

Exhibit 6

Release and voidance of restrictions in land grants

This policy provides direction to release or remove restrictions that are no longer in the interest of the Crown.

Note: Due to changes we made to the *Public Lands Act* (<https://www.ontario.ca/laws/statute/90p43>) in 2021, this policy is under review.

Read the regulatory registry (<https://www.ontariocanada.com/registry/view.do?postingId=38807&language=en>) for additional information on the recent *Public Lands Act* changes. If you have any questions, contact your local district office (<https://www.ontario.ca/page/ministry-northern-development-mines-natural-resources-and-forestry-regional-and-district-offices>).

Subject: Release and Voidance of Restrictions in Land Grants

Policy: PL 4.03.01

Complied by – branch: Crown Forests and Lands Policy Branch

section: crown lands section

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1.0 Introduction

Crown grants commonly contain restrictions in the form of reservations, exceptions, land use conditions, qualifications or other restrictions. These restrictions are

imposed by the Crown pursuant to the common law, legislation and/or policy that applies when the lands are granted.

Such restrictions may be viewed as a restriction on title to land and property owners may wish to have them removed. Some restrictions may be obsolete or outdated and no longer in the interest of the Crown. Some restrictions are voided by statute. The *Public Lands Act* also provides for the release of other restrictions.

2.0 Goal

To facilitate effective stewardship of public lands or interests and, where appropriate, release or removal of restrictions that are no longer in the interest of the Crown.

3.0 Objectives

3.1.1. To provide direction on the status of restrictions and, provide guidance on whether:

- a) they are void by statute and/or;
- b) may be released if no longer required, consistent with the public interest or Ministry programs.

3.1.2 To ensure the Ministry completes all required due diligence prior to potentially releasing patent restrictions.

4.0 Patent restrictions

4.1 Restrictions void by statute

Some patent restrictions have been made “void by statute”, meaning the restriction has no effect in accordance with a provision of Ontario statute law. A request may be made by an individual to the Ministry for a voidance certificate for any patent restrictions void by statute.

The original letters patent, patent record and records in the Land Registry Office will continue to show restrictions that are now void by statute. A person with an interest in the land may want confirmation that the restriction is void by statute to be recorded on title.

Any individual may apply for a voidance certificate for a particular parcel of land, however only the owner of the property may have the certificate registered on title for the land in the local Land Registry Office.

Appendix "A" provides a list of restrictions of general application that are void by statute including other site specific restrictions may also be void and reference should be made to the statutes of Ontario for these provisions. There may be additional provisions that have not been consolidated into the statutes of Ontario, as is illustrated by the list provided in Appendix A which references *Public Lands Amendment Acts* passed in 1956, 1957 and 1960.

4.2 Restrictions That Can Be Removed By a Method Other Than a Release

4.2.1 Habendum Restriction

A habendum is generally identified by the phrase – "To have and to hold".

Usually such restrictions are limited to historical letters patent which may contain a clause in the habendum that restricts the interest being granted. An example of such a provision would be: "To have and to hold the said lands for the purpose of a public market."

Habendum restrictions are not land use conditions within the meaning of section 18 of the *Public Lands Act* and consequently may not be released under section 19. An Order in Council is required to authorize the release of the lands from the restriction. As the interest granted is limited in the original letters patent, supplementary letters patent are required to grant the additional interest in the lands.

4.3 Non-void restrictions that will not be released

4.3.1 Mines and minerals

Mines and minerals reserved in Crown grants issued on or after May 6, 1913 remain the property of the Crown and are administered under the *Mining Act*.

4.3.2 Ores, etc. to be treated in Canada

The *Public Lands Act* and the *Mining Act* each require that all ores and minerals taken from patented lands be treated or refined in Canada. This condition cannot be released.

4.3.3 Navigability clause

Many Crown grants, especially those for waterfront lands, include a reservation similar to the following: “the free use, passage and enjoyment of, in, over and upon all navigable waters that shall or may be hereafter found on or under, or be flowing through or upon any part of the” lands granted.

This type of reservation reflects the common law right of navigation. The province cannot release this reservation as navigation is the responsibility of the federal government and the right is granted by the common law.

4.3.4 Restrictions that have already been exercised or do not affect the lands granted

Where it is determined that the restriction has already been exercised by the Crown, is time limited or does not affect the lands granted, the restriction need not be released, as it no longer exists. Examples of these are below.

1. **Public or colonization roads.** Most Crown grants contain a reservation similar to the following:

“**saving, excepting and reserving** the surface rights in and over any public or colonization roads or any highways crossing the said Land at the date of these Letters Patent.”

