

NOVA SCOTIA COURT OF APPEAL
Citation: *Penney v. Langille*, 2018 NSCA 43

Date: 20180523
Docket: CA 465436
Registry: Halifax

Between:

Jacob Frederick Penney

Appellant

v.

Bedford Reid Langille, David Charles Campbell,
Sharon Joan Campbell, Stanley R. Sutherland, Barry Vernon Sutherland,
Heather Ann Emmett, Scott Cullan and Rose Marie Hatt

Respondents

and

Registrar General of Land Titles

Intervenor

Judge: The Honourable Justice Peter M.S. Bryson

Appeal Heard: April 9, 2018, in Halifax, Nova Scotia

Subject: Real Property. Land Registration Act. Easements. Overriding Interests. Correction of Registry.

Summary: All parties own properties in a subdivision created in 1983 bordering on Caribou Lake, Lunenburg County, Nova Scotia. In 2010, the appellant, Mr. Penney, purchased a lot and migrated it to the registry under the *Land Registration Act*. The respondents claimed a right-of-way to the lake over a portion of Mr. Penney's property, granted in 1983. No such right-of-way was noted in Mr. Penney's migration, and he denied that the respondents enjoyed the claimed right-of-way. The respondents successfully applied for a declaration and

correction to the registry. Mr. Penney appealed.

Issues:

(1) Did the respondents' deeds grant the claimed right-of-way?

(2) If so, was it necessary for the judge to consider the equitable factors in s. 35(6) of the *Act* regarding whether to correct the registry?

(3) If so, did the judge err by deciding to correct the registry?

Result:

Appeal dismissed. The respondents were granted rights-of-way which were overriding interests enforceable against Mr. Penney, even if not recorded or registered (s. 73(1)(e) of the *Act*). The equitable factors in s. 35(6) of the *Act*, applied to confirming, not correcting, a registration. In any event, the respondents were entitled to record their rights-of-way under s. 47(4) of the *Act*, precluding any exercise of discretion under s. 35(6).

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 11 pages.