SUPREME COURT OF NOVA SCOTIA

Citation: *Landry v. Kidlark*, 2018 NSSC 208

Date: 20180905
Docket: Pic No. 453177
Registry: Pictou

Between:

Joseph Philip Bernard Landry

Applicant

v.

Jeffrey G. Kidlark, Joan C. McKale

Respondents

Judge: The Honourable Justice John D. Murphy

Heard: January 29, 2018, in Pictou, Nova Scotia

Counsel: E. Anne MacDonald, for the Applicant
Jeffrey G. Kidlark, Respondent, In Person

By the Court:

Introduction

[1] This application arises from a dispute over the contents of certain parcel registers under the *Land Registration Act*, S.N.S. 2001, c. 6 (the *LRA*).

[2] The Applicant applies by Notice of Application in Chambers filed June 30, 2016, for “an order to substantiate the recording of an easement” between several non-parties “as a benefit to the registered interest” of the Applicant’s property, and as “a burden to the registered interest” of the Respondents.

Background

[3] To understand the background of this application, it is necessary to consider the related decision of Hood J. in *Landry v. Kidlark*, 2014 NSSC 154 (the 2014 decision), which involved essentially the same parties and property interests.

[4] The 2014 decision arose from an action brought by Joseph Philip Bernard Landry, and his wife E. Anne MacDonald (together sometimes referred to as “Landry”). They alleged, among other things, breach of a view-plane easement and of a pedestrian right of way over the neighbouring property of Jeffrey G. Kidlark and his wife Joan C. McKale (together sometimes referred to as “Kidlark”). Both the plaintiffs and the defendants had purchased their properties from J. Peter MacKay and V. Carol MacKay, who were subdividing a large area on the shore of the Northumberland Strait. The plaintiffs took title through a company owned by Mr. Landry, Cottage Mechanical Services Ltd. (Cottage).

[5] The Cottage lot was not on the water. Mr. Landry and Ms. MacDonald had negotiated an agreement with the MacKays (before Mr. Kidlark and Ms. McKale bought the property) for a pedestrian right of way from their lot to the Strait, along with an easement prohibiting the obstruction of their view. This agreement, between Cottage and the MacKays, was dated June 9, 2000. It was filed in the Pictou County Registry of Deeds as Document 2484, Book 1348, at pp. 433-438. The 2000 Agreement described the right of way and the view-plane easement in the following terms:

> 1. MacKay hereby grants unto Cottage a pedestrian right-of-way over and along that portion of the lands described in Schedule “B” hereto annexed, between said

> Schedule “A” lands and the waters of the Northumberland Strait. Provided however, that the pedestrian right-of-way shall be limited to the area which is an extension of the private road in an easterly direction until it reaches the shores of the Northumberland Strait.
>
> 2. For the purpose of preserving and protecting the use and enjoyment by Cottage of the lands more particularly described in Schedule “A” hereto annexed, MacKay hereby grants to Cottage an easement over the lands described in paragraph 1 above, lying to the east of the lands described in Schedule “A” hereto annexed; said easement being in the form of a prohibition against construction or erection by MacKay, or those acting on behalf of MacKay, of any structure or object which would interfere with the view from the dwelling to be erected on the lands described in Schedule “A”, of the waters of the Northumberland Strait. Nothing herein contained shall obligate MacKay to maintain said lands free and clear of vegetation or other naturally occurring things.