If such a road existed at the date of the letters patent, the road lands were excepted from the grant as a result. If such a road did not exist on the date of patent, then no interests were reserved to the Crown.

2. **Where the described lands reserved do not form part of the parcel.** See paragraph 4.4.3.4 for an example.

4.4 Non-void restrictions that may be released

The *Public Lands Act* allows the Minister to release most patent restrictions that are not described in the above sections. The Minister is not required to release such restrictions, however when an application for release is received, consideration will be given to the current or potential future need to retain the interest contained in the restriction, including if the release would result in impacts to socio-economic opportunities for the broader community. If releasing a patent restriction does not adversely affect the interests of the Crown or the public then the restriction may be released.

4.4.1 Restrictions eligible for release under general authority

Section 68.1(2) of the *Public Lands Act* provides the Minister with general authority to release reservations that cannot be released under any other provision of the Act as long as the release is not prohibited by the Act. This allows the Minister to release unique and/or outdated reservations that are no longer in the interest of the Crown to retain.

The following list provides examples of common patent restrictions that may be released pursuant to this section upon request by the owner of the land affected by the reservation:

- reservation of sand and gravel rights on the land to the Crown
- reservation of a right-of-way for a railway line which may be released for a line that has not been constructed
- Fishery Clause - Retaining the right to use the bank for fishery purposes.

4.4.2 Restrictions eligible for release under specific authority

The *Public Lands Act* also provides the Minister with specific authority to release the following types of restrictions. Application for release can be made by the owner of the land affected by the restriction:

4.4.2.1 Trees

Where there is a reservation of any or all trees, provided the reservation is not void, the reservation may be released in accordance with Procedure Directive PL 4.03.01 under authority of s. 58(6) of the *Public Lands Act*.

Reservations of timber included in grants under the *Veteran's Land Grant Act* of 1908 or its predecessor Act, passed in 1901, known as

"An Act to Provide for the Appropriation of Certain Lands for the Volunteers who Served in South Africa and the Volunteer Militia who Served on the Frontier in 1866"

are not void by statute and may be released under s. 58(6) of the *Public Lands Act*.

4.4.2.2 Land use condition

Since 1959, Crown grants may contain a land use condition authorized by section 18 of the *Public Lands Act*, similar to the following:

"It is a condition of these letters patent that the land granted shall be used for - purposes only."

Typically, land use conditions have been imposed to confine the use of lands to agricultural, conservation or municipal purposes. Rarely, the clause may indicate that the lands shall not be used for a particular purpose.

A land use condition should not be confused with an habendum restriction. See Habendum Restriction (Section 4.2.1 of this Policy).

Section 19 of the *Public Lands Act* provides the Minister with authority to order the release of the land or any part of the land from the land use condition.

Any restriction that is not a habendum which restricts the use of the land in letters patent dated prior to 1959 may be a restrictive covenant and would not be a land use condition subject to release under s. 19 of the *Public Lands Act*.

4.4.3. Restrictions related to roads and access

A variety of reservations related to roads and public access that may be found in Crown grants may be released pursuant to the *Public Lands Act* when an application is made by a landowner.

4.4.3.1 Percent reservation for roads

Most Crown grants, especially those issued after August 6, 1866 in townships where no road allowances were laid out, contain a reservation of a specified percentage of the surface rights of the parcel being granted for roads similar to the following:

“saving, excepting, and reserving (the surface rights only in) {percentage} per cent of the area hereby granted for roads and the right to lay out the same where the Crown or its officers may deem necessary.”

In accordance with subsection 64 (3) of the *Public Lands Act*, such a reservation, if not exercised before May 1, 1963 is deemed to be a reservation of the surface rights only.

Authority to release this type of reservation is found in s. 66(1) of the *Public Lands Act*.

4.4.3.2 Access clause

Many Crown grants, particularly those for waterfront lands, include the following type of access reservation:

“reserving also the right of access to the shores of all rivers,

streams and lakes for all vessels, boats and persons.”

The access clause provides for access to private property from water (e.g. in times of marine distress).

Authority to release this type of reservation is found in s. 66(2) of the *Public Lands Act*.

4.4.3.3 Right to construct roads

The right to construct roads is reserved in any grant or disposition by the Crown under section 65(1) of the *Public Lands Act*, whether or not it is expressly reserved in the instrument.

Authority to release this type of reservation is found in s. 66(1) of the *Public Lands Act*.

