IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *0717540 B.C. LTD v. The Owners, Strata Plan EPS4116,* 2024 BCSC 314

Date: 20240223
Docket: S22327
Registry: Nelson

Between:

0717540 B.C. LTD.

Claimant

And

THE OWNERS, STRATA PLAN EPS4116, EARTH KING FOREST PLAZA LTD., 1188769 BC LTD., 1052829 B.C. LTD., A & G DHALIWAL HOLDINGS LTD., PARVEEN'S ACCOUNTING LTD., KINDHRA HOLDINGS LTD., CANADIAN WESTERN WORKFORCE CORPORATION, INTERCONTINENTAL GLOBAL 'IMMIGRATION SOLUTIONS CORPORATION, PREMIUM GP HOLDINGS INC., 1304350 B.C. LTD., 1304568 B.C. LTD., 1286049 B.C. LTD., SIMPLY COUNSELLING INC., N.W.0 HOLDINGS LTD., 1194939 B.C. LTD., RAJINDER SINGH NIJJER, 1256763 B.C. LTD., 1237731 B.C. LTD., 1188845 B.C. LTD., JOHN DOE AND ABC CORP

Respondent

Before: The Honourable Justice Brundrett

Reasons for Judgment

Counsel for Claimant:	T.M. Zoobkoff
Counsel for Respondent:	J.M.S. Woolley
Place and Date of Trial:	Port Coquitlam, B.C. November 1, 2023
Place and Date of Judgment:	Port Coquitlam, B.C. February 23, 2024

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I. INTRODUCTION

[1] The petitioner is the owner of a parcel of land on 120th Street (Scott Road) in Surrey, B.C. who seeks an order cancelling an easement in favour of an adjacent property and removing it from title.

[2] The easement at issue (the "Parking Easement") grants the respondent strata corporation's property at 8318 120th Street (the "Dominant Property") access and parking rights over the petitioner's neighbouring property to the north at 8338 120th Street (the "Servient Property"). The Parking Easement was registered in 1996 to preserve sufficient parking for the Dominant Property to remain in compliance with municipal bylaw requirements as the Servient Property was being developed. For many years, parking on the two properties does not appear to have been an issue. However, in recent years, concern has increased as parking demands have risen in response to a redevelopment of the Dominant Property and growth of the surrounding area.

[3] The petitioner, 0717540 B.C. Ltd., is a corporation that owns and operates a two-storey building complex known as A&A Plaza on the Servient Property. The respondent, the Owners of Strata Plan EPS4116, is a strata corporation that owns and operates a four-storey building complex known as Arista Centre on the Dominant Property. The respondent Strata corporation comprises 33 individual strata lots.

[4] In addition to the respondent strata corporation (whom I shall refer to as the respondent) who appeared and opposed the petition, the petitioner added and served each of the owners of the respondent's strata lots with a copy of its petition. For the most part, those individual owners did not appear or make arguments at the hearing. However, Ms. Gill, a strata lot owner and member of the respondent's strata council, filed an affidavit supporting the position of the respondent.

[5] As well, while s. 35(4) of the *Property Law Act*, R.S.B.C. 1996 c. 377 [*PLA*] requires the Court to make an inquiry of the affected municipal authority on an

application such as this, notice was provided to the City of Surrey, and counsel advises that the City takes no position on this application.

[6] Both the Dominant Property and the Servient Property contain low-rise office buildings with some parking in the front and rear. Until recently, the tenants and guests of the respondent's Dominant Property had been in the practice of using approximately 14 parking spaces on the petitioner's Servient Property, pursuant to the Parking Easement.

[7] The petitioner submits that the character of the properties has changed substantially since 1996, such that the Parking Easement ought to be cancelled. The petitioner relies upon various subsections of s. 35(2) of the *PLA* to argue that the Parking Easement should be cancelled because (a) it is obsolete due to changes in the character of the land, neighbourhood, or other material circumstances, (b) it impedes the reasonable use of land with no practical benefit to others, (c) the persons who are or have been entitled to its benefit have agreed to it being cancelled, (d) cancelling it will not injure the beneficiary of the easement, or (e) it is invalid, unenforceable or has expired.

[8] The respondent does not agree that the Parking Easement should be cancelled. The respondent submits that the easement is not "invalid," "unenforceable" or "expired" under s. 35(2)(e), as the petitioner's contractual cancellation option is "impermissibly vague and unenforceable" and was not exercised within a reasonable period of time. Further, the Parking Easement is not "obsolete" under s. 35(2)(a), as it is still "in regular use".

[9] Neither party takes the position that the application to cancel the easement is premature in the circumstances. Rather the main issue, as framed by the parties, is whether the petitioner has shown the requisite basis for cancelling the Parking Easement under s. 35(2) of the *PLA.* This issue turns partly upon whether the petitioner has a continuing contractual right to cancel the Parking Easement.

II. BACKGROUND

A. The Parking Easement

[10] The Parking Easement is currently registered on the titles of both the Dominant Property, which is benefitted by it, and the Servient Property, which is encumbered by it. It was originally entered into between the then owner of the Servient Property, "Grantor" A&A Progressive Development Ltd. ("A&A") and the then owner of the Dominant Property, "Grantee" Stathis Brothers Investments Incorporated ("Stathis").

[11] The terms of the Parking Easement are contained in a written document dated January 19, 1996 (the "Parking Easement").

[12] The recitals to the Parking Easement state that "[the] Grantor has agreed to grant to the Grantee an easement over the Servient [Property] appurtenant to the Dominant [Property] for the purpose of parking motor vehicles." As noted in *Robb v. Walker,* 2015 BCCA 117 at paras. 26–27, recitals to an easement may be referred to for the purpose of interpreting the grant but generally only for the purpose of clarifying ambiguity.

[13] The operative term of the Parking Easement provides the following:

> 2. Grant
>
> The Grantor hereby gives and grants to the Grantee, its servants, agents, employees, licencees, invitees, customers, contractors and subcontractors, and those who contract with the aforesaid an easement in common with the Grantor and its servants, agents, employees, licencees, invitees, customers, contractors and subcontractors and those who contract with the aforesaid, the full, free and unrestricted right and liberty, to enter in, over and upon the Servient Tenement and remain thereon from time to time, and at all times, by day or night, for the purposes of parking up to 14 motor vehicles on the Servient [Property] and for ingress and egress thereto.
>
> [Emphasis added.]