[6] The MacKay lands were later subdivided into several waterfront lots. The right of way was relocated by agreement dated May 30, 2002, to facilitate the sale of one of the other MacKay lots. This agreement, also between Cottage and the MacKays, was filed in the Pictou County Registry of Deeds as Document 2573, Book 1420, at pp. 752-756. After stating that the parties had agreed to amend the 2000 Agreement “by altering the location of the right-of-way thereby created for Cottage Mechanical”, the 2002 agreement stated, in part:

> 1. The right-of-way created for the benefit of Cottage Mechanical pursuant to paragraph 1 of said Agreement is hereby extinguished. Paragraph 1 is hereby revoked in its entirety.
>
> 2. MacKay hereby grants unto Cottage Mechanical a pedestrian right-of-way over the lands of MacKay more particularly described in Schedule “A” hereto annexed.
>
> 3. As part of the consideration for Cottage entering into this Agreement, MacKay covenants that the lands described in Schedule “A” will always be maintained as a private right-of-way and MacKay further covenants that he will not grant similar or any other rights with respect to the schedule “A” lands to patrons of Salty Reef Driving Range or any other commercial or business enterprise. This covenant shall enure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.

[7] Several days before this agreement was concluded, Cottage had conveyed its property – known as Lot 5 – to Mr. Landry. That deed, dated May 27, 2002, was recorded almost a year later, on April 11, 2003.

[8] Landry agreed to an amendment of the view-plane easement in a further agreement, executed on July 12, 2004, and recorded as an interest under s. 47 of the *Land Registration Act* on July 14. This agreement, between the MacKays and Mr. Landry, referred to the 2000 and 2002 agreements between Cottage and the MacKays. The 2004 agreement provided, in part:

> AND WHEREAS the parties hereto have agreed to modify the Restrictive Covenant as set out in the Agreement dated June 9th, 2000, as hereinafter set out;
>
> ...
>
> 1. MacKay hereby covenants and agrees with Landry to observe and comply with the following restrictive covenant. The burden of the restrictive covenant shall run with all or any of the lands referenced in the Nova Scotia Land Registration System as PID #65147068 (Lot 4) as the servient tenement for the benefit of all or any of the lands described in Schedule "A" hereto (Lot 5) as the dominant tenement and the owner(s) and occupier(s) of such lands from time to time. The restrictive covenant shall be binding upon and enure to the benefit of the heirs, executors, administrators, representatives, successors in title and assigns of the parties hereto:
>
> (a) MacKay hereby covenants with Landry that MacKay shall not permit the construction, erection, or placement of any building, structure or object, temporary or permanent, or permit the planting or cultivation of any vegetation [with the exception of flower gardens having a height at full growth of not more than two (2) feet] within that portion of Lot 4 shown as Parcel VP-2 on the Plan of Survey dated June 24, 2004 attached as Schedule "C ' hereto and as more particularly described in Schedule "D" attached hereto (the "Parcel VP-2"), which in any way would have the effect of either partially or completely blocking, obstructing, impairing, or lessening the view of the Northumberland Strait from the Lot 5 Dwelling.
>
> 2. MacKay hereby grants to Landry, and all owner(s) of Lot 5 from time to time, an easement to enter over the Parcel VP-2 for the purpose of trimming naturally occurring vegetation on Parcel VP-2 to the extent that it interferes with the view of the Northumberland Strait from the Lot 5 Dwelling. This right of entry shall be subject to the owner(s) of Lot 5 giving 14 days written notice by registered mail to the owner(s) of Lot 4.
>
> 3. Landry hereby releases all remaining lands of MacKay [save and except Parcel VP-2] from the Restrictive Covenant as set out in paragraph 2 of the Agreement dated June 9th, 2000.

…

> 6. MacKay hereby grants and confirms to Landry, as successor in title to Cottage of Lot 5, the Right of Way in its revised location, as set out in the Agreement dated May 30, 2002.

[9] Accordingly, the 2004 agreement between Mr. Landry and the MacKays created a new view-plane easement over Lot 4, and confirmed the right of way as described in the 2002 agreement. It further confirmed that Mr. Landry was successor in title to Cottage.

