



EAS 1 – Easement / Encroachment / Party Wall Agreement

Land Titles & Surveys - Procedure Manual

Alberta 

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A. Background

Dominant Tenement - a parcel of land "for the benefit or advantage of which an easement exists or is enjoyed."

Improvement – a structure; anything attached or secured to a structure that would be transferred without special mention by a transfer or sale of the structure. (1)

Servient Tenement - a parcel of land "which is subject to the burden of an easement existing for or enjoyed by another tenement."

The purpose of this procedure manual is to discuss four (4) similar instruments that are registered on title:

- Easement - An easement confers on the owner of a parcel of land "the right to use the land of another in some way, or to prevent it from being used for certain purposes." (2) It is: "A right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with a general property in the owner." (3)
- Encroachment Agreements – An agreement between two adjoining owners which permits the encroachment of an improvement made on the adjoining parcel of land
- Party Wall Agreements – An agreement setting out the rights, privileges, easements and covenants regarding walls that are defined as a Party Wall.
- Agreements – A document that is a combination of Easement, Encroachment Agreement, Restrictive Covenants and or Party Wall Agreement due to its similar discharge requirements.

B. Policy and Procedure

General Information

The following conditions must be met for the registration of an Easement, Encroachment Agreement or Party Wall Agreement:

1. The dominant and servient tenement is to be clearly specified in the document presented (easement, encroachment agreements and party wall agreements) for registration.
 - a. The dominant and servient tenement need not be contiguous. (4)
 - b. An owner cannot grant himself an easement where one parcel of property purports to be both the dominant and servient tenements.
2. There must be a certificate of title issued for all affected parcels of land.
 - a. If the servient tenement is a leasehold interest, a certificate of title must be issued for the leasehold interest.
 - b. If the dominant tenement is a leasehold estate, a certificate of title must be issued for either the fee simple estate or the leasehold estate. (5)
 - c. If titles do not exist for all affected land, the instrument may be registered by way of caveat. (6)
 - d. The Fee Simple and Leasehold Certificate of Title cannot have the same legal description.
3. The registered owners must be the same as the grantor (party granting the easement) and grantee (party benefiting from the easement) of the easement and they can be the same person. (7)

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form and the codes used for registration at Land Titles are the following:

SPIN2 DRR - Document Type	Land Titles Registration Code
Easement	EASE
Party Wall Agreement	PAWA
Encroachment Agreement	ENCA
Agreement (combination of interests in one document)	AGRE

B1 – Easement

General Information

Common law requires the following conditions to be satisfied in order to create an easement which is enforceable by and against successors in title to land [\(8\)](#):

1. There must be a parcel of land which benefits from the easement, known as the dominant tenement. And a parcel of land which is burdened by the easement, known as a servient tenement. An easement must clearly identify a dominant and servient tenement and may not be granted where only one parcel of land purports to be both the dominant and servient tenement.
2. The easement must accommodate the dominant tenement in the sense of making the dominant tenement a better and more convenient property.
3. At common law the dominant and servient tenements could not be both owned and occupied by the same person. However, section 68 of the Land Titles Act has changed this condition in Alberta law. It provides that an owner may grant an easement to himself for the benefit of land which he owns and against land which he owns. Consequently, when dominant and servient tenements become registered in the name of the same person, an easement does not necessarily merge by reason of common ownership.

An easement cannot exist in gross (i.e., without a dominant tenement). [\(9\)](#)

The easement must be capable of forming the subject matter of a grant. In general terms, this condition means that the right granted in the easement must be within the general nature of rights which the law has recognized as easements.

In most jurisdictions, an easement can be created by express grant, by statute, by implication of law or by prescription. [\(10\)](#) Statutory easements are created by different Alberta Acts (e.g., the Irrigation Districts Act) and are registered as orders or certificates but have the same effect as an easement. Section 69 of the Land Titles Act authorizes the registration of certain utility rights of way which do not require a dominant tenement. Where an owner conveys part of a parcel of land, the common law will imply such easements as are necessary to the reasonable enjoyment of the property conveyed, such as a way of necessity to give access to a land-locked parcel. Prescription (the acquisition of rights through long-continued enjoyment of the rights) is not applicable in Alberta by virtue of section 69(3) of the Law of Property Act, R.S.A. 2000, c. L-7 which states that no easement may be acquired by prescription.

