

CIVIL FILE ENDORSEMENT SHEET

MOTION/DIRECTION/ORDER

Judge: O. REES

Court File No.: CV-22-00000029-0000 (Belleville/Picton)

Short Case Name: JOVKOVIC v. MIDDLETON et al

Clark, James for Applicant

Barbeau, Connor for Respondent Middleton

Li, Rina, for Respondent HMK (Ontario)

☐ ORDER/JUDGMENT MADE

☐ DIRECTION FOR REGISTRAR

☐ ON CONSENT

☐ UNOPPOSED

☐ NO ONE APPEARED

☐ ADJOURNED TO [Click here to enter a date.](#)

ENDORSEMENT:

The applicant seeks a declaration that he has a right of way over Part 1 on Plan 47R-988, and that this includes the ancillary right to modify the right of way for vehicular access. The applicant also seeks an order against the respondent Middleton that she not interfere with the applicant's lawful use of the right of way. In passing, I note that the relief sought against the His Majesty the King in right of Ontario (the Crown) has been bifurcated by an earlier direction of this court, and thus was not before me today.

At the hearing, counsel for the respondent Middleton advised that the respondent agreed the applicant has a right of way over Part 1 on Plan 47R-988, and that this includes the ancillary right to modify the right of way for vehicular access. (The Crown takes no position.) The respondent Middleton's main concern is that the applicant should be required to obtain regulatory approval before undertaking any modifications to the right of way for vehicular access. Essentially, the respondent Middleton asks me to make this clear in my decision.

After having considered the record and heard submissions, including the Indenture dated August 14, 1975 and the Plan 47R-988, I declare that the applicant has a right of way over Part 1 on Plan 47R-988, and that this includes the ancillary right to modify the right of way for vehicular access.

The applicant says he intends to abide by whatever regulatory approvals are required. I decline to make any determination regarding what regulatory approvals are required before he can modify the right of way, or indeed whether any regulatory approval is in fact required. What is before me today is an

application relating to the determination of the applicant's proprietary rights. I have now determined what those are. It goes without saying that the applicant is required to abide by any applicable law (for example, statute, regulation, or bylaw) in exercising those proprietary rights.

I further decline to grant an order against the respondent Middleton that she not interfere with the applicant's lawful use of the right of way. The applicant has not satisfied me that such an order is appropriate or necessary on the record. I expect that the respondent Middleton will abide by this Court's declaration of the applicant's property rights. If she does not do so, it is open to the applicant to seek appropriate relief from the Court. To be clear, however, if the applicant is required to obtain any regulatory approval in exercising his ancillary right to modify the right of way for vehicular access, the respondent Middleton can pursue whatever legal recourse she may have under the regulatory process. But that is for another day and venue; it is not an issue this Court need determine on this application.

The applicant may file cost submissions within 7 days of this decision. The respondent Middleton has seven days from being served to file costs submissions. Neither party's costs submissions will exceed 750 words. No costs are awarded against the Crown in respect of today's hearing.

Date: 21-Jul-23



JUSTICE OWEN REES