[14] Some relevant terms are defined in s. 1 of the Parking Easement as follows:

> 1. Interpretation

> In this Agreement, except as otherwise expressly provided or unless the context otherwise require[s]:
>
> …
>
> (d) a reference to an entity includes any successor to that entity,
>
> (g) "Building" means that building and parking lot to be constructed by the Grantor on the Servient [Property].
>
> (h) "Parking Area" means that area of the Building, once constructed, designated by the Grantor for parking motor vehicles.

[15] Section 6 of the Parking Easement provides that the easement runs with the land, binding future owners. It also grants the Grantor (A&A, and now the petitioner) an express right to designate which parking stalls on the Servient Property will be subject to the easement, as follows:

> 6. Covenants
>
> (1) The covenants contained herein shall be covenants running with the Servient [Property] and shall attach to each part into which it may hereafter be subdivided from time to time.
>
> …
>
> (5) Once the Building is constructed, the Grantee agrees that it will only exercise its rights hereunder on such portions of the Parking Area as indicated by the Grantor from time to time for such parking purposes, and on such other portions of the Servient Tenement designated from time to time by the Grantor for vehicular movement, entrance to and exit from the Servient Tenement.

[16] Section 8 of the Parking Easement addresses severability as follows:

> 8. Severability
>
> If any provision of this Agreement is at any time unenforceable or invalid for any reason it will be severable from the remainder of this Agreement and, in its application at that time, this Agreement will be construed as though such provision was not contained herein and the remainder will continue in full force and effect and be construed as if this Agreement had been executed without the invalid or unenforceable provision.

[17] Section 12 of the Parking Easement indicates that the easement will bind subsequent owners of the properties, stating as follows:

> 12. Binding Effect
>
> This Agreement will enure to the benefit of and be binding upon the respective legal representatives, successors and assigns of the parties.

[18] Section 15 of the Parking Easement contains the following "entire agreement" clause:

> This Agreement constitutes the entire agreement between the parties and supersedes every previous agreement, communication, expectation, negotiation, representation or understanding, whether oral or written, express or implied, statutory or otherwise, between the parties with respect to the subject matter of this Agreement.

[19] Section 16 of the Parking Easement permits A&A, as the Grantor, to request a discharge of the Easement if Stathis, as the Grantee, fails to provide 11 additional parking stalls on the Dominant Property on or before April 18, 1996:

> The Grantee covenants to provide 11 additional parking stalls on the Dominant Lot on or before April 18, 1996. If the Grantee fails to provide the additional 11 parking stalls on the Dominant Lot by April 18, 1996 then at the option of the Grantor, this easement shall automatically determine and the Grantee at the request of the Grantor shall execute all necessary documents to discharge this easement.
>
> [Emphasis added.]

[20] I interpret the word "determine" in the above paragraph to mean to "bring to an end": Daphne Dukelow, *The Dictionary of Canadian Law*, 3rd ed. (Toronto: Carswell, 2004) at p. 346; Earl Jowitt & Clifford Walsh, *Jowitt's Dictionary of English Law*, 2nd ed. (London: Sweet & Maxwell, 1977) *sub verbo* "determine." The closing words of the paragraph and the reference to executing documents to discharge the easement reinforce this interpretation. In other words, should the Grantee (the owner of the Dominant Property) fail to "provide" 11 additional parking stalls on its own property by the date indicated, then, at the option of the Grantor (the owner of the Servient Property), the Parking Easement will automatically come to an end.

[21] In broad terms, the Parking Easement permits the owners of the Dominant Property, and their tenants, employees, and customers to enter the Servient Property and park vehicles in parking spaces that are designated by the petitioner.

The parking spaces are not exclusive to the Dominant Property but are shared in common with the Servient Property.

[22] The purpose of the Parking Easement therefore appears to be to provide additional parking on and access to the Servient property for people using the Dominant Property.

B. The Circumstances Surrounding the Parking Easement

[23] The parties have filed affidavit evidence attesting to the creation, purpose and history of the Parking Easement. That contextual evidence includes the following facts, which I accept as fact for the purpose of this petition proceeding. The extent to which these facts can be used to interpret terms of the Parking Easement, or to determine its purpose and scope, is considered further below.

[24] According to Mr. Anokh Aadmi, the director of A&A and the individual who entered into the Parking Easement on A&A's behalf, the Servient Property and the Dominant Property were formerly one parcel of land that was owned by Stathis (the Grantee). A two-storey commercial building called Forest Plaza was situated on this parcel. The Forest Plaza building had 54 parking stalls, which was the minimum number required to meet the City of Surrey's bylaw requirements for parking at that time.

[25] In 1995, Stathis subdivided the parcel into two separate properties, with the Servient Property forming one lot and the Dominant Property forming another. The Dominant Property contained the Forest Plaza building and most of its parking lot. The Servient Property was a bare parcel, save for a small parking area that formerly serviced the Forest Plaza building.

[26] Stathis wanted to develop the Servient Property, and arranged to sell the property to A&A, a commercial real estate developer, for this purpose. However, A&A anticipated that it would have difficulty obtaining a building permit from the City of Surrey for the proposed building project due to issues with the division of the Forest Plaza parking lot between the two properties.

[27] Prior to the subdivision, Forest Plaza met the City of Surrey's minimum parking requirement of 54 parking stalls. However, after the subdivision, approximately 14 of the 54 parking spaces that formerly serviced Forest Plaza (now the Dominant Property) fell on the Servient Property (A&A's lot) instead of the Dominant Property. This left the Dominant Property with fewer parking stalls (40) than what the bylaw required (54).

[28] According to Mr. David Ho, the architect retained by A&A to design the proposed building on the Servient Property, he recommended that a Parking Easement be entered into between A&A and Stathis to address the Dominant Property's parking requirements. The Parking Easement was designed to ensure that sufficient parking would be shown for both the Servient Property and the Dominant Property during the building permit process.

[29] Mr. Ho indicated that he submitted an architectural design to the City of Surrey on this basis for the development of a proposed two-storey building on the Servient Tenement (the A&A Plaza), which was approved on August 14, 1996.

[30] Section 16 of the Parking Easement allows A&A (and now the petitioner) to request a complete discharge of the easement if Stathis, as the Grantee, fails to provide 11 parking stalls of its own on the Dominant Property by April 18, 1996. Mr. Aadmi's evidence is that the purpose of s. 16 was to require the Grantee to create additional parking on the Dominant Property to satisfy its own parking needs. The addition of 11 parking spaces on the 8318 property would have brought the total number of parking spaces on the Dominant Property to 51.

