

Subject: **CAVEATS - SIMULTANEOUS REGISTRATION OF AN INSTRUMENT AND WITHDRAWAL OF A CAVEAT**

BACKGROUND

The priority of registration of any instrument capable of registration under the Act which was originally registered by way of caveat may be preserved by virtue of section 147 of the Land Titles Act. The priority is maintained by the withdrawal of the caveat and the simultaneous registration in lieu thereof of the instrument under which the title or interest described in the caveat was claimed. The same priority is preserved to all rights under the instrument as the like rights were entitled to under the caveat. This procedure is most often used in the registration of utility rights of way.

REGISTRATION PROCEDURE

1. The original caveat must be examined to ensure that the interest claimed and the particulars of the instrument are the same in the caveat as in the instrument being registered. However if the interest can be determined from the title, then it is not necessary to check the original caveat to determine the particulars of the instrument.
2. The instrument must comply with all registration requirements for that type of instrument. The instrument can be executed either by the party who was entitled to do so when the caveat was registered or who is entitled to do so when the simultaneous registration takes place or at anytime in between. For example, a utility right of way granted by A can be registered under this procedure if A was the registered owner when the caveat was registered or if A is now the registered owner.
3. Both the instrument and a discharge of the caveat must be presented for registration at the same time and simultaneous registration must be requested by the registrant. The documents are to be registered in the order requested in the Document Registration Request form.
4. An example of the memorandum of a simultaneous registration is

"UTILITY RIGHT OF WAY TO XYZ LTD. - TAKES
PRIORITY DATE OF CAVEAT 841123456 REGISTERED
ON 84/03/02".

"Takes priority of caveat #" information is entered in document particulars.

5. If the simultaneous registration procedure is being applied to an unregistered transfer, all endorsements on the title are carried forward even if they were registered after the caveat. Any claim that subsequent interests are not binding on the transferee is to be resolved by the courts. A memorandum with the following particulars is registered as an instrument:

"TRANSFER 851654321 TAKES PRIORITY DATE OF
CAVEAT 841123456 REGISTERED ON 84/03/02".

6. When registering an amending agreement or other instrument pursuant to section 147 of the Land Titles Act, that replaces a caveat that is affected by a postponement the system will automatically drop the postponement. To re-instate the postponement information you must register an "internal" postponement containing full registration information and show the amending agreement registration number instead of the original caveat number.

7. **Fees** - The Tariff item for the document being registered is charged. If the simultaneous registration procedure is being applied to an unregistered mortgage or encumbrance, **the minimum fee under [Tariff item 5\(1\)](#) is charged if fees were paid upon the registration of the caveat pursuant to section 133 of the Land Titles Act.**