to the parcel register as a result of the lawyer's instructions on the Form 24.
6. Compare the Form 29 with the Form 24 and with the parcel register to ensure no errors were made during the revision.
7. You will provide your clients with a reporting letter as to the effect of the revision.

**Sample Form 24 (some sections have been removed to facilitate ease of reading)  
Request to Revise the Registration and Certificate of Legal Effect**

**In the matter of** Parcel Identification Number (PID)

<b>PID: 45198611</b>
<b>PID:</b>
<i>(Expand box for additional PIDs.)</i>

- (Check if appropriate)* This transfer relates to a portion of the above-noted consolidated parcel.
- (Check if appropriate)* This transfer of ownership also subdivides land and creates a parcel or parcels 10 hectares or greater in area.

**Take notice that** the transferees hereby request a revision of the registration of the above-noted parcel, as set out below



**I hereby certify that**

1. The legal description of the parcel contained, or referred to, in the attached document is identical to the legal description contained in the parcel register for the property.
2. By virtue of the attached document, the following registered interests are changed in the parcel's registration (*insert N/A if not applicable*):

<b>Instrument type/code</b>	Deed
<b>Expiry date</b> (if applicable)	N/A
<b>Interest holder and type to be removed</b> (if applicable)	Robert James Taylor & Jill Elizabeth Taylor (Fee Simple)
<b>Interest holder and type to be added</b> (if applicable) <i>Note: include qualifier (e.g. estate of, executor, trustee, personal representative) if applicable</i>	George Frank & Eric Robert (Fee Simple)
<b>Mailing address of interest holder added</b> (if applicable)	248 Arrowhead Drive Enfield, Nova Scotia B2T 1G9
<b>Manner of tenure</b> (if applicable)	Joint Tenants
<b>Description of mixture of tenants in common and joint tenancy</b> (if applicable)	N/A
<b>Access type to be removed</b> (if applicable)	N/A
<b>Access type to be added</b> (if applicable)	N/A
<b>Non-resident</b> (to eligible lawyer's information and belief) (Yes/No?)	No
<b>Reference to related instrument in names-based roll/parcel register</b> (if applicable)	N/A

**Paragraphs 3 - 9 are not applicable**

10. It is appropriate to revise the parcel registration for the indicated PIDs as certified in this request.

**Certified** at \_Halifax, in the County of Halifax, Province of Nova Scotia, February 11, 2005.

## Revision Steps for Second Form 24

Second, you will effect a second revision on the parcel register to add the easement granted to your client's parcel by the owners of Lot M. Following are the steps you would take.

1. Perform a sub search for your parcel to check for any changes since the last revision.
2. Perform a search for Lot M on Property Online to determine the status of Lot M (LRA or non-LRA parcel). We are assuming the parcel is in the land registration system for the purposes of the scenario.
3. Since Lot M is in the land registration system, it is not necessary to prepare a full abstract of title for the parcel. As well, ascertain if there are mortgages on Lot M which require you to contact the lender re: the easement.
4. You will review the approved description for your parcel in light of the grant of easement. Is it different and if so, then you will have to file an amending PDCA after the Form 24 has been registered at the LRO.

When amending a PDCA as a result of a revision, you record the document, put a note in the Form 24 that an amending PDCA is being done even though you confirm that the legal description contained in the attached document is the same as the certified document. So register first, get the document number and then amend PDCA. This is like an undertaking or follow up.

5. Once the Form 24 is registered by the LRO staff then the parcel register is revised. In this scenario, we are assuming there is no change to the description so the only difference on the parcel register will be the addition of a new easement benefit to the Arrowhead Drive parcel.
6. Compare the Form 29 with the Form 24 and with the parcel register to ensure no errors were made during the revision.
7. You will provide your clients with a reporting letter as to the effect of the revision.

