

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Shea v. Bowser*, 2016 NSCA 18

**Date:** 20160318

**Docket:** CA 435271

**Registry:** Halifax

**Between:**

James David Shea and Linda Shea

Appellants

v.

Loyal F. Bowser and Wendy Lynn Bowser

Respondents

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**Judge:** The Honourable Justice Elizabeth Van den Eynden

**Appeal Heard:** November 19, 2015, in Halifax, Nova Scotia

**Subject:** Right to relocate an express grant of right of way

**Summary:** The Sheas had an express grant of ROW which burdened the Bowser property. The application judge was asked to determine its location. The contentious aspect of his declaration is that he did not place the ROW in its original location as he found it to exist. Instead, in the interests of justice, he declared the ROW to be in a different location on the Bowser property.

The Sheas appealed, arguing relocating an express ROW is a reversible error. Absent agreement to relocate, abandonment, or extinguishment, none of which exist in this case, the Sheas assert it is their legal right to have the ROW in its original deeded location. This is so, notwithstanding such placement is more invasive to the Bowsers, and there might be practical reasons for the application judge wanting to relocate the ROW.

**Issues:**

(1) Did the application judge have the authority to relocate a ROW created by express grant to a different location from the one originally granted?

(2) Did the application judge err in his cost award by only awarding the appellants 50% of their incurred expert fees?

**Result:**

Appeal allowed. This Court found the application judge did not have the authority to relocate the ROW. Respondents ordered to pay the full expert fees in the amount of \$6,917.25 and costs on appeal of \$1,500.00, inclusive of disbursements.

*This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 9 pages.*