The land mentioned in any certificate of title granted under the Land Titles Act is by implication and without any special mention therein subject to:

1. any public highway or right of way or other public easement, howsoever created, on, over or in respect to the land, and
2. any right of way or other easement granted or acquired under any Act or law in force in Alberta. ([18](#))

1. Legal Description Requirements

The following must be taken in consideration for the registration of an easement in terms of the Legal Description:

1. The legal descriptions of all lands affected by the agreement must be consistent with the existing certificates of title.
2. An easement affecting the whole servient tenement (i.e., a blanket easement) may be registered.
3. An easement affecting existing improvements like utilities, access road etc. may be registered as a blanket easement provided it does not refer to any sketch or the location.
4. Where the portion of the servient tenement affected by the easement is described by reference to a registered plan, the plan must be checked to ensure that it affects the land in the title.
5. Where a metes and bounds description is used to describe the portion affected by the easement, the document must be referred to the Surveys section for description approval. A sketch illustrating the metes and bounds description may be attached but a sketch cannot be accepted on its own to describe the portion of the parcel affected.
 - a. Metes and Bounds are acceptable at the discretion of the Registrar.

Pursuant to Tariff of Fees Regulation, Section 9 ([Tariff](#)), Description Approval fees are charged for an acceptable metes and bounds description.

2. Metes and Bounds Conditions

Acceptable Metes and Bounds descriptions at minimum must meet the following conditions:

1. All parent parcel boundaries and described property lines must be parallel
2. Metes and Bounds description may only delineate an interest contained within two parcels of land

3. Acceptable Easements

The following is a list of some recognized easements. As this list is not exhaustive, any doubtful easement documents should be referred to the survey department.

1. right of way for passage by pedestrians or vehicles
2. right of access
3. right to park vehicles
4. right of drainage
5. right to project eaves and guttering over a property boundary
6. right of light
7. right to support
8. right to maintain and service utilities (usually between owners of duplexes)
9. right to commit a nuisance ([11](#))

4. Title Endorsement:

Easement and Restrictive Covenant – this is registered as an Agreement (AGRE)

- a. Title endorsement will be marked as: re: Easement and Restrictive Covenant

General Submission Requirements

The following requirements must be complied with for an Easement registration submission:

1. Documentation Registration Request
 - a. Completed via SPIN2
 - b. Document Type – Easement
 - c. Rights Type - Surface
 - d. Land IDs – Linc Number, Short Legal or Title Number
2. Easement
 - a. Signatures Required - The easement must be signed by the owner of the servient tenement. Some mutual easements, such as joint driveway agreements, confer rights and obligations on both parties so that each tenement is both servient and dominant and the document must therefore be signed by both parties.
 - b. Attestation requirements must be complied with (see procedures under [AFF-1](#), [AFF-2](#) and [COR-1](#)).
 - c. Dower is required for the person granting the interest (owner of the servient tenement) (see procedure under [DOW-1](#)).
 - d. *Note - No legislated template form is available from Land Titles and Surveys
3. Required fees as per the Tariff of Fees
4. *Certificates of Title must exist for all parcels of land affected by the agreement. ([12](#))

B2 - Encroachment Agreements

General Information

The Land Titles Act permits the registration of an encroachment agreement executed by the owner of a parcel of land (the servient tenement) to permit the encroachment of an improvement made on an adjoining parcel of land (the dominant tenement).

1. Once an agreement is registered, it runs with the land to the same extent as if it was an easement. ([13](#)).
2. A caveat may also be accepted for registration. No party information is shown on the title.

Exceptions

Registration of an Encroachment Agreement Affecting a Road - An encroachment over a road, lane or street may be registered by way of caveat by the municipality pursuant to section 651.2 of the Municipal Government Act. (see [CAV-5](#)).

For discharge requirements see ([CAV-2](#))

Encroachment Over a Utility Right of Way or Easement - Where the encroachment is over a utility right of way or easement, the existing legislated provisions of the Land Titles Act provides for the registration of an amending agreement (or a caveat re: amending agreement) amending the terms of the utility right of way to allow for encroachment. ([14](#)) Attestation requirements must be complied with for all parties to the agreement.

Encroachment Which Burdens an Environmental Reserve Lot – is not registerable. This would render the portion unusable for the purposes specified under Section 671(1) of the Municipal Government Act.