The 2014 decision

[10] Mr. Kidlark and Ms. McKale bought Lot 4 from the MacKays in 2006. Lot 4 was consolidated with land abutting on Mr. Landry's Lot 5, including the area containing the Landry right of way, to create a new Lot 4A. Mr. Kidlark subsequently planted trees, to which Landry objected, claiming this violated the view-plane easement. Mr. Landry and Ms. MacDonald brought an action against Mr. Kidlark and Ms. McKale, alleging interference with the easement and the right of way, and against the MacKays for negligent misrepresentation. Landry argued that it followed from the consolidation of Lot 4 and adjoining parcels into Lot 4A that the view-plane easement should be extended over the area lying between Parcel VP-2 (which was subject to the view-plane easement) and the Landry-MacDonald property, Lot 5. Hood J. rejected this argument (paras. 93-97). She also found no basis for rectification of deeds (paras. 98-105).

[11] Hood J. rejected the Landry claim that the registration of Lot 4A under the *LRA* had improperly extinguished their easement and right of way, noting, at para. 109, that the

> description of Lot 4A specifically makes it subject to … the right-of-way in favour of Lot 5 …, and the agreement of July 12, 2004… The latter document provides for the restrictive covenant (over Parcel VP-2) and also regrants the right-of-way.

[12] While the description of Lot 4A did not refer to the 2000 agreement, this was unnecessary because that agreement had been "superceded by two subsequent agreements (clauses 1 and 2) and the passage of time (clause 3)" (para. 111). As such, Hood J. stated, "the documents registered pursuant to the *Land Registration Act* affecting Lots 4A and 5 accurately reflect the benefits and burdens affecting these lots" (para. 112).

[13] There was also a dispute over access to the right of way and to Parcel VP-2, because Landry did not have a deeded right of way over a *cul-de-sac* located at the intersection of the various properties subdivided by the MacKays. This was a parcel that the MacKays still owned, located at the end of a private road. Landry had a right of way over the road for access to their own lot, but not over the *cul-de-sac* (paras. 114-123). Hood J. held that Landry had an equitable easement over that area, which was necessary to allow them to access their right of way and to clear obstructions as permitted by the view-plane agreement. Neither the MacKays nor Mr. Kidlark and Ms. McKale had grounds to defeat this equitable easement, as Hood J. explained:

> 124 As between plaintiffs [Landry] and the MacKays, I am satisfied the equity is established and the extent of it is to give the plaintiffs access over Parcel B, the cul-de-sac portion of Salty Reef Road to the pedestrian right-of-way and thence from it to Parcel VP-2 which abuts the right-of-way. The remedy is an equitable easement over Parcel B, still owned by the MacKays.
>
> 125 An equitable easement can be defeated by the purchase of the lands subject to the equitable easement by a third party without notice. That is not the case here with respect to Parcel B: the MacKays still own it. However, the equitable easement does affect Kidlark and McKale. Although they are not the owners of Parcel B, the equitable easement does result in the plaintiffs having access to their lands to exercise rights pursuant to the right-of-way and view plane agreements.

[14] Mr. Kidlark and Ms. McKale counterclaimed for, *inter alia*, a declaration that any easements or rights of way over their property were "null and void" (para. 131). Hood J. rejected this claim, holding that Landry had a valid view-plane easement and right of way. She rejected the assertion that the view-plane easement was invalid because the dominant and servient tenements were not contiguous or because it had somehow been breached by Landry (paras. 138-148). With respect to the validity of the right of way, she said:

> [149] Kidlark and McKale also say the plaintiffs' pedestrian right-of-way to the shore is invalid. They say the MacKays granted a right-of-way to Cottage on May 30, 2002, when Cottage had conveyed its interest to Philip Landry three days earlier... They say since Cottage no longer had title to the lands, the grant of right-of-way is invalid.
>
> [150] However, when the restrictive covenant over Parcel VP-2 was granted by the MacKays to Philip Landry in July 2004, they also granted and confirmed "to

> Landry as successor to Cottage" the right-of-way previously granted to Cottage in that May 30, 2002 agreement. Therefore, Philip Landry, as owner of Lot 5, was granted the pedestrian right-of-way.
>
> [151] No authority was cited by Kidlark and McKale to the effect that the July 12, 2004 agreement would not create a valid right-of-way. I conclude the plaintiffs have a valid right-of-way.
>
> …
>
> [154] It was the July 12, 2004 agreement which effectively granted the right-of-way to Philip Landry...