**Sample Form 24** (some sections have been removed to facilitate ease of reading)  
Request to Revise the Registration and Certificate of Legal Effect

In the matter of Parcel Identification Number (PID)

<b>PID: 45198611</b>
<b>PID:</b>
<i>(Expand box for additional PIDs.)</i>

- (Check if appropriate)* This transfer relates to a portion of the above-noted consolidated parcel.
- (Check if appropriate)* This transfer of ownership also subdivides land and creates a parcel or parcels 10 hectares or greater in area.

**Take notice that** the interest holders hereby request a revision of the registration of the above-noted parcel, as set out below.

1. The legal description of the parcel contained, or referred to, in the attached document is identical to the legal description contained in the parcel register for the property.  
**NOTE:** An amending PDCA will be filed once the parcel is revised in accordance with this Form 24.

**Paragraphs 2-4 are not applicable**

5. By virtue of the attached document, the following benefits (e.g. right of way benefits) are changed in the parcel’s registration *(insert N/A if not applicable)*:

<b>Instrument type/code</b>	Deed
<b>Expiry date</b> (if applicable)	N/A
<b>Interest holder and type to be removed</b> (if applicable)	N/A
<b>Interest holder and type to be added</b> (if applicable) <i>Note: include qualifier (e.g. estate of, executor, trustee, personal representative) if applicable</i>	Together with an Easement/ROW (Easement/Right of Way Holder (Benefit))
<b>Mailing address of interest holder added</b> (if applicable)	unknown

<b>Servient tenement parcel(s)</b> ( <i>list all affected PIDs</i> ): <i>Note: If the servient tenement parcel is not registered under the Land Registration Act, you must attach an abstract of title for the servient tenement parcel and a Form 8 Opinion of Title as required by the Land Registration Administration Regulations subsection 8(2).</i>	45347200
<b>Reference to related instrument in names-based roll/parcel register</b> (if applicable)	N/A

**Note: The following section of paragraph 5 is only filled out if the servient tenement parcel is in the land registration system. This allows the burden to be placed on that register without filing a second Form 24, with the associated fee. However, if the servient tenement PID is a non-LRA parcel, then you do not complete the section below.**

- By virtue of the attached document, the following related burdens are added to the servient tenement L R parcel(s) listed above (*check box and complete table if applicable*):

<b>Instrument type/code</b>	Deed
<b>Expiry date</b> (if applicable)	N/A
<b>Interest holder and type to be removed</b> (if applicable)	N/A
<b>Interest holder and type to be added</b> (if applicable) <i>Note: include qualifier (e.g. estate of, executor, trustee, personal representative) if applicable</i>	45198611 (easement/Right of Way Holder (Benefit))
<b>Mailing address of interest holder added</b> (if applicable)	unknown
<b>Reference to related instrument in names-based roll/parcel register</b> (if applicable)	N/A

**Paragraphs 6-9 are not applicable.**

10. It is appropriate to revise the parcel registration for the indicated PIDs as certified in this request.

**Certified** at \_Halifax, in the County of Halifax, Province of Nova Scotia, February 11, 2005.

## **Case Study 2: Cobequid Drive - PID 55026264**

### Objectives

The objectives of this scenario for the 2005 conference are as follows:

1. To review the process the submitting lawyer followed to determine the benefits and burdens associated with PID 55026264.
2. To review and analyze the steps the lawyer followed to include the benefits and burdens on the application for registration.

### Facts

Attached as Exhibit “J” is the application for registration submitted to convert this parcel. Attached as Exhibit “K” is the approved legal description for the parcel.

There are multiple easements associated with this parcel which is located on Cobequid Drive. It has two access options: Cobequid Road which is public or Brecken Ridge Lane which is a private right of way. The plan and parcel description are at Appendix “”.

This parcel was approved for subdivision by the Halifax Regional Municipality on April 3, 2001 on a plan of subdivision on file at the Registry of Deeds as plan no. 34443 in drawer no. 377.