[31] According to Mr. Aadmi, Stathis did not provide the required 11 additional parking spaces on the Dominant Property by the April 18, 1996 deadline. The respondent agrees with this fact.

[32] The respondent submits, however, that it can be inferred that 11 parking stalls were added to the Dominant Property sometime after the Parking Easement was executed, as one of the principals of Earth King Forest Plaza Ltd., Manjit Gill,

deposed that there were 53 parking spaces at Forest Plaza on the Dominant Property when Earth King purchased the property in 2007. Given Mr. Aadmi's evidence that there were originally 40 parking spaces on the 8318 or Dominant Property, it follows that 13 spaces were added to the Dominant Property sometime between April 18, 1996 and 2007. However, no evidence was led explaining how these additional parking spaces were created or comparing the layout of the parking lot at this time to its layout at the time the Parking Easement was granted.

[33] By the time A&A had finished constructing the A&A Plaza on the Servient Property in 1996, Mr. Aadmi's concern with the parking issue fell to the wayside. The Ministry of Children & Family Development moved into the A&A Plaza, and parking disputes did not arise as both A&A Plaza and Forest Plaza were two-storey, low-density buildings with minimal parking needs. As a result, Mr. Aaadmi did not turn his mind to A&A's option to cancel the Parking Easement.

C. Use of the Land Following the Parking Easement

[34] A&A continued to own the Servient Property until 2013 when it was sold to Janda Group Holdings Inc. ("Janda"). According to Janda's director, Mr. Sonny Janda, Janda owned the Servient Property for three years before selling it to the petitioner. During the time that Janda owned the Servient Property, parking was again not an issue. Like A&A, Mr. Janda did not exercise or waive any of Janda's rights under the Parking Easement.

[35] The Dominant Property has been sold and acquired several times since the Parking Easement was entered into.

[36] On May 23, 2002, the Dominant Property was transferred to Oballa Consulting Inc.

[37] On March 10, 2004, Oballa Consulting Inc. sold the Dominant Property to Metro KNP Holdings Inc.

[38] On January 17, 2006, Metro KNP Holdings Inc. sold the Dominant Property to Victoria King.

[39] On February 28, 2007, Victoria King sold the Dominant Property to Earth King Forest Plaza Ltd. (“Earth King”).

[40] The Forest Plaza building on the Dominant Property burnt down on February 8, 2012. Mr. Janda attests that after the fire, the Parking Easement was not in use because a fence was constructed around the demolished remains of Forest Plaza, which blocked access from the 8318 property onto the 8338 property. However, Mr. Gill attests that after construction of the Arista Centre got underway in 2015, Earth King again began to use the designated parking spaces at the 8318 Property for itself as well as construction workers and visitors.

[41] Since the original Forest Plaza building burned down, changes have been made to the Dominant Property. On December 14, 2015, the City of Surrey adopted a bylaw permitting the rezoning of the Dominant Property to “CD”, which allows for the construction of a more densely populated building. The rezoning was pursued by Earth King Forest Plaza Ltd., a respondent on this petition. Following the rezoning, Earth King began the process of developing the Arista Centre, a multi-tenanted four-storey commercial building.

[42] A development report in relation to Earth King’s proposal was issued on July 7, 2014. The development report notes that the City of Surrey’s Planning and Development committee endorsed its construction with 70 on-site parking spaces. It does not appear that the Parking Easement was a factor in the City’s decision on the required number of parking spaces.

[43] As construction of the Arista Centre on the Dominant Property was nearing completion in late 2017, Earth King filed an application to deposit a strata plan in the Land Title Office, which resulted in the creation of 33 strata lots. Since Arista Centre’s construction was completed in 2018, the building’s strata lots have been sold and new businesses have come to occupy the space.

[44] The Arista Centre became operational in 2018. As attested to by Manjit Gill, the Arista Centre was constructed with at least 70 parking spaces in accordance with its building permit. He attests that although the Arista Centre was constructed to meet the minimum number of required parking spaces to comply with the bylaw, it was always his intention that the strata lot owners in the new building would continue to use the parking spaces next door.

[45] The Arista Centre is much larger and more densely populated than the original Forest Plaza. The resulting increase in vehicle traffic has been a source of conflict with the petitioner's Servient Property when it comes to parking.

[46] A&A Plaza on the Servient Property is approximately 16,000 square feet in size. It has 15 parking stalls at the front of the building and 14 parking stalls behind it. There are also 36 gated parking stalls in a secure parkade designated for use by tenants of A&A Plaza.

[47] Whereas the petitioner does not require payment to park on the Servient Property, the respondent has monetized parking at the Arista Centre on the Dominant Property. The petitioner argues that the respondent's monetization of parking and opening it up to the general public has come at the expense of securing parking spaces for its own users, though this is disputed by the respondent.

[48] The parties disagree as to whether there were previously signs on the Servient Property designating certain areas of parking at the front and back of the A&A Plaza for use by Forest Plaza users and as to whether the petitioner removed such signs. The petitioner attests that he was not made aware of any agreement by the previous owners that specifically designated certain parking spots for use by Forest Plaza on the Servient Property. However, I do not find it necessary to reach definitive findings on this issue because, in my view, this case turns on different considerations.

III. APPLICABLE LEGAL PRINCIPLES

A. Modifying or Cancelling Charges

[49] A court's power to modify or cancel charges on land stems from s. 35(2) of the *Property Law Act,* which provides as follows:

> **35** (1) A person interested in land may apply to the Supreme Court for an order to modify or cancel any of the following charges or interests against the land, whether an easement;
>
> …
>
> (2) The court may make an order under subsection (1) on being satisfied that the application is not premature in the circumstances, and that
>
> > (a) because of changes in the character of the land, the neighbourhood or other circumstances the court considers material, the registered charge or interest is obsolete,
> > (b) the reasonable use of the land will be impeded, without practical benefit to others, if the registered charge or interest is not modified or cancelled,
> > (c) the persons who are or have been entitled to the benefit of the registered charge or interest have expressly or impliedly agreed to it being modified or cancelled,
> > (d) modification or cancellation will not injure the person entitled to the benefit of the registered charge or interest, or
> > (e) the registered instrument is invalid, unenforceable or has expired, and its registration should be cancelled.
> >
> > [Emphasis added.]

