

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

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Judge: The Honourable Justice John D. Murphy

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

Subject: Real property; easements; rights of way; land registration

Summary: Two burdens on the respondent's property – a right of way and a view-plane easement – originated in a 2000 deed between the applicant and the respondent's predecessors in title. The right of way was altered by agreement in 2002, around the time the respondent took title. There was a further modification by agreement in 2004. In a 2014 decision, the court confirmed the existence of the right of way and the view-plane easement over the respondent's property. The respondent subsequently delivered a notice requiring cancellation of the recording of the 2002 agreement under the *Land Registration Act*. In response, the applicant applied for an order to substantiate the recording of the 2002 agreement.

Issues: Should the recording of the 2002 agreement be substantiated?

Result: The relevant property interests had been resolved by the 2014 decision, and were not in dispute. The interest was exempt from cancellation by virtue of s. 63(3)(b) of the *Land Registration Act*, as an interest to which the registered owner had consented.

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