[15] Justice Hood's 2014 decision confirmed that the benefits and burdens affecting the parties' properties were reflected in the *LRA* registrations. She confirmed the validity of the view-plane easement and the right of way. The order confirmed that Landry had an equitable easement for the purpose of accessing the Kidlark-McKale lands, specifically Parcel C and Parcel VP-2, "in order to exercise the rights granted to Philip Landry" under the Landry-Mackay agreement of July 12, 2004. The order was to be recorded against the relevant parcels under the *Land Registration Act*.

The cancellation notice

[16] On May 3, 2016, Mr. Kidlark delivered a Notice pursuant to s. 63(1) of the *LRA*, requiring cancellation of a recorded interest referenced in his parcel register; namely, the 2002 Cottage Agreement, Document 2573, which, he stated, was "now wrongly and unlawfully recorded as an easement burden on *"Kidlark's" "Lot 4A"*." (Emphasis in original.) In the Notice he said, in reference to Document 2573:

> 8. The *"Cottage Agreement"*, being personal in nature and not being an interest in land recognized under law, has been wrongfully and unlawfully recorded as an easement benefit to *"Landry's" "Lot 5"*;
>
> 9. The *"Cottage Agreement"*, being personal in nature and not being an interest in land recognized under law, has been wrongfully and unlawfully recorded as an easement burden on *"Kidlark's" "Lot 4A"*; and …

> 10. There is no evidence to suggest, or substantiate, that the *"Cottage Agreement"* is a lawfully, recordable easement burden on *"Kidlark's" "Lot 4A"*…

[17] As such, Mr. Kidlark sought cancellation of the recording. Mr. Landry subsequently commenced this application under s 63(3) of the *LRA*, after filing a *lis pendens*, as required to prevent mandatory cancellation of the recording under s. 63(4)(b).

Issues

[18] Mr. Landry's Notice of Application sets out several grounds for substantiating the recording. Mr. Landry submits (and I paraphrase) that

> (1) the easement is registered, and is therefore exempt from cancellation pursuant to s. 63(3)(a);
>
> (2) the easement is an interest to which the registered owner has consented, and is therefore exempt from cancellation pursuant to s. 63(3)(b);
>
> (3) the easement is an amendment to a prior registered easement between predecessors in title to the present parties;
>
> (4) the respondent is a successor in title under an agreement by which MacKay confirmed the applicant as "successor in title to Cottage of Lot 5, the right of way in its revised location, as set out in the Agreement dated May 30, 2002"; and, finally,
>
> (5) the easement was confirmed by Hood J.'s decision.

[19] In his Notice of Contest, Mr. Kidlark set out several grounds on which he contested the application:

> (1) Document 2573 – the 2002 right-of-way agreement – was not registered, but only recorded, and so it was not exempted by s. 63(3)(a);
>
> (2) Mr. Kidlark denied that there was consent to the interest, since it was "not a lawful easement" and they "cannot be deemed to have consented to something which is unlawful", so there was no exemption available under s. 63(3)(b);

> (3) Mr. Kidlark claimed that Document 2573 could not be a "lawful amendment" to Document 2484 – the 2000 MacKay-Cottage agreement – because Cottage, the grantee under the 2000 agreement, "did not have the legal capacity to make such an amendment";
>
> (4) Mr. Kidlark denied that either the 2000 agreement or the 2002 agreement were binding on the respondents; and
>
> (5) Mr. Kidlark asserted that no "easement benefit" derived from the 2002 agreement "has ever been confirmed" by this court.

[20] The issue on this application is whether the recording of the 2002 agreement – i.e. Document 2573 – should be substantiated. This will require the court to consider whether one or both of the s. 63 exceptions apply. It will also be necessary to consider the interaction of the various agreements that delineated the view-plane easement and the right of way, and whether Kidlark is bound by it as successors to the MacKays.