Attached as Exhibit “I” is a modified plan which shows the parcel and many easements. We wish to thank Lisa Neilly of the Barristers’ Society and Mr. Kent Carrack, N.S.L.S. who prepared the original plan. Without their assistance we would not have the modified plans which allow for clearer examples.

At time of conversion, the legal description contained the following easements:  
Benefits (Together with):

1. A right-of-way and service easement over Parcel RSE-130 situated on Lot 130 for access install and maintain sewer laterals and electrical and communication lines.
2. A right-of-way and service easement over Parcel RSE-35A situated on the adjoining Lot 35A for the same purposes as #1.
3. A 10.13 foot wide right-of-way and service easement with respect to Parcel RSE-22A being situated on Lot 22A for the same purposes as #1.
4. A 40 foot wide right-of-way and service easement with respect to Parcel RSE-24A, being situated on the adjoining Lot 24A for the same purposes as #1.

5. A 20 foot wide right-of-way and service easement with respect to Parcel U.S.E. 35AA, being situated on the adjoining Lot 35A for the same purposes as #1.
6. A 20 foot wide right-of-way and service easement with respect to Parcel U.S.E. 130B, being situated on Lot 130.

**Burdens (Subject to):**

1. Restrictive covenants recorded in Book 6989, page 531, Document Number 10055.
2. A Development Agreement in favour of the Municipality of the County of Halifax recorded in Book 4947, page 812;
3. A Easement Agreement (affecting various owners) made between Stoneridge Properties Limited and Scott and Penny Wells recorded in Book 6985, page 828 as Document Number 9367;

How to describe the Benefits

There were six benefits as noted above. These six benefits affected four parcels. The first two easements and the last two easements ran over the same property. All easements were (fortunately) described in the same enabling instrument. Therefore, there was only one “Together with” statement in the AFR and ultimately the parcel register. The pairing of the easements with the Servient Tenement PIDs resulted in only four entries as only four parcels were burdened.

The easements were shown on a plan and well described and the servient tenement PIDs could be easily identified and able to be flagged.

How to describe the Burdens

In this scenario, there are three burdens but only one easement burden. It was an agreement made between the original developer and a lot owner in the area regarding the use of the private lane known as Brecken Ridge Lane. This appeared to affect the parcel being converted and was shown in the AFR that the interest holder or parties benefiting were “various owners”. In this situation, the burden was created by the easement agreement. There was only one easement burden created by that document as can be seen in the certified description.

Access Issue

In this example, the private road, Brecken Ridge Lane, was never used to access the parcel. The house is currently under construction and will be accessed from the Cobequid Road and not Brecken Ridge Lane. Therefore the access field on the AFR is shown as Public and a Textual Qualification was added to indicate that there was also Private Access.

Another option would have been to note the Access in the Parcel Register as “other” and then put a Textual Qualification to describe the two types of access. In this case, it was known that the main access would be Public and it appeared to be the most accurate way to describe the access.

### **III Conclusion**

We chose the examples to provide the basics with respect to identifying the benefits and burdens and to help clarify the process you will follow to ensure benefits and burdens are put into the land registration system accurately.

The exercise of the lawyer’s professional judgment in this area of property law cannot be understated. We recommend you familiarize yourself with the *Land Registration Act*, as amended, the associated regulations and the Nova Scotia Barristers’ Society Professional Standards.

There are numerous resources available to lawyers and legal assistants. Below are a few of the web pages we recommend and use regularly.

1. Nova Scotia Barristers’ Society [www.nsbs.ns.ca](http://www.nsbs.ns.ca),
2. Nova Scotia Barristers’ Liability Claims Fund  
Real Estate Resource Page [www.nsblcf.ca/realestate.htm](http://www.nsblcf.ca/realestate.htm)
3. Registry 2000 Project [www.gov.ns.ca/snsmr/property/registry/](http://www.gov.ns.ca/snsmr/property/registry/)
4. Nova Scotia Property Online: [www.nspropertyonline.ca](http://www.nspropertyonline.ca)