Encroachment Which Burdens a Municipal Reserve – is not registerable. One may consider registering the interest by way of caveat or for the municipality to dispose of the portion of the Municipal Reserve which is encroached upon.

General Submission Requirements

The following requirements must be complied with for an Encroachment Agreement registration submission:

1. Documentation Registration Request (DRR)
 - a. Legal Descriptions properly selected
 - b. DRR - Document Type – Encroachment Agreement
 - c. DRR - Right Type - Surface
2. Encroachment Agreement
 - a. Accompanied by a Real Property Report prepared and signed by an Alberta Land Surveyor showing the encroachment.
 - b. Attestation and dower requirements must be complied with for the current registered owner granting the Encroachment (Servient tenement).
 - c. Note - No legislated template form is available from Land Titles and Surveys
3. Required fees as per the Tariff of Fees
4. *Certificates of Title must exist for all parcels of land affected by the agreement. ([12](#))

B3 - Party Wall Agreement

General Information

The registered owners of adjoining parcels of land may enter into a party wall agreement:

1. Declaring certain existing walls or walls that are to be constructed on those parcels to be party walls,
2. Setting forth the rights, privileges, easements and covenants that exist in respect of the party walls. The rights, privileges, easements and covenants under the party wall agreement are deemed to run with the land. ([15](#))

General Submission Requirements

The following requirements must be complied with for a Party Wall Agreement registration submission:

1. Documentation Registration Request
 - a. Legal Descriptions properly selected
 - b. DRR - Document Type – Party Wall Agreement
 - c. DRR - Right Type - Surface
2. Party Wall Agreement
 - a. Signatures Required – Party Wall Agreements confer rights and obligations on both parties so that each tenement is both servient and dominant and the document must therefore be signed by both parties.
 - b. Attestation requirements must be complied with (see procedures under [AFF-1](#), [AFF-2](#) and [COR-1](#)).
 - c. Dower is required for the person granting the interest (owner of the servient tenement) (see procedure under [DOW-1](#)).
 - d. Note - No legislated template form is available from Land Titles and Surveys
3. Required fees as per the Tariff of Fees

*Certificates of Title must exist for all parcels of land affected by the agreement. ([12](#))

B4 - Agreements

General Information

The registered owners of adjoining parcels of land may enter into a party wall agreement combined with easement, restrictive covenants and or encroachment agreements. The requirements of all the above instruments would have to be complied with.

General Submission Requirements

The general submission requirements for all the instruments defined above are applicable for agreements. DRR – Document type - Agreement

B5 – Discharge of Easements, Party Wall or Encroachment Agreements

General Information

- A discharge in the prescribed form ([FORM 10.1](#)), executed by the current registered owner of the lands benefitted by the agreement (dominant tenement), is required. ([16](#))
- Where all lands affected by the agreement are both dominant and servient, i.e. mutual easements for joint driveways and party wall agreements, the discharge is to be executed by the current registered owners of all affected parcels.
- In all cases, the original instrument is checked to verify the dominant tenement(s). Attestation requirements must be complied with.
- If only one dominant owner signs the discharge, the document must be rejected for both parties to sign the discharge, to remove the agreement in full from both affected titles.
- If the intention is for only the dominant tenancy to be removed from one of the parcels affected, it must be clarified as such; a discharge of this nature is a partial discharge. A partial discharge must contain an additional notation in the particulars such as (“as to dominant tenancy of Lot ____ only”).

General Submission Requirements

The following must be submitted for the discharge of an Easement/Encroachment Agreement / Party Wall Agreement registration submission:

1. Documentation Registration Request (DRR)
 - a. Legal Descriptions properly selected
 - b. DRR - Document Type – Discharge
 - c. DRR - Right Type - Surface
2. Discharge (Easement/Encroachment Agreement/Party Wall Agreement) – [Form 10.1](#)
 - a. Signatures Required – The signatures of the dominant tenements (one whom is benefitting) are required
 - b. Attestation requirements must be complied with (see procedures under [AFF-1](#), [AFF-2](#) and [COR-1](#)).
3. Required fees as per the Tariff of Fees

B6 - Expiry of Easements, Party Wall Agreements or Encroachment Agreements

General Information

- Easements, Party Wall Agreements or Encroachment Agreements may contain an express provision that the instrument expires on a specific date or following a specific period of time after the date of execution of the instrument. ([17](#))