[50] Under s. 35(2), the court may make an order cancelling an easement if any one of the five conditions therein are satisfied. The petitioner bears the burden of establishing that any one of these conditions are satisfied: *Wallster v. Erschbamer*, 2011 BCCA 27 at para. 10.

[51] The wording of s. 35(2) is discretionary: *Olenczuk v. Mooney*, 2014 BCSC 825 at para. 36.

[52] In *Chivas v. Mysek* [1986] B.C.J. No. 2547, 1986 CarswellBC 1259 (C.A.), cited in *Collinson v. LaPlante* (1992), 73 B.C.L.R. (2d) 257, 1992 CanLII 685 (C.A.), Lambert J.A. stated the following regarding the test for obsolescence under s. 35(2):

> …[it] is not a test to be satisfied on the basis of balancing the rights of the parties, but rather by a consideration of the nature of the charge itself in the

> circumstances of the use of the relevant property and a determination of whether on those facts the charge or interest is obsolete.

[53] An easement cannot be considered obsolete "in circumstances in which it has been in regular use": *Vandenberg v. Olson*, 2010 BCCA 204 at para. 33; *NBC Holdings Ltd. v. Aarts Nursery Ltd.*, 2021 BCCA 7 at para. 54; *Schriemer v. Harris*, 2021 BCSC 1490 at para. 19; *Lafontaine v. University of British Columbia*, 2012 BCSC 805 at para. 41. It is not a defence for the owner of the servient tenement to simply prevent its use by the dominant tenement: *Granfield v. Cowichan Valley*, 1993 CanLII 2218 (B.C.S.C.) at 9.

B. Authority to Consider Surrounding Circumstances

[54] In *Robb v. Walker,* 2015 BCCA 117 at paras. 31–32, the Court of Appeal endorsed the following approach to interpreting an easement's purpose and provisions:

> [31] When interpreting an easement, the court must have regard to the plain and ordinary meaning of the words in the grant to determine what the intention of the parties was at the time the agreement was entered into. Surrounding circumstances, that is, objective evidence of the background facts at the time of the execution of the contract, are to be considered in interpreting the terms of a contract: *Sattva* at para. 58.
>
> [32] The wording of the instrument creating the right of way should govern interpretation unless (1) there is an ambiguity in the wording, or (2) the surrounding circumstances demonstrate that both parties could not have intended a particular use of the easement that is authorized by the wording of the document: *Granfield v. Cowichan Valley (Regional District)* (1996), 1996 CanLII 356 (BC CA), 16 B.C.L.R. (3d) 382 (C.A.).

[55] The Court in *McQuordale v. Baranti Developments Ltd*., 2015 BCCA 133 adopts this same proposition from *Granfield* (at para. 23). The Court goes on to state as follows:

> [29] With respect to the operative terms, it was and is an established principle that the use for which an easement was intended at the time of the grant is not a surrounding circumstance that establishes an objective common intention that an easement would not be put to any other use in the future: Granfield at paras. 20-21, citing *White v. Grand Hotel, Eastbourne, Limited*, [1913] 1 Ch. 113 (C.A.). A general grant of access was just that. Limitations on use or circumstances in which a grant would terminate required express language: Grand Hotel at 116 (per Cozens-Hardy M.R.). Moreover, ambiguity in a grant would be interpreted in favour of the grantee:

> *Williams v. James* (1867), L.R. 2 C.P. 577 at 581 (per Willes J.); see also John Leybourn Goddard, Gale on Easements, 8th ed. (London: Stevens and Sons, Limited, 1921) at 342; Edward Douglas Armour, K.C., Armour on Real Property, 2nd ed. (Toronto: Canada Law Book Company, 1916) at 21.

[56] In *Avanti Mining Inc. v. Kitsault Resource Ltd*., 2010 BCSC 1181 at para. 61, Mr. Justice Joyce emphasized that evidence of the context or surrounding circumstances of an easement agreement must not be allowed to overwhelm the plain language of the document. In the same paragraph, Joyce J. went on to give the following warning about relying on extrinsic evidence of the easement's purpose:

> 5. Evidence of negotiations or subjective evidence of the person who drafted the instrument purporting to explain the intent of the easement is not a "surrounding circumstance" and is not admissible as an aid to construction.
>
> …
>
> 6. To the foregoing, I would add this: where the instrument granting the easement contains an expression of the use for which the easement is intended, the court should be cautious about relying on extrinsic evidence as to use or purpose.

[57] As noted by Justice Baird in *LY Capital Inc. v. 668599 B.C. Ltd*., 2023 BCSC 233 at para. 26, the elements of the factual matrix that help construe an easement will vary from case to case, but the analysis should be limited to the circumstances that existed at the time of the easement's creation: citing *Englehart v. Holt*, 2014 BCSC 1969 at para. 120. The surrounding circumstances may be gathered from the testimony of the parties (see e.g., *Wong v. Rashidi*, 2011 BCCA 489 at para. 46) or the physical layout of the land and its historical uses (see e.g., *Laurie v. Winch*, [1953] 1 S.C.R. 49, 1952 CanLII 10 at 56).

IV. DISCUSSION

[58] The petitioner submits that the Parking Easement should be cancelled pursuant to ss. 35(2) of the *PLA.* The respondent submits that the petitioner's grounds for cancellation cannot succeed and that the petition should be dismissed.

A. The Petitioner's Right to Terminate the Parking Easement

[59] The petitioner seeks to cancel the Parking Easement on the basis that its option to cancel the Parking Easement under s. 16 was triggered on April 18, 1996, and was not subsequently waived. The petitioner submits that this cancellation option, if exercisable, permits this Court to cancel the Parking Easement under s. 35(2)(e) (or alternatively, s. 35(2)(c)). The respondent strongly opposes this position and submits that the petitioner's right of cancellation is not enforceable.

[60] Before turning to its impact on the s. 35(2) analysis, I will first consider whether the petitioner's option to cancel may still be exercised.

1. Whether s. 16 is Impermissibly Vague

[61] The respondent first argues that s. 16 of the Parking Easement is impermissibly vague and is therefore unenforceable. Specifically, the respondent submits that the provision for 11 "additional" parking stalls is impermissibly vague or that it inadequately defines the triggering event.