[21] To be clear, the existence of the relevant property interests is not in dispute. Both the view-plane easement and the right of way are valid interests. That was decided by Justice Hood. This proceeding is only concerned with the recording of the 2002 interest under the *Land Registration Act*. When this was put to him during the hearing, Mr. Kidlark conceded that this was the case, saying that he only wanted the recording cancelled to "clean up" his parcel register and to protect the "integrity" of the *Land Registration Act*. In other words, Mr. Kidlark concedes that there is no live dispute of any substance here.

The *Land Registration Act* scheme

[22] An "interest" under the *LRA* is, *inter alia*, "any estate or right in, over or under land recognized under law": s. 3(1)(g). The interests that can be registered are identified at s. 17(1):

> 17(1) The following interests may be registered:
>
> (a) a fee simple estate;
>
> (b) a life estate and the remainder interests; and

(c) an interest of Her Majesty.

[23] To "record" an interest, on the other hand, "means to secure priority of enforcement for an interest by means of entries in a register pursuant to this Act": *LRA,* s. 3(1)(r). Pursuant to s. 47, an "interest in any parcel that is subject to this Act may be recorded" (s. 47(1)), which is done "by recording the document on which the interest is based" (s. 47(2)). A recording that is not authorized by section 47 is void (s 47(8)).

[24] The cancellation of a recording of an interest is governed by various sections of the *LRA*. Section 57 provides:

> 57 (1) The recording of an interest, other than a security interest, shall be cancelled
>
> (a) when the interest may not be recorded pursuant to this Act;
>
> (b) if the interest is recorded but not registered, when requested by the holder of the interest; and
>
> (c) when the time for which the interest is effective has expired, subject to any recorded renewal, amendment or termination.
>
> (2) Cancellation of the recording of an interest does not terminate the interest.
>
> (3) Cancellation of the recording of an interest does not affect the priority of enforcement rights that accrued before the cancellation.
>
> (4) An interest that is removed from a register and any release or discharge of the interest shall be preserved in an archive register.

[25] Section 61 provides, in part:

> Effect of condition and covenants
>
> 61(1) Every successive owner of a parcel is affected with notice of a condition or covenant included in an instrument registered or recorded with respect to that land and is bound thereby if it is of such nature as to run with the land, but a condition or covenant may be modified or discharged by order of the court on proof to the satisfaction of the court that

> (a) the modification or discharge will be beneficial to the persons principally interested in the enforcement of the condition or covenant;
>
> (b) the condition or covenant conflicts with the provisions of a land-use by-law, municipal planning strategy or development agreement issued, made or established pursuant to an enactment and the modification or discharge is in the public interest; or
>
> (c) the condition or covenant offends public policy or is prohibited by law.
>
> (2) A registered owner may create, by grant or otherwise, a right of way, restrictive covenant or easement for the benefit of the registered owner and that right-of-way, restrictive covenant or easement may be recorded pursuant to this Act.

[26] Section 63 of the *LRA* provides, in part:

[27] Cancellation

> 63 (1) The registered owner of a parcel may send a notice requiring cancellation of a recorded interest or a judgment referenced in the parcel register by serving notice on the holder of that interest or judgment to take proceedings in the court to substantiate the interest or judgment.
>
> (2) The notice pursuant to subsection (1) shall include an affidavit outlining the basis for the objection and the reason why the recorded interest or judgment should be cancelled.
>
> …
>
> (3) This Section does not apply to
>
> (a) an interest that is registered;
>
> …
>
> (b) an interest to which the registered owner has consented…

Section 63 of the *LRA*

[28] Landry says the recording of the interest created by the 2002 agreement cannot be cancelled under s. 63 because the interest is registered (*LRA*, s. 63(3)(a)) or because the registered owners – i.e. Kidlark – has consented to it (*LRA*, s. 63(3)(b)). Kidlark denies both claims.