- An owner of land affected by the easement, a party wall agreement or an encroachment agreement may request in writing that the Registrar cancel the registration of the instrument where the interest created by the instrument has expired. Normal attestation requirements do not apply. Upon review of the original agreement and being satisfied that the interest has expired, the Registrar will remove the instrument from title

General Submission Requirements

1. Documentation Registration Request (DRR)
 - a. Legal Descriptions properly selected
 - b. DRR - Document Type – Discharge or Expiry
 - c. DRR - Right Type - Surface
2. Required fees as per the Tariff of Fees

C. Fees

- [Tariff item](#) 9 - charged if a metes and bounds description approval is required.
- [Tariff items](#) 11(6) and 11(5) - charged for all registrations and discharges, including expiries,
- [Tariff item](#) 13 - charged for extra endorsement fees

*Note – See the *Land Titles and Surveys Common Document Fee Schedule* for additional information regarding fees ([Link](#))

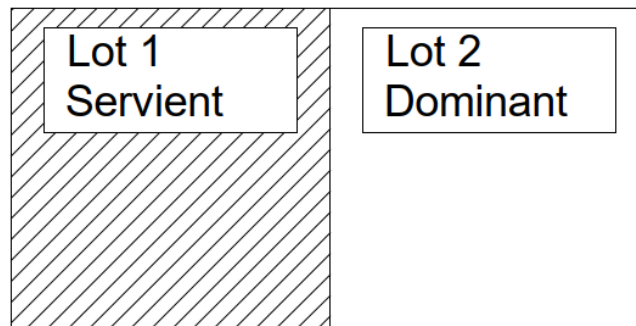
D. Forms

- Form 10.1 – Discharge of Easement, Restrictive Covenant, Party Wall Agreement or Encroachment Agreement ([Link](#))

E. Related and Standard Policy / Related Content

Different Servient / Dominant Tenement Scenarios

One Way - Blanket



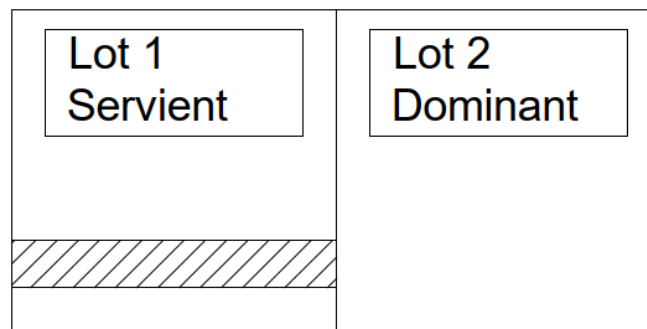
In this example:

Lot 1 is servient (burdened) to Lot 2

Lot 2 is dominant (benefited) to Lot 1

To wholly discharge, the current registered owner of Lot 2 would need to sign the discharge because they are the dominant tenement

One Way - Servient Limited



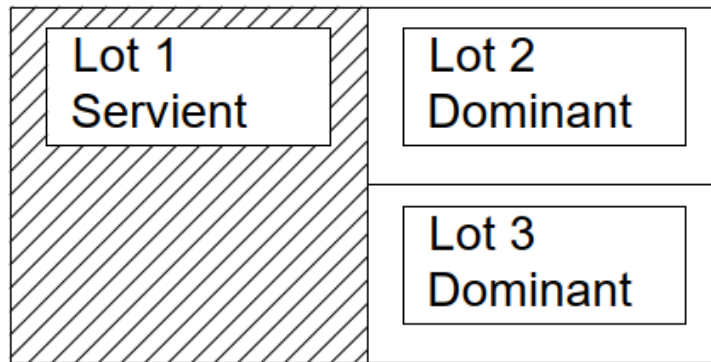
In this example:

Portion of Lot 1 is servient (burdened) to Lot 2

All of Lot 2 is dominant (benefited) to portion of Lot 1

To wholly discharge, the current registered owner of Lot 2 would need to sign the discharge because they are the dominant tenement

One Way - Blanket



In this example:

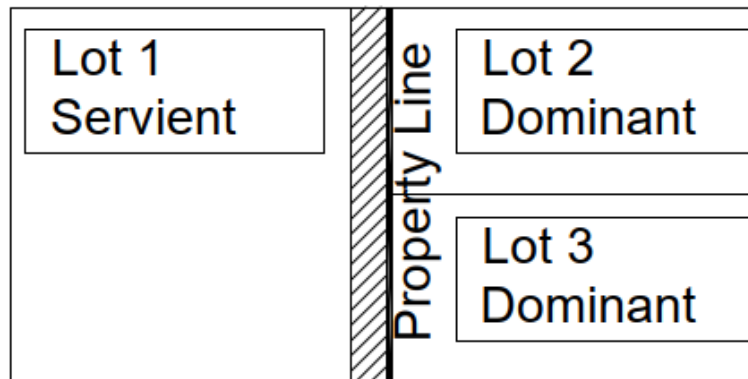
- Lot 1 is servient (burdened) to Lot 2
- Lot 2 is dominant (benefited) to Lot 1
- Lot 3 is dominant (benefited) to Lot 1

To wholly discharge, the current registered owners of Lot 2 and 3 would need to sign the discharge because they are the dominant tenements

OR

The current registered owner of Lot 2 OR Lot 3 could discharge off of their own title only because they are a dominant tenement and there would be another dominant tenement left, therefore, it would not be existing in gross

One Way - Servient Limited



In this example:

Portion of Lot 1 is servient (burdened) to Lots 2 and 3

All of Lot 2 is dominant (benefited) to portion of Lot 1

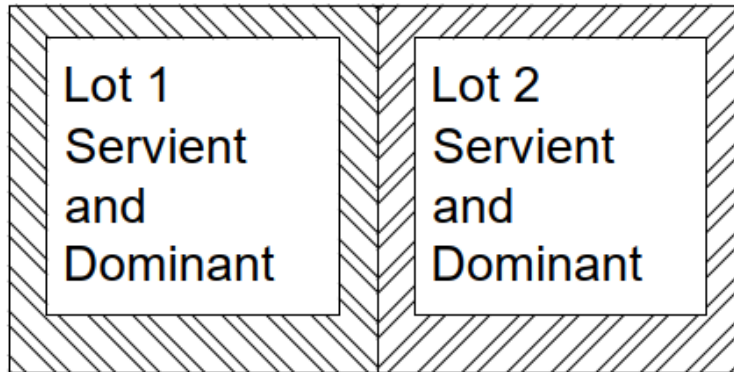
All of Lot 3 is dominant (benefited) to portion of Lot 1

To wholly discharge, the current registered owners of Lot 2 and 3 would need to sign the discharge because they are the dominant tenements

OR

The current registered owner of Lot 2 OR Lot 3 could discharge off of their own title only because they are a dominant tenement and there would be another dominant tenement left, therefore, it would not be existing in gross

Two Way/Mutual - Blanket



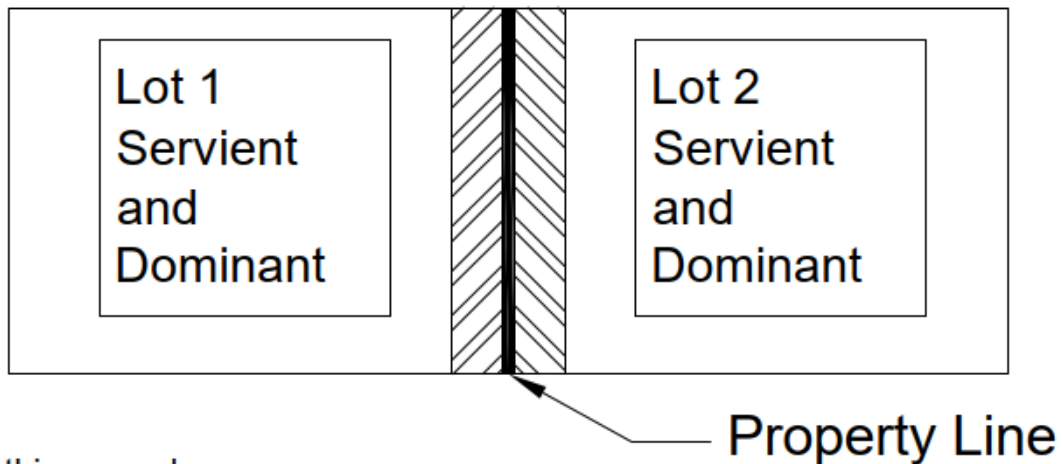
In this example:

Lot 1 is servient (burdened) and dominant (benefited) to Lot 2

Lot 2 is servient (burdened) and dominant (benefited) to Lot 1

To wholly discharge, the current registered owners of Lot 1 and 2 would need to sign the discharge because they are the dominant tenements