[62] I do not agree with these arguments. The wording in s. 16 of the Parking Easement uses relatively plain language. It makes clear who the "Grantee" and "Grantor" are, what property is defined as the "Dominant Lot," and the obligation of the Grantee to build 11 additional parking stalls by a set date. There is little room for ambiguity about the "triggering event" or the nature of the easement. In my view, the language of s. 16 can be interpreted in its natural and ordinary sense, informed (to the extent necessary as a result of ambiguity) by the surrounding circumstances known to the parties at the time the easement was formed.

2. Whether the Termination Mechanism in the Parking Easement is Still Available to the Petitioner

[63] The respondent further submits that the only reasonable interpretation of s. 16 is that the cancellation option must be exercised within a reasonable time. Alternatively, they argue that the petitioner is barred from exercising the option by the doctrine of election.

[64] As s. 16 of the Parking Easement is at the core of the dispute between the parties, I will repeat it here for ease of reference:

> The Grantee covenants to provide 11 additional parking stalls on the Dominant Lot on or before April 18, 1996. If the Grantee fails to provide the additional 11 parking stalls on the Dominant Lot by April 18, 1996 then at the option of the Grantor, this easement shall automatically determine and the Grantee at the request of the Grantor shall execute all necessary documents to discharge this easement.
>
> [Emphasis added.]

[65] It is common ground that Stathis did not provide the 11 parking spots by the requisite date, being April 18, 1996. As a result, I have no difficulty in finding that the option of the Grantor to "automatically determine" the Parking Easement was triggered. However, the question remains as to whether that option endures.

3. Whether the Right to Demand a Discharge Endures

[66] The petitioner maintains that the right to request a discharge under the Parking Easement endures and that the petitioner can request a discharge—even today. The petitioner maintains that its predecessors exhibited no conscious intent to abandon their option to request a discharge and never waived this right. According to the petitioner, their failure to request a discharge did not render s. 16 forever inoperable.

[67] The respondent, however, argues that the petitioner and its predecessors failed to exercise this option within a reasonable period of time. The respondent submits that the Grantor's successor ought not to be permitted to exercise this stale option 27 years after it was supposedly triggered. According to the respondent, the only reasonable interpretation of s. 16 is that the Grantor's option must be exercised within a reasonable time after April 18, 1996, and, at the latest, before the Grantee provides the 11 additional parking spaces.

[68] The respondent further submits that faced with two competing interpretations of s. 16, the Court ought to choose the more commercially reasonable one: that the option to terminate the Parking Easement has lapsed. The respondent proposes that this produces the fairest result and best promotes the intention of the parties.

[69] For the reasons that follow, I cannot agree with the respondent's submissions.

[70] Section 16 is silent as to *when* the Grantor may exercise its option to terminate the Parking Easement. There is no limitation stating by which date it must exercise this right. Moreover, s. 12 of the Parking Easement indicates that "[t]his Agreement will enure to the benefit of and be binding upon the respective legal representatives, successors and assigns of the parties." This language clearly indicates that the rights of the parties under the easement are to have a continuing effect.

[71] The respondent also submits that the petitioner is barred by the doctrine of election because the petitioner and its predecessors have effectively affirmed the Parking Easement for over 25 years by permitting users of the Dominant property to park there. In this regard, the respondent relies on *Springer Development Corp. v. Rogers* (1987), 11 B.C.L.R. (2d) 145, 1987 CanLII 2688 (C.A.) [*Springer*] for the proposition that "a party may lose a right acquired to avoid a contract if thereafter the conduct of that party, with knowledge of the option, is consistent only with a contract that is valid and enforceable by both parties" (emphasis added), even if the party does not communicate its choice to waive this right.

[72] In *Springer*, a party to a land purchase agreement lost the right to exercise its cancellation option after subsequently taking positive and affirmative actions under the contract and, importantly, allowing actions to be taken by the other party under the contract to that party's detriment. By contrast, I would not find that the petitioner or its predecessors took positive steps to abandon their right to cancel the easement in this case. On the contrary, they have merely acquiesced in the status quo for a period of 27 years. At no point during this time did they receive any benefits under the contract or affirmatively pursue a course of action inconsistent with their option to cancel.

[73] Further, the contract at issue in *Springer* did not explicitly require any waiver of rights to be in writing. That is not the case here. Section 9 of the Parking

Easement sets out that any consent or waiver, express or implied, is not valid unless it is in writing. Thus, the Parking Easement restricts the doctrine of waiver to instances where a party makes a waiver in writing to the other party. That did not occur here.

[74] Additionally, s. 15 of the Parking Easement sets out that "[t]his Agreement constitutes the entire agreement between the parties and supersedes every … representation … whether … express or implied…". That provision further undermines the strength of the respondent's argument that the petitioner's predecessors waived their cancellation right through their conduct.

[75] I cannot find that the petitioner ever exhibited an "unequivocal and conscious intention" to abandon its s. 16 cancellation right: *Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co.,* [1994] 2 S.C.R. 490, 1994 CanLII 100 at 500. This strict test for waiver is justified, as the petitioner would receive no consideration for waiving this contractual right: *Trial Lawyers Association of British Columbia v. Royal & Sun Alliance Insurance Company of Canada*, 2021 SCC 47 at para. 75.

[76] I find that, while the petitioner and its predecessors did not consider or take action in relation to their s. 16 right to terminate the Parking Easement, this does not constitute a conscious intention to abandon this right. Mr. Aadmi deposed that when the right to cancel the easement crystallized on April 18, 1996, his focus was directed elsewhere, on completing construction on A&A Plaza on the Dominant Property. In the years following the building's completion, he did not have concerns about sufficient parking because there was enough parking on the Servient Property to meet the demands of the businesses who rented space there at the time. The British Columbia Ministry of Children & Family Development was one such tenant who did not place significant demands on parking in the area. A&A's successor in title, Janda Group Holdings Inc., owned the Dominant Property from 2013 until 2017 and never requested a discharge of the Parking Easement. The evidence indicates that significant concerns over parking did not arise until parking until after the 2015-

2018 redevelopment of the 8318 Property with a larger building and more demand for parking.

[77] In these circumstances, the fact that A&A and its successors acted as good neighbours for many years and did not exercise pursuant to s. 16 the option to terminate the Grantee's right to park in the 14 additional spaces on the Grantor's lot ought not to be interpreted as an abandonment of this right. To interpret the Parking Easement as the respondent suggests and prohibit the petitioner from exercising this right now would also be anomalous in that the Grantor's s. 16 option to cancel would have eroded over time, but the Grantee's s. 2 right (in common) to park on the Servient Property would endure perpetually. I cannot find support for this interpretation in the language easement. Moreover, the respondent's position would depart from the apparent intent of the parties in s. 16, as it would allow the respondent and its predecessors to avoid any consequences for failing to construct the 11 additional parking spaces required by the easement.