4.4.3.4 Allowances or strips of land along the shores of lakes and rivers

Some clauses in Crown grants refer to allowances or strips of land along the shores of water bodies. Historically the wording of these clauses has not been consistent. The wording may state that the strip is an allowance, and was “reserved” or “excepted”, and may describe that the strip of land is for road purposes. Some examples of the wording are:

- **“Reserving** an allowance of one chain in perpendicular width **along the shore of”**
- **“Excepting** a strip of land one chain in perpendicular width **along the shore of”**
- **“Reserving** an allowance **for road purposes** one chain in perpendicular width **along the shore of”**
- **“Excepting** an allowance **for road** one chain in perpendicular width **along the shore of”**

Regardless of how the clause is worded, subsection 66(3) of the *Public Lands Act* provides the authority for the Minister to treat the restriction in respect of a right-of-way or allowance along the shore as a reservation that may be released. Determining whether a clause of this type can be released must be done on a case-by-case basis. In all cases, the Office of the Surveyor General will be consulted if:

- a) the water body is or has been artificially flooded, **and/or**
- b) if the application affects a “mining location”, as a shore road allowance may have been created by statute.

In some cases the inclusion of the clause in the Crown grant may have been intended to draw attention to an existing strip of land for a right-of-way or for shore road allowance already in front of the parcel being granted. In such cases the restriction can not be released (see paragraph 4.3.4).

Subject to paragraph 4.3.4, restrictions of the type set out above may be released where **all** of the following conditions are met:

1. The strip of land has not been used as if it was excepted from the original grant

Prior to proceeding with an application to release, it must be determined that:

- a) there is no evidence of use of the strip of land by the public, **and**
- b) there is no apparent other claimant to any portion of the strip of land.

2. The release is eligible for registration in the Land Registry Office

For a release to be eligible for registration in the Land Registry Office, the applicant’s parcel (as described in the Land Registry PIN) must include the strip of land (i.e. the survey or written description of the parcel includes all the lands to the water’s edge).

3. If the wording includes “for road purposes” or similar language and the strip of land is not a road

If the clause indicates that the strip of land is for road purposes, it shall be deemed to be a road dedicated by the Crown for public use. The Courts have determined that both the intent to dedicate a road by the Crown and the acceptance by the public of the road must be present to create a road at law.

To determine whether the dedication of road has been accepted by the public:

a) **In areas with municipal organization:**

The strip of land will be considered a highway:

- If the municipality has passed a by-law establishing the strip as a road after December 31, 2002, **or**

- If the public accepted the dedication of the strip in the restriction by using the strip as a road (or footpath) or the municipality did so by by-law prior to December 31, 2002.

In these circumstances the municipality will be consulted to determine if the municipality considers the ownership of the strip of land to have vested in the municipality, in which case it is the municipality, not the Crown, who would have the ability to dispose of the land in accordance with the provisions of the *Municipal Act*.

If the strip of land has not vested in the municipality, the restriction may be treated as a reservation that may be released in accordance with this policy as long as the municipality does not object to its release.

b) In areas without municipal organization:

The strip of land will be considered a road if the public has accepted the dedication by using the strip for travel for a sufficient period of time (e.g., enough time that the denial of public use would interfere with public convenience and private rights).

In such a case, the restriction cannot be released. An application to purchase the land could be made, but the road must first be stopped up by Minister's Order under Section 55.1(1) of the *Public Lands Act* before it could be sold. (see Policy PL 4.11.03).

If the strip of land has not been used by the public for travel, the restriction may be treated as a reservation that may be released in accordance with this policy.

5.0 Definitions

In this policy,

Crown grant

means an original grant from the Crown that includes letters patent or another type of document that grants public lands.

Exception

means a clause in a Crown grant which operates to remove or not include certain lands or interests in land in a Crown grant. The land or interest in land described in the exception are retained by the Crown.

Patent restrictions

includes reservations, land use conditions, qualifications, provisos, or other restrictions contained in letters patent or the Crown grant, whether or not they are void;

Release

means to discharge by a document issued under statutory authority;

Reservation

means a clause in a Crown grant which retains (or reserves) to the Crown some right or interest in the land described by the grant. A reservation retains only a limited right to use the lands to which it applies (such as a reservation of mining rights, or a reservation of a right-of-way, or a reservation of pine trees.)

Void by statute

means to have no effect in accordance with a provision of Ontario statute law.

Appendix "B"

provides a summary of the status of various patent restrictions. For accuracy, reference should be made to the official volumes of the statutes of Ontario, as required.