Two Way/Mutual - Servient Limited



In this example:

Portion of Lot 1 is servient (burdened) to all of Lot 2 and all of Lot 1 is dominant (benefited) to portion of Lot 2

Portion of Lot 2 is servient (burdened) to all of Lot 1 and all of Lot 2 is dominant (benefited) to portion of Lot 1

To wholly discharge, the current registered owners of Lot 1 and 2 would need to sign the discharge because they are the dominant tenements

*Note - The above examples are merely for assisting with understanding the concept of Dominant Tenement and Servient Tenement. Please refer to the registered instrument for more information regarding the defined tenements.

Attributes which Differentiate an Easement from a Utility Right of Way

Easement

- Must be at least 2 titled lands
- Have a servient and dominant tenement
- Runs with the land
- Cannot be transferred
- Can be discharged by the current owner of the dominant tenement

Utility Right of Way

- Only one land required
- Owner of the land is the Grantor
- Runs with the Grantee of the UTRW who is either a corporation, the Crown or Municipality
- Can be transferred
- Can be discharged by the grantee

F. Statutes and Case References

Applicable Legislated Acts

- Land Titles Act
- Municipal Government Act
- Tariff of Fees Regulation, Land Titles Act ([Tariff](#))

Land Titles Procedure Manuals

- AFF – 1 – Affidavits of Attestation ([Manual](#))
- AFF – 2 – Affidavits Sworn Outside of Alberta ([Manual](#))
- CAV - 2 – Removal of Caveats ([Manual](#))
- CAV - 5 – Caveats Registered Pursuant to Statutes of Alberta Other than the Land Titles Act ([Manual](#))
- COR – 1 – Corporations – Acquisition and Disposition of Interests ([Manual](#))
- DOW – 1 – Dower ([Manual](#))

Land Titles and Surveys Common Documents Fee Schedule ([Schedule](#))

References

Statute references are to the Land Titles Act, R.S.A. 2000, c. L-4, unless otherwise indicated.

Reference #	Reference
1	S. 284(J), Municipal Government Act, R.S.A. 2000,
2	R.E. Megarry and H.W.R. Wade, The Law of Real Property, (3rd ed. 1966) p. 145
3	Henry Campbell Black, Black's Law Dictionary, (4th rev. ed. 1968) p. 599
4	Gale on Easements, 14th ed. by Spencer G. Maurice at p. 20 states: "If land to which a right purports to be annexed is in fact accommodated by the use of the right, the right qualifies as an easement whether the dominant and servient tenements are contiguous or not. A right of way, not ending anywhere on the land to which it is annexed, will be a valid easement if the owner of the land owns, or otherwise has the right to pass over, the intervening land."
5	s. 67
6	Rystephaniuk v. Prosken (1951), 3 W.W.R. (NS) 76 (Man. K.B.)
7	supra, footnote 4 and s. 68 11. British Columbia Forest Products Ltd. v. Nordal and Nordal (1954)
8	Re Ellenborough Park; Re Davis; Powell Maddison [1956] Ch 131 (Court of Appeal of England) and Principles of Property Law (2d Ziff (1996) pages 328- 332
9	In G.C. Cheshire, Cheshire's Modern Law of Property, 9th ed. at p. 448, "in gross" is explained as follows: "an easement that is independent of the ownership of land by the person who claims the right. Of course, a person who does not own a yard of property may be granted a privilege to pass over Whiteacre, but though this may give him a contractual right it certainly does not entitle him to an easement. It amounts to a licence confined in its effect to the actual parties."
10	V. DiCatri, Thom's Canadian Torrens System, 2nd ed., at p. 47
11	W.W.R. (N.S.) 403 (B.C.S.C.)
12	s. 72(2)
13	s. 72(a)

<u>14</u>	s. 129
<u>15</u>	s. 71
<u>16</u>	s. 73
<u>17</u>	s. 73(2)
<u>18</u>	s. 61(1)(c) and (f) and Husky Oil Operations Ltd. and Alberta Inspector of Land Titles v. Shelf Holdings Ltd. (1989) 65 Alta. L.R. (2d) 300 (Alta. C.A.) and PetroCanada Inc. v. Shaganappi Village Shopping Centre Ltd. (1990) 76 Alta. L.R. 162 (Alta. C.A.)