4. Summary of Petitioner's Right to Terminate

[78] I find that the petitioner's right to unilaterally discharge the Parking Easement crystalized on April 18, 1996 when the respondent's predecessor failed to construct the 11 additional parking spaces by that date. I do not agree with the respondent's arguments to the contrary, including the submissions that the Parking Easement is impermissibly vague and unenforceable, that in this context the Grantor's option must be exercised within a reasonable time, or that the petitioner is barred by the doctrine of election. The petitioner's right to cancel the Parking Easement endures and may still be exercised.

[79] Through the petition, the petitioner has provided effective notice of its intention to terminate the Parking Easement. However, the parties' submissions were all based on whether the Court should cancel the easement pursuant to s. 35(2) of the *PLA*, and the petitioner sought court-ordered cancellation as a remedy rather than a simple declaration of the parties' rights. I would therefore analyze the cancellation issue within the *PLA* framework.

B. Whether the Parking Easement Should be Cancelled under s. 35(2)

[80] The petitioner submits that this Court should cancel the Parking Easement pursuant to s. 35(2)(a) (the interest is obsolete), 35(2)(b) (the reasonable use of the land will be impeded without practical benefit to others), 35(2)(c) (the beneficiary has expressly or impliedly agreed to cancellation), 35(2)(d) (the beneficiary would not be injured by its cancellation), or 35(2)(e) (the instrument is invalid, unenforceable, or expired). There was some shift in the petitioner's position. For instance, its second amended petition references all of s. 35(2) of the *PLA,* but ultimately states that it is seeking cancellation pursuant to ss. 35(2)(a), (b), (d) and (e). However, the petitioner's argument focussed on s. 35(2)(a), (c) and (e), with the latter two bases said to overlap.

[81] Below, I comment on the possibility of cancelling the easement, first pursuant to s. 35(2)(c) and (e) (agreement to cancel and expiry). I also alternatively address obsolescence pursuant to s. 35(2)(a) since this was emphasized in the petitioner's argument for cancellation.

1. Whether the Petition is Premature

[82] A condition precedent to modifying or cancelling an easement under s. 35(1) and (2) of the *PLA* is that the application is "not premature in the circumstances".

[83] An application is premature when considerations that are material to determining whether grounds exist under s. 35(2) have not yet materialized, or where, for other reasons, it would be better to defer the decision to a later date: *Newco Investments Corp. v. BC Transit* (1987), 14 B.C.L.R. (2d) 212, 1987 CanLII 2662 (C.A.) at 222–223; cited in *BC Transportation Financing Authority v. Rastad Construction Ltd. et al*., 2020 BCSC 2064 at para. 21. In *Newco Investments Corp.*, Taggart J.A. uses the following example at para. 33:

> …an application under s. 31(2)(e) on the ground the covenants are unenforceable for uncertainty might be premature if it was shown that future events such as a pending agreement or a decision on arbitration could resolve the uncertainty.

[84] The parties agree that this petition is not premature. The petitioner explains that the relevant circumstances justifying cancellation of the easement crystalized either at the time the Arista Centre's construction was completed in 2018 (under ss. 35(2)(a), (b), and (d) of the *PLA*), or on April 18, 1996 when the Grantee failed to provide 11 additional parking stalls on the Dominant Property, thereby triggering the Grantor's option to cancel the agreement (under s. 35(2)(e) of the *PLA*).

2. Agreement to Cancel the Parking Easement Under s. 35(2)(c) and Expiry of the Parking Easement Under s. 35(2)(e)

[85] The grounds for cancellation in s. 35(2)(c) and (e) depend largely upon the finding that the petitioner's option to cancel endures.

[86] The Parking Easement has expired by operation of the provisions set out within the document itself. For the reasons set out above, the petitioner's s. 16 right allows the petitioner to "automatically determine" the easement or bring it to an end.

[87] The Grantee and Grantor originally agreed in s. 16 of the Parking Easement to the easement being cancelled upon the failure of the Grantee to provide 11 additional parking spaces by a certain date. I have found above that this option to cancel remains exercisable by the petitioner. Through the petition process, the petitioner has provided effective notice that it is exercising its option to terminate the Parking Easement.

[88] As such, under s. 35(2)(e) of the *PLA,* "the registered instrument is invalid, unenforceable or has expired, and its registration should be cancelled."

[89] The circumstances also fall within s. 35(2)(c). All relevant considerations with respect to whether "the persons who are or have been entitled to the benefit of the [Parking Easement] have expressly or impliedly agreed to it being… cancelled" have been argued by the parties. The basis for cancelling the Parking Easement under s. 35(2)(c) is effectively the same as that considered above in relation to my finding that the petitioner's right to cancel the Parking Easement endures: namely, the respondent's predecessors agreed, pursuant to s. 16 of the Parking Easement, that

the petitioner and its predecessors should have a right of cancellation, which right was subsequently triggered and remains open to the petitioner who has expressed its desire to cancel the easement. However, as s. 35(2)(c) of the *PLA* was relied upon in argument but not developed as a ground for cancellation in the second amended petition, I would base the order for cancellation on s. 35(2)(e).

3. Whether the Parking Easement is Obsolete under s. 35(2)(a)

[90] If I am wrong about the petitioner's ability to presently exercise the cancellation option, which formS the basis of cancellation in s. 35(2)(e) of the *PLA*, I would instead decide this petition on the basis of s. 35(2)(a).

[91] The petitioner submits that the character of the two properties has changed significantly over the years, rendering the Parking Easement obsolete within the meaning of s. 35(2)(a) of the *PLA,* for the following reasons:

a) The Parking Easement was originally entered into so that A&A could obtain its building permit for A&A Plaza, but also so that sufficient parking space would remain available for use by the Dominant Property, which would have otherwise lost the right to utilize the parking spaces on the Servient Property.

b) The redevelopment of the Dominant Property following the fire that destroyed Forest Plaza resulted in a material change to the character of the land. The Dominant Property underwent a rezoning to construct a building significantly larger and more densely populated than the original Forest Plaza, introducing parking difficulties that did not previously exist between the properties.

c) The Arista Centre on the Dominant Property was purpose-built to accommodate its own parking needs without the need to rely on the Parking Easement. Indeed, its building permit was granted without reliance on or reference to the Parking Easement. It has sufficient parking on-site to accommodate users and patrons of the Dominant Property without having to resort to using the Parking Easement.