6.0 Policy cross references

- PL 4.03.01 "Release and Voidance of Reservations and/or Conditions in Land Grants" procedure
- PL 4.11.03 "Road Allowances, Dedicated Roads and Crown Shoreline Reserves – Dispositions"
- PL 6.02.01 "Administrative Fees for Public Land Transactions"

Appendix "A"

Restrictions on letters patent void pursuant to statute

(this list contains restrictions of general application only:

Additional site specific restrictions may also be void pursuant to the statutes of Ontario)

1. Building Conditions - 18 Months

Conditions in letters patent that require the patentee to expend \$300 within 18 months on improvements and obtain Minister's approval before starting construction, are void. (see section 68 of the *Public Lands Act*)

2. Mines and Minerals Letters Patents issued before May 6, 1913

With the exception of any mines and minerals disposed of under the *Mining Act* or any predecessor of that Act, or mines and minerals that have or may revert to the Crown, all reservations of mines and minerals in any letters patent issued before May 6, 1913 are void. (see section 61 of the *Public Lands Act*)

3. Oaths Prescribed by Law

The following proviso, or one in words with the same effect, in any letters patent is void: Provided also, that if at any time or times hereafter, the land so hereby given and granted to the said - shall come into possession and tenure of any person or persons whomsoever, either by virtue of any deed of sale, conveyance, enfeoffment, or exchange, or by gift, inheritance, descent, devise, or marriage, such person or persons shall within twelve months next after his, her or their entry in, to, and possession of the same, take the oaths prescribed by law, before some of the magistrates of Our said Province, and a certificate of such oaths having been so taken shall cause to be recorded in the Secretary's Office of the said Province. (see section 8 of the *Public Lands Amendment Act, 1957, S.O. 1957, c. 99*)

4. Pine Cutting

Any provision in a letters patent granting a summer resort location that prohibits the cutting of pine timber without permission or provides the manner of disposal of cut timber is void. (see subsection 58 (4) of the *Public Lands Act*)

5. Trees

The following tree reservations in letters patent are void:

- a) Where land disposed of for agricultural purposes. (see subsection 58 (1) of the *Public Lands Act, Free Grants and Homesteads Act* or any lands granted prior to 1970 under Part II of the *Public Lands Act*.;

- b) Where land disposed of for a summer resort location (see subsection 58 (2) of the *Public Lands Act*); and
- c) Where reservation of all timber and trees contained in letters patent dated on or before April 1, 1869. (see subsection 58(3) of the *Public Lands Act*)

6. Surveyor General of Woods

The following proviso, or one in words with the same effect, in any Crown grant is void: Provided always, that no part of the parcel or tract of land hereby given and granted to the said - be within any reservation heretofore made and marked for us, our heirs and successors, by our Surveyor-General of Woods, or his lawful Deputy; in which case, this Our grant for such part of land hereby given and granted to the said - as aforesaid and which upon a survey thereof being made, be found within any such reservation, shall be null and void, and of none effect, anything herein contained to the contrary notwithstanding (see section 10 of the *Public Lands Amendment Act, 1956, S.O. 1956, c. 72.*

7. Time Limit - Dwelling Construction and Residency

The following proviso, or one in words with the same effect, in any Crown grant is void: Provided also, that the said - shall and do within three years, erect and build or cause to be erected and built upon some part of the said parcel or tract of land, a good and sufficient dwelling house (not being in his own right lawfully possessed of an house in Our said Province) and cause some person to be therein resident, for, and during the space of One Year thence next ensuing the building of the same. (see section 7 of the *Public Lands Amendment Act, 1957, S.O. 1957, c. 99*)

8. Certain Letters Patent – Toronto

Reservations contained in a certain letters patent issued on May 18th, 1880 granting to the City of Toronto a tract of marshland and land covered by water containing approximately 1,385 acres located in the southeast of the City are void. (see section 8 of the *Public Lands Amendment Act, 1956, S.O. 1956, c. 72*)

9. Islands – Georgian Bay

Where Crown grants granting certain islands in Georgian Bay of Lake Huron contain the following proviso, or one in words with the same effect, it is void: Provided always, and it is hereby declared that these Presents are issued for the

purpose of passing to the Grantee only such estate, right, title and interest in and to the said lands as We in the right of our Province of Ontario have power to convey, and that the said Grantee, his heirs or assigns, shall have no recourse against Us or Our successors or against the Province of Ontario or the Government thereof should our title be found to be defective or should these Presents be found ineffectual to pass such title. (see section 9 of the *Public Lands Amendment Act, 1956, S.O. 1956, c. 72*)