[29] As noted earlier, s. 17(1) of the *LRA* identifies interests which may be registered: fee simple estates, life estates and remainder interests, and interests of

Her Majesty. Other interests affecting a parcel register are recorded, pursuant to s. 47. In the *Nova Scotia Real Property Practice Manual* (Butterworths: Looseleaf), C.W. MacIntosh summarizes the distinction between "registered" and "recorded" interests at §16.3:

> There is an important distinction between property interests that are registered and those that are merely recorded. The only interests that are to be registered (and guaranteed) by the system are fee simple estate, life estate and remainder interests, and an interest of her majesty... All other interests are recorded. What the system protects is their priority and their full text is included in the register. Since recorded instruments vary in form and content and are the subject of interpretation, the system does not guarantee their effect, merely their priority (ss. 48, 49). Accordingly, while deeds transferring ownership of a property are registered and have their effect guaranteed by the system, such documents as mortgages, leases, easements and judgments are recorded.

[30] Similar remarks appear in an article by Catherine Walker Q.C., "Certifying Title and Qualifying Title under the *Land Registration Act*" (Lawyers' Insurance Association of Nova Scotia, 2005), at p. 2:

> Under the Act, interests in a parcel are divided into two categories – registered and recorded (sections 17 and 47 respectively of the Act). Only those interests which qualify for registration (fee simple, life estate and remainder, and Her Majesty the Queen) are guaranteed by the system to the holder of those interests (s. 20 of the Act)…

[31] Counsel for Mr. Landry submitted that a recorded interest does not convey title or an interest in the property, but conveys a money interest. She insisted that a right of way is a registered interest. I cannot agree with this interpretation. The 2002 agreement is not the type of interest identified in s. 17(1) as being capable of registration. It appears on the respective parcel registers under the headings "Benefits to the Registered Interests" and "Burdens on the Registered Interests." The only entries on the parcel registers under the heading of "Registered Interests" are the fee simple interests. While the registers do provide a "registration date" for the benefits and burdens attaching to the parcel, it does not follow that these are "registered" within the meaning of ss. 17(1) and 63(3)(a). The exception under s. 63(3)(a), that cancellation does not apply to a registered interest, is accordingly not available.

[32] As to the exception for consent of the registered owner under s. 63(3)(b), the 2002 agreement was agreed to by the then-owners of the servient tenement, the MacKays. It appeared as a burden on the property when the parcel was migrated

to the *LRA* system in 2004. Mr. Kidlark and Ms. McKale had notice of it when they bought the property in 2006. The 2004 agreement further confirmed that Mr. Landry was successor in title to Cottage. Having purchased the property with notice of the interests in question, it appears to me that Kidlark – being the registered owner of the servient tenement – must be taken to have consented to the interest. As such, s. 63 does not apply.

[33] Accordingly, I conclude that Mr. Kidlark consented to the interests described in the 2002 agreement when he and Ms. McKale bought their property. As such, the interests are immune from cancellation, and the application to substantiate the interest is allowed.

[34] I will, however, consider the other arguments in the alternative.

The effect of the agreements

[35] In denying that Cottage – Mr. Landry's company, and his predecessor in title – had the "legal capacity" to amend the 2000 agreement, Mr. Kidlark appears to be advancing the same, or a similar, position to the argument he raised before Hood J. As she stated:

> [149] Kidlark and McKale also say the plaintiffs' pedestrian right-of-way to the shore is invalid. They say the MacKays granted a right-of-way to Cottage on May 30, 2002, when Cottage had conveyed its interest to Philip Landry three days earlier (Exhibit 12, Tab D5). They say since Cottage no longer had title to the lands, the grant of right-of-way is invalid.
>
> [150] However, when the restrictive covenant over Parcel VP-2 was granted by the MacKays to Philip Landry in July 2004, they also granted and confirmed "to Landry as successor to Cottage" the right-of-way previously granted to Cottage in that May 30, 2002 agreement. Therefore, Philip Landry, as owner of Lot 5, was granted the pedestrian right-of-way.
>
> [151] No authority was cited by Kidlark and McKale to the effect that the July 12, 2004 agreement would not create a valid right-of-way. I conclude the plaintiffs have a valid right-of-way.

[36] Justice Hood confirmed that the *LRA* registrations of Lots 4A and 5 "accurately reflect the benefits and burdens affecting these lots" (para. 112).

[37] Mr. Kidlark maintains that the 2002 agreement did not create an interest, but only a "license" that could not "run with the land" or be registered or recorded. It is not clear what the basis for this submission is. He appears to argue that an interest under the *LRA* must be capable of being registered under s. 17, but this is

not correct. He says the recording is unauthorized for recording under s. 47 and is therefore void pursuant to s. 47(8), because there was no "meeting of the minds." Once again, this submission has no apparent foundation.

[38] Mr. Kidlark maintains that the 2002 agreement could not amend the 2000 agreement because the grantee of the right of way, Cottage, had transferred the title to the Applicant several days before the agreement was executed. As a result, he says, there was no benefit conferred on any property by the 2002 agreement. Counsel for Mr. Landry relies on a body of law dealing with the effective date of a deed, summarized by MacIntosh at §5.5A of the *Nova Scotia Real Property Practice Manual*. In my view, this aspect of the 2002 and 2004 agreements was settled by Justice Hood. As counsel for Landry submits, Justice Hood held that the 2004 agreement incorporated the 2002 agreement, in which the MacKays acknowledged Landry as a successor to Cottage. She confirmed and regranted the right of way as described in the 2002 agreement. She rejected Mr. Kidlark's claim on essentially the same grounds he has advanced in this proceeding. I conclude that Justice Hood's decision disposed of this issue.

[39] Mr. Kidlark maintains that it would make his parcel register simpler and easier to understand if the 2002 agreement were struck off. I do not see how this is the case. The 2004 agreement states that "MacKay hereby grants and confirms to Landry, as successor in title to Cottage of Lot 5, the Right of Way in its revised location, as set out in the Agreement dated May 30, 2002." The 2004 Agreement does not contain a description of the area subject to the right of way; that is found in Schedule A of the 2002 agreement. As such, to remove the 2002 agreement from the parcel register would be as likely to confuse as to clarify the interests involved.

Is Kidlark bound as successor in title?

[40] Justice Hood stated, at para. 150 of her 2014 decision, that when the MacKays agreed to the adjusted view-plane easement in July 2004, they also granted and confirmed "to Landry as successor to Cottage" the right of way granted to Cottage in the 2002 agreement. As I stated earlier, Mr. Kidlark and Ms. McKale were on notice of the interests in question when they purchased the property, and Justice Hood confirmed that they were successors in title to the MacKays.

[41] I am satisfied that the 2002 agreement binds the parties and is appropriately included in Mr. Kidlark's parcel register. This would provide a second basis on which to substantiate the recording of document 2573.

Other issues

[42] Mr. Kidlark raised various issues about other interests and documents to which he apparently objected. He claimed that Justice Warner, in an earlier appearance by the parties in this proceeding, had indicated that these other issues would be dealt with in this proceeding. As Mr. Landry's counsel pointed out, this proceeding was brought in response to Mr. Kidlark's demand for removal of the interest under the *LRA*. The application before the court is Mr. Landry's, not Mr. Kidlark's, and the only issue is the substantiation of the recording challenged by Mr. Kidlark. Justice Warner did not more than indicate that the judge hearing the application would decide how the *LRA* parcel register should reflect the interests granted in Justice Hood's decision.

Conclusion

[43] In conclusion, I am satisfied that the recording of document 2573 should be substantiated. The interest is exempt from cancellation by virtue of s. 63(3)(b). Even if that were not the case, I would be satisfied that the respondent is bound by the easement, as a successor in title to the MacKays, and that the 2002 agreement is appropriately on the parcel register as a description of the right of way confirmed and regranted in the 2004 agreement.

[44] If the parties are unable to agree with respect to costs, submissions may be made to me in writing by October 15, 2018.

Murphy, J.