[92] The respondent disagrees and submits that the Parking Easement is not obsolete, as it is still "in regular use": the respondent and the individual strata lot owners are ready, willing and able to use the 14 parking spots to which they are entitled, and such parking still provides a practical benefit to them.

[93] The term “obsolete” was considered by the majority in *TDL Group Ltd. v. Harvey,* 2002 BCCA 258, where the Court referenced the power under the former *PLA* to “declare obsolete an easement that has fallen into desuetude.” At para. 53, the majority approved of the following definition from *Re Truman, Hanbury, Buxton & Co., Ltd.'s Application*, [1955] 3 All E.R. 559 (C.A.) at 563–4:

> The meaning of the term "obsolete" may well vary according to the subject-matter to which the term is applied. Many things have some value, even though they are out of date in kind or in form — for example, motor cars or bicycles. Here, however, we are concerned with the application of the term to restrictive covenants as to user, and these covenants are imposed when a building estate is laid out, as was the case with this estate which was laid out in 1898, for the purpose of preserving the character of the estate as a residential area for the mutual benefit of all those who build houses on the estate or subsequently buy them. If, as sometimes happens, the character of an estate as a whole, or of a particular part of it, gradually changes, a time will come when the purpose to which I have referred can no longer be achieved, for what was intended at first to be a residential area has become, either through express or tacit waiver of the covenants, substantially a commercial area. When that time comes, it may be said that the covenants have become obsolete, because their original purpose can no longer be served and, in my opinion, it is in that sense that the word "obsolete" is used in s. 84(1)(a).
>
> [Emphasis added.]

[94] In deciding to cancel an easement, the Court in *TDL Group Ltd*. noted that the character of the neighbourhood and the relevant circumstances had changed significantly since the easement was originally created. I will quote from the majority’s discussion of the easement in question, as the analysis is instructive:

> [54] It must be remembered that the original and only use of this easement was to permit the owner of Lot B to reach his garage located on the rear easterly portion of Lot B by way of the easement access through Lot C, the Lot that is presently occupied by a restaurant. So far as the record discloses, since the apartment building came into existence, there has been no use of this access easement by any vehicle or vehicles to get to the apartment building now situated on Lots A and B. It was only when the restaurant now located on Lot C was anticipated and the parties could not agree on a price to remove the old easement that the respondent owners of the apartment property indicated some intention to endeavour to make some use of this easement. To date, apparently nothing has been done along this line and it is not easy to see how any effective use could be made of this long dormant easement. Vehicular access to the apartment building always has been from another nearby street and all of the parking areas for the apartment building are accessed from that street.

> [55] There can be no doubt that the character of the neighbourhood has changed dramatically over the nearly fifty years since the charge was created, unlike the situation in the English case referred to supra. It appears to me on the facts of the instant case that this easement is wholly obsolescent. Both its original purpose and its earlier use are long dormant. The case perhaps most favourable to the position argued at trial by the respondents is Gray v. Doyle, a case referred to by my colleague in her Reasons. I would distinguish *Gray v. Doyle* on the basis that there the neighbourhood had not significantly changed and the existing easement had some apparent continuing utility. The situation in the case at bar is different on both aspects. This situation seems to me to fall four-square within the wording of the applicable statutory provision, s. 35(2) of the Property Law Act. In my respectful view, the chambers judge took an unduly narrow view of her jurisdiction to make an order declaring this charge obsolete because of a neighbourhood now much different from an earlier time in the 1950s and 60s and considering that the easement is completely outdated and of no practical use. I, therefore, consider that within the applicable wording of s. 35(2), this easement, the registered charge, "is obsolete" and should be declared to be so.
>
> [Emphasis added.]

[95] In *TDL Group Ltd.,* the Court held the original purpose of the easement is relevant in determining obsolescence.

[96] Indeed, several decisions have held that the intention of the parties, as recorded in the easement at the time of drafting, is the primary factor in interpreting the purpose of an easement: *Paterson v. Burgess*, 2017 BCCA 298 at para. 23; *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53 at para. 57; *Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corp*., 2020 SCC 29 at para. 101. The surrounding circumstances—that is, “objective evidence of the background facts at the time of the execution of the contract”—are also considered in interpreting the terms of the easement, though they “must not be allowed to overwhelm the plain language of the document”: *Avanti Mining Inc*. at para. 61; *Robb* at para. 31.

[97] The original purpose of the agreement can only be used to determine the proper extent of the easement if it is “expressed in the grant or can be inferred therefrom”: *Lafontaine v. University of British Columbia*, 2012 BCSC 805 at para. 57, aff’d on other grounds in 2018 BCCA 307.

[98] As noted, the recitals of the Parking Easement state that "C. The Grantor has agreed to grant to the Grantee an easement over the Servient [Property] appurtenant to the Dominant [Property] for the purpose of parking motor vehicles."

[99] Section 2 of the Parking Easement indicates that the Grantee's right to park on the Servient Property is "full, free and unrestricted," and applies to "its servants, agents, employees, licencees, invitees, customers, contractors and subcontractors, and those who contract with the aforesaid."

[100] I heed the warning from *Avanti Mining Inc.* at para. 61 to be cautious about relying on extrinsic evidence of use or purpose, as the Parking Easement contains an expression of the use for which the Parking Easement was intended.

[101] However, I cannot agree with the respondent that the right to park in the neighbouring 14 allotted spaces was unrestricted. Further and necessary clarification of the Parking Easement's purpose and scope can be found within the express terms of the easement itself, as well as by reference to the surrounding circumstances in which it was formed to explain residual ambiguity.

[102] Extra parking for the Dominant Property was required at the time in order to subdivide and redevelop the Servient Property, which redevelopment left a shortage in required parking spaces for the Dominant Property under the applicable local bylaw. The Parking Easement provides in s. 16 that the Grantee must create an additional 11 parking spots on its own property (the Dominant Property), or else the owner of the Servient Property may terminate the easement. Had these 11 parking spaces been created, this would have reduced the need for the Dominant Property to rely on the Servient Property to maintain its parking requirements. Part of the purpose of this provision appears to be to motivate the Dominant Property to provide for its own parking needs without having to rely on the Servient Property.