10. Lands Transferred Within Three Years of Patent

The following proviso, or one in words with the same effect, in any letters patent is void: Provided always that if at any time or times hereafter within the space of three years from the date of these presents the said - by any Deed of Bargain and Sale release, exchange or other conveyance shall grant, bargain,, sell, alien, release or convey all or any part of the said parcel or tract of land hereby granted, then and in such case this our Grant for such part of the land so given and granted to the said - and his heirs as aforesaid shall be null and void anything hereinbefore contained to the contrary thereof in anywise notwithstanding" (see section 5 of the *Public Lands Amendment Act, 1960, S.O. 1960, c. 94*).

Appendix "B"

Legend for release and voidance chart

Type

- EXC – Exception
- LUC – Land Use Condition
- PRO – Proviso
- RES – Reservation
- RST – Restriction

Status

- REL – Releasable
- NR – Non releasable
- V – Void

- AMD – Amended patent required
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- ARA – *Aggregate Resources Act*
.....
- MA – *Municipal Act*
.....
- MG – *Mining Act*
.....

Release and voidance chart

Mines and minerals

Restriction	Type	Status	Exceptions	Authority
Mines and minerals where lands granted before May 6, 1913 (See 4.1. & Appendix A)	RES	V	-Where mines and minerals disposed of under <i>Mining Act</i> , etc. -where mines and minerals have reverted to Crown	ss. 61 (1) PLA
Mines and minerals where lands granted on or after May 6, 1913 (See 4.3.1)	RES	NR/MG	N/A	N/A

Miscellaneous

Restriction	Type	Status	Exceptions	Authority
Sand and gravel (4.4.1)	RES	REL /AR A	N/A	ss. 68.1(2) PLA
Access clause (See 4.4.3.2)	RES	REL	N/A	ss. 66(2) PLA
Fishery clause (See 4.4.1)	RES	REL	N/A	ss. 68.1(2) PLA
Navigability (See 4.4.3)	RES	NR	N/A	N/A
Oaths prescribed by law (See 4.1.3)	PRO	V	N/A	s. 8, S.O. 19 57, c 99
Time limit – Dwelling and Residency (See 4.1.6)	PRO	V	N/A	s. 7, S.O. 19 57, c 99
Other reservations that cannot be released under any other provision of the <i>Public Lands Act</i>	RES	REL	N/A	ss. 68.1(2) PLA

Purpose restrictions

Restriction	Type	Status	Exceptions	Authority
Land use condition (e.g. municipal conservation authority purposes only) (See 4.4.2.2)	LU C	REL	N/A	s. 19 PLA
Habendum restriction (to have and to hold for purposes) (See 4.2.1)	RS T	AM D	N/A	OIC- Supplemental Patent

Roads/rights of way

Restriction	Type	Status	Exceptions	Authority
Allowance along shore of lake or river, or a right of way (See 4.4.3.4)	RES /EX C	REL	N/A	ss. 66(2) PLA (see also ss. 66(3) PLA)
Percentage (5/10%) reservation for roads (4.4.3.1)	RES	REL	N/A	ss. 66(1) PLA
Right to construct roads (See 4.4.3.4)	RES	REL	N/A	ss. 66(1) PLA

Restriction	Type	Status	Exceptions	Authority
Public or colonization roads (See 4.3.4)	EXC	NR	N/A	N/A
Surveyor general of woods (See 4.1 & Appendix A)	PR O	V	N/A	s. 10, S.O. 1956, c 72

Summer resort

Restriction	Type	Status	Exceptions	Authority
Building condition – 18 months (See 4.1 & Appendix A)	LU C	V	N/A	s. 68, PLA
Pine cutting – Permission Requirement (See 4.1 & Appendix A)	PR O	V	N/A	ss. 58 (4) PLA

Trees

Restriction	Type	Status	Exceptions	Authority
Trees – Agricultural purposes (See 4.1 & Appendix A)	RE S	V	N/A	ss. 58(1)

Restriction	Type	Status	Exceptions	Authority
				PLA
Trees – Summer Resort Location (See 4.1 & Appendix A)	RE S	V	N/A	ss. 58(2) PLA
Trees – Grants on or before April 1, 1869 (See 4.1 & Appendix A)	RE S	V	N/A	ss. 58(3) PLA
Trees – not void (see 4.4.2.1)	RE S	REL	N/A	ss. 58(6) PLA

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