[103] It can be inferred from the inclusion of such a term in the Parking Easement that the primary purpose of the easement was to solve the immediate need for the Dominant Property to maintain the minimum parking required by City of Surrey

bylaws and to facilitate the Servient Property's building permit being approved, at least in the interim until the Dominant Property could increase parking on its land. The surrounding circumstances—namely, the recent subdivision and impending redevelopment of the Servient Property—lend further support to this conclusion. Hence, s. 16 informs the scope of the right granted in s. 2 of the Parking Easement as well as when and how the easement may be considered obsolete.

[104] The consideration of obsolescence in s. 35(2)(a) is also tied to the "changes in the character of the land, the neighbourhood or other circumstances the court considers material…". As noted, Dominant Property changed character in the post-2012 period after the fire destroyed the Forest Plaza building. It then changed character again in 2015–2017 when the property was rezoned (from a C-8 designation to CD) by Earth King to permit a more densely populated building of larger size, and when a larger building, the Arista Centre, was built. At that time, 70 parking spaces were constructed, which was determined to be the minimum needed to service the building. Hence, the Dominant Property had significantly increased the need for, and the supply of, parking on its lot.

[105] The Parking Easement could not have contemplated this later redevelopment of the Dominant Property at the time it was formed. The requirement that the Grantee create an additional "11" parking spots on the Dominant Property is linked to the parking needs of the Forest Plaza building at the time, which were far less demanding. Hence, the changes in the character of the land overtook the original purpose of the Parking Easement, which was connected with the subdivision of the property and the construction of A&A Plaza on the Servient Property in 1996.

[106] The petitioner relies upon *McQuordale v. Baranti Developments Ltd.*, 2015 BCCA 133 and *BC Transportation Financing Authority v. Rastad Construction Ltd.*, 2020 BCSC 2064 [*Rastad*]. These cases involved landlocked properties that had been granted easements allowing access to the main road. The properties at issue later obtained alternative means of accessing the main road through redevelopment or consolidation. In both cases, the Court concluded that the circumstances of the

land and the neighbourhood had thus changed, rendering the easement obsolete. In *Rastad*, the impugned easement had also granted a right to park on the servient tenement. The Court noted as follows at para. 29:

> …There is also now space on the [dominant tenement] for free access of vehicles and for tenants to park in front of their units without the need for access to the Easement area on the [servient tenement].

[107] The respondent submits that *McQuordale* and *Rastad* are distinguishable, as the easements that were cancelled in these cases had clearly fallen into disuse. By contrast, the Parking Easement is still being used (or is sought to be used) by the respondent and the individual strata lot owners. The respondent submits that an easement cannot be cancelled "in circumstances in which it has been in regular use": *Vandenberg* at para. 33; *NBC Holdings Ltd.* at para. 54.

[108] Yet, I find that the Parking Easement was not in regular or continued use in the period after the fire in February 2012 destroyed the Forest Plaza building and the building was redeveloped. From the evidence, I find that a fence was erected in the 2012–2015 period, blocking parking access around the site for potential users of the Dominant Tenement. It appears that some parking was permitted in the 2015–2018 period while the Arista Centre being developed. However, there was a significant interruption in parking during the overall redevelopment period.

[109] Moreover, "regular" or "continued" use cannot refer to all uses to which the owners of a dominant tenement could imagine or desire to put an easement. In this case, it is not just the character of the land that has changed; the manner of use of the Parking Easement has fundamentally changed since it was granted. The use to which the respondent now seeks to put the Parking Easement is not "regular" or "continued"; it is no longer being used "in the manner contemplated by the grant": *Collinson v. LaPlante,* 1992 CanLII 685 (BCCA).

[110] As a result of the respondent's decision to charge a fee for parking on its own lot, I infer that the petitioner's parking lot on the Servient Property may sometimes be used as a first option for Arista Centre users, rather than as a last resort. Amin

Nurmohamed, the principal and director of the petitioner, deposes that Arista Centre users commonly park in A&A Plaza even when parking spaces are available at the Arista Centre. This use is inconsistent with the parking right granted in the Parking Easement, which allows for shared access to designated parking spaces to meet the overflow or supplementary parking needs of the Dominant Property.

[111] Rather than offering its users free parking within its own lot, the respondent has chosen to charge for its parking stalls and explicitly or tacitly encourage users to take advantage of the free parking on the petitioner's property. Thus, the use the respondent has made of the Parking Easement in recent years—namely, to "free up" its own parking stalls to generate revenue—is not a proper use and is therefore not a "regular" or "continued" use of the Parking Easement.

[112] I have no doubt that the additional 14 parking spaces were commonly used by the respondent's predecessors and guests. This state of affairs was no doubt fed by the failure of the previous owners of the Servient Property to exercise their s. 16 right to terminate the Parking Easement upon the failure of the Dominant Property owners to create new parking stalls after 1996.

[113] Of course, if more space is required by the owners and guests of the Dominant Property, nothing prevents the parties from entering into negotiations to attempt to accommodate such demand for additional parking. Furthermore, nothing prevents the owners of Servient Property from charging parkers for parking on their property. The respondent cannot, however, expect free parking forever on its neighbour's lot when the purpose of providing the extra parking has long been overtaken.

[114] Overall, I find that the Parking Easement is "obsolete" under s. 35(2)(a), in that it has outlived its original intended purposes and has been overtaken by subsequent changes to the land: the failure of the Dominant Property to construct extra parking on its own lot; the fire in 2012 at Forest Plaza that destroyed the building, the subsequent rezoning of the Dominant Property, and the 2015–2017 redevelopment of the Dominant Property into a larger building complex with a

number of parking stalls that far exceeds what was contemplated in 1996 when the Parking Easement took effect. I would therefore cancel the Parking Easement on this basis.

4. Other Bases for Cancellation of the Easement Under s. 35 of the *PLA*.

[115] In addition to ss. 35(2)(a), (c), and (e) of the *PLA*, the petitioner has cited s. 35(2)(b) (reasonable use impeded) and (d) (no injury) as alternative bases for cancellation.

[116] Given my findings above, I find it unnecessary to consider the other subsections of s. 35(2) of the *PLA.*

V. CONCLUSION

[117] The order sought by the petitioner cancelling the Parking Easement, as stated in para. 1 of its second amended petition, is granted.

[118] Unless the parties wish to make submissions as to costs, the petitioner is entitled to its costs on the normal scale of difficulty.

"